

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Uniform Partition of Heirs Property Act.

6 Section 2. Definitions. In this Act:

7 (1) "Ascendant" means an individual who precedes another
8 individual in lineage, in the direct line of ascent from the
9 other individual.

10 (2) "Collateral" means an individual who is related to
11 another individual under the law of intestate succession of
12 this State but who is not the other individual's ascendant or
13 descendant.

14 (3) "Descendant" means an individual who follows another
15 individual in lineage, in the direct line of descent from the
16 other individual.

17 (4) "Determination of value" means a court order
18 determining the fair market value of heirs property under
19 Section 6 or 10 or adopting the valuation of the property
20 agreed to by all cotenants.

21 (5) "Heirs property" means real property held in tenancy in
22 common which satisfies all of the following requirements as of
23 the filing of a partition action:

1 (A) there is no agreement in a record binding all the
2 cotenants which governs the partition of the property;

3 (B) one or more of the cotenants acquired title from a
4 relative or, if a cotenant is an entity, from a relative of
5 a beneficiary, shareholder, partner, or member of the
6 entity, whether such relative is living or deceased; and

7 (C) Any of the following applies:

8 (i) 20 percent or more of the interests are held by
9 cotenants who are relatives;

10 (ii) 20 percent or more of the interests are held
11 by a cotenant who acquired title from a relative,
12 whether living or deceased; or

13 (iii) 20 percent or more of the cotenants are
14 relatives.

15 (6) "Fair market value" means the cash price at which the
16 heirs property would change hands between a willing buyer and a
17 willing seller, neither being under any compulsion to buy or
18 sell and both having reasonable knowledge of the relevant
19 facts.

20 (7) "Partition by sale" means a court-ordered sale of all
21 or a portion of the heirs property conducted under Section 10.

22 (8) "Partition in kind" means the division of heirs
23 property into physically distinct and separately titled
24 parcels.

25 (9) "Record" means information that is inscribed on a
26 tangible medium or that is stored in an electronic or other

1 medium and is retrievable in perceivable form.

2 (10) "Relative" means an ascendant, descendant, or
3 collateral or an individual otherwise related to another
4 individual by blood, marriage, adoption, or law of this State
5 other than this Act.

6 Section 3. Applicability; relation to other law.

7 (a) This Act applies to partition actions filed on or after
8 the effective date of this Act.

9 (b) In an action to partition real property under Article
10 XVII of the Code of Civil Procedure the court shall determine
11 whether the property is heirs property. If the court determines
12 that the property is heirs property, the property must be
13 partitioned under this Act unless all of the cotenants
14 otherwise agree in a record.

15 (c) This Act supplements Article XVII of the Code of Civil
16 Procedure and, if an action is governed by this Act, replaces
17 provisions of Article XVII of the Code of Civil Procedure that
18 are inconsistent with this Act.

19 Section 4. Service; notice by posting.

20 (a) This Act does not limit or affect the method by which
21 service of a complaint in a partition action may be made.

22 (b) If the plaintiff in a partition action seeks an order
23 of notice by publication and the court determines that the
24 property may be heirs property, the plaintiff, not later than

1 10 days after the court's determination, shall post and
2 maintain while the action is pending a conspicuous sign on the
3 property that is the subject of the action. The sign must state
4 that the action has commenced and identify the name and address
5 of the court and the common designation by which the property
6 is known. The court may require the plaintiff to publish on the
7 sign the name of the plaintiff and the known defendants.

8 Section 5. Commissioners. If the court appoints a
9 commissioner pursuant to Article XVII of the Code of Civil
10 Procedure, the commissioner, in addition to the requirements
11 and disqualifications applicable to commissioners in Article
12 XVII of the Code of Civil Procedure, must be disinterested and
13 impartial and not a party to or a participant in the action.

14 Section 6. Determination of value.

15 (a) Except as otherwise provided in subsections (b) and
16 (c), if the court determines that the property that is the
17 subject of a partition action is heirs property, the court
18 shall determine the fair market value of the property by
19 ordering an appraisal pursuant to subsection (d).

20 (b) If all cotenants have agreed to the value of the
21 property or to another method of valuation, the court shall
22 adopt that value or the value produced by the agreed method of
23 valuation.

24 (c) If the court determines that the evidentiary value of

1 an appraisal is outweighed by the cost of the appraisal, the
2 court, after an evidentiary hearing, shall determine the fair
3 market value of the property and shall order the plaintiff to
4 send notice to the parties of the value.

5 (d) If the court orders an appraisal, the court shall
6 appoint a disinterested real estate appraiser licensed in this
7 State to determine the fair market value of the property
8 assuming sole ownership of the fee simple estate. On completion
9 of the appraisal, the appraiser shall file a sworn or verified
10 appraisal with the court.

11 (e) If an appraisal is conducted pursuant to subsection
12 (d), not later than 10 days after the appraisal is filed, the
13 court shall order the plaintiff to send notice to each party
14 with a known address, stating:

15 (1) the appraised fair market value of the property;

16 (2) that the appraisal is available at the clerk's
17 office; and

18 (3) that a party may file with the court an objection
19 to the appraisal not later than 30 days after the notice is
20 sent, stating the grounds for the objection.

21 (f) If an appraisal is filed with the court pursuant to
22 subsection (d), the court shall conduct a hearing to determine
23 the fair market value of the property not sooner than 30 days
24 after a copy of the notice of the appraisal is sent to each
25 party under subsection (e), whether or not an objection to the
26 appraisal is filed under subsection (e) (3). In addition to the

1 court-ordered appraisal, the court may consider any other
2 evidence of value offered by a party.

3 (g) After a hearing under subsection (f), but before
4 considering the merits of the partition action, the court shall
5 determine the fair market value of the property and order the
6 plaintiff to send notice to all of the parties of the value and
7 a cotenant's buyout rights as provided in Section 7.

8 Section 7. Cotenant buyout.

9 (a) If any cotenant requested partition by sale, after the
10 determination of value under Section 6, the court shall order
11 the plaintiff to send notice to the parties that any cotenant
12 except a cotenant that requested partition by sale may buy all
13 the interests of the cotenants that requested partition by
14 sale.

15 (b) Not later than 45 days after the notice is sent under
16 subsection (a), any cotenant except a cotenant that requested
17 partition by sale may give notice to the court that it elects
18 to buy all the interests of the cotenants that requested
19 partition by sale.

20 (c) The purchase price for each of the interests of a
21 cotenant that requested partition by sale is the value of the
22 entire parcel determined under Section 6 multiplied by the
23 cotenant's fractional ownership of the entire parcel.

24 (d) After expiration of the period in subsection (b), the
25 following rules apply:

1 (1) If only one cotenant elects to buy all the
2 interests of the cotenants that requested partition by
3 sale, the court shall notify all the parties of that fact.

4 (2) If more than one cotenant elects to buy all the
5 interests of the cotenants that requested partition by
6 sale, the court shall allocate the right to buy those
7 interests among the electing cotenants based on each
8 electing cotenant's existing fractional ownership of the
9 entire parcel divided by the total existing fractional
10 ownership of all cotenants electing to buy and send notice
11 to all the parties of that fact and of the price to be paid
12 by each electing cotenant.

13 (3) If no cotenant elects to buy all the interests of
14 the cotenants that requested partition by sale, the court
15 shall order the plaintiff to send notice to all the parties
16 of that fact and resolve the partition action under Section
17 8(a) and (b).

18 (e) If the court sends notice to the parties under
19 subsection (d)(1) or (2), the court shall set a date, not
20 sooner than 60 days after the date the notice was sent, by
21 which electing cotenants must pay their apportioned price to
22 the clerk of court or as otherwise ordered by the court. After
23 this date, the following rules apply:

24 (1) If all electing cotenants timely pay their
25 apportioned price to the clerk of court or as otherwise
26 ordered by the court, the court shall issue an order

1 reallocate all the interests of the cotenants and
2 disburse the amounts held to the persons entitled to them.

3 (2) If no electing cotenant timely pays its apportioned
4 price, the court shall resolve the partition action under
5 Section 8(a) and (b) as if the interests of the cotenants
6 that requested partition by sale were not purchased.

7 (3) If one or more but not all of the electing
8 cotenants fail to pay their apportioned price on time, the
9 court, on motion, shall order the plaintiff to give notice
10 to the electing cotenants that paid their apportioned price
11 of the interest remaining and the price for all that
12 interest.

13 (f) Not later than 20 days after the court gives notice
14 pursuant to subsection (e) (3), any cotenant that paid may elect
15 to purchase all of the remaining interest by paying the entire
16 price into the court. After the 20-day period, the following
17 rules apply:

18 (1) If only one cotenant pays the entire price for the
19 remaining interest, the court shall issue an order
20 reallocating the remaining interest to that cotenant. The
21 court shall issue promptly an order reallocating the
22 interests of all of the cotenants and disburse the amounts
23 held to the persons entitled to them.

24 (2) If no cotenant pays the entire price for the
25 remaining interest, the court shall resolve the partition
26 action under Section 8(a) and (b) as if the interests of

1 the cotenants that requested partition by sale were not
2 purchased.

3 (3) If more than one cotenant pays the entire price for
4 the remaining interest, the court shall reapportion the
5 remaining interest among those paying cotenants, based on
6 each paying cotenant's original fractional ownership of
7 the entire parcel divided by the total original fractional
8 ownership of all cotenants that paid the entire price for
9 the remaining interest. The court shall issue promptly an
10 order reallocating all of the cotenants' interests,
11 disburse the amounts held to the persons entitled to them,
12 and promptly refund any excess payment held by the clerk of
13 court or as ordered by the court.

14 (g) Not later than 45 days after notice is sent to the
15 parties pursuant to subsection (a), any cotenant entitled to
16 buy an interest under this section may request the court to
17 authorize the sale as part of the pending action of the
18 interests of cotenants named as defendants and served with the
19 complaint but that did not appear in the action.

20 (h) If the court receives a timely request under subsection
21 (g), the court, after hearing, may deny the request or
22 authorize the requested additional sale on such terms as the
23 court determines are fair and reasonable, subject to the
24 following limitations:

25 (1) a sale authorized under this subsection may occur
26 only after the purchase prices for all interests subject to

1 sale under subsections (a) through (f) have been paid into
2 court and those interests have been reallocated among the
3 cotenants as provided in those subsections; and

4 (2) the purchase price for the interest of a
5 nonappearing cotenant is based on the court's
6 determination of value under Section 6.

7 Section 8. Partition alternatives.

8 (a) If all the interests of all cotenants that requested
9 partition by sale are not purchased by other cotenants pursuant
10 to Section 7, or if after conclusion of the buyout under
11 Section 7, a cotenant remains that has requested partition in
12 kind, the court shall order partition in kind unless the court,
13 after consideration of the factors listed in Section 9, finds
14 that partition in kind will result in manifest prejudice to the
15 cotenants as a group. In considering whether to order partition
16 in kind, the court shall approve a request by two or more
17 parties to have their individual interests aggregated.

18 (b) If the court does not order partition in kind under
19 subsection (a), the court shall order partition by sale
20 pursuant to Section 10 or, if no cotenant requested partition
21 by sale, the court shall dismiss the action.

22 (c) If the court orders partition in kind pursuant to
23 subsection (a), the court may require that one or more
24 cotenants pay one or more other cotenants amounts so that the
25 payments, taken together with the value of the in-kind

1 distributions to the cotenants, will make the partition in kind
2 just and proportionate in value to the fractional interests
3 held.

4 (d) If the court orders partition in kind, the court shall
5 allocate to the cotenants that are unknown, unlocatable, or the
6 subject of a default judgment, if their interests were not
7 bought out pursuant to Section 7, a part of the property
8 representing the combined interests of those cotenants as
9 determined by the court.

10 Section 9. Consideration for partition in kind.

11 (a) In determining under Section 8(a) whether partition in
12 kind would result in manifest prejudice to the cotenants as a
13 group, the court shall consider the following:

14 (1) whether the heirs property practicably can be
15 divided among the cotenants;

16 (2) whether partition in kind would apportion the
17 property in such a way that the aggregate fair market value
18 of the parcels resulting from the division would be
19 materially less than the value of the property if it were
20 sold as a whole, taking into account the condition under
21 which a court-ordered sale likely would occur;

22 (3) evidence of the collective duration of ownership or
23 possession of the property by a cotenant and one or more
24 predecessors in title or predecessors in possession to the
25 cotenant who are or were relatives of the cotenant or each

1 other;

2 (4) a cotenant's sentimental attachment to the
3 property, including any attachment arising because the
4 property has ancestral or other unique or special value to
5 the cotenant;

6 (5) the lawful use being made of the property by a
7 cotenant and the degree to which the cotenant would be
8 harmed if the cotenant could not continue the same use of
9 the property;

10 (6) the degree to which the cotenants have contributed
11 their pro rata share of the property taxes, insurance, and
12 other expenses associated with maintaining ownership of
13 the property or have contributed to the physical
14 improvement, maintenance, or upkeep of the property;

15 (7) the tax consequences; and

16 (8) any other relevant factor.

17 (b) The court may not consider any one factor in subsection
18 (a) to be dispositive without weighing the totality of all
19 relevant factors and circumstances.

20 Section 10. Open-market sale, sealed bids, or auction.

21 (a) If the court orders a sale of heirs property, the sale
22 must be an open-market sale unless the court finds that a sale
23 by sealed bids or an auction would be more economically
24 advantageous and in the best interest of the cotenants as a
25 group.

1 (b) If the court orders an open-market sale and the
2 parties, not later than 10 days after the entry of the order,
3 agree on a real estate broker licensed in this State to offer
4 the property for sale, the court shall appoint the broker and
5 establish a reasonable commission. If the parties do not agree
6 on a broker, the court shall appoint a disinterested real
7 estate broker licensed in this State to offer the property for
8 sale and shall establish a reasonable commission. The broker
9 shall offer the property for sale in a commercially reasonable
10 manner at a price no lower than the determination of value and
11 on the terms and conditions established by the court.

12 (c) If the broker appointed under subsection (b) obtains
13 within a reasonable time an offer to purchase the property for
14 at least the determination of value:

15 (1) the broker shall comply with the reporting
16 requirements in Section 11; and

17 (2) the sale may be completed in accordance with state
18 law other than this Act.

19 (d) If the broker appointed under subsection (b) does not
20 obtain within a reasonable time an offer to purchase the
21 property for at least the determination of value, the court,
22 after hearing, may:

23 (1) approve the highest outstanding offer, if any;

24 (2) redetermine the value of the property and order
25 that the property continue to be offered for an additional
26 time; or

1 (3) order that the property be sold by sealed bids or
2 at an auction.

3 (e) If the court orders a sale by sealed bids or an
4 auction, the court shall set terms and conditions of the sale.
5 If the court orders an auction, the auction must be conducted
6 under Article XVII of the Code of Civil Procedure.

7 (f) If a purchaser is entitled to a share of the proceeds
8 of the sale, the purchaser is entitled to a credit against the
9 price in an amount equal to the purchaser's share of the
10 proceeds.

11 Section 11. Report of open-market sale.

12 (a) Unless required to do so within a shorter time by
13 Article XVII of the Code of Civil Procedure, a broker appointed
14 under Section 10(b) to offer heirs property for open-market
15 sale shall file a report with the court not later than seven
16 days after receiving an offer to purchase the property for at
17 least the value determined under Section 6 or 10.

18 (b) The report required by subsection (a) must contain the
19 following information:

20 (1) a description of the property to be sold to each
21 buyer;

22 (2) the name of each buyer;

23 (3) the proposed purchase price;

24 (4) the terms and conditions of the proposed sale,
25 including the terms of any owner financing;

- 1 (5) the amounts to be paid to lienholders;
- 2 (6) a statement of contractual or other arrangements or
- 3 conditions of the broker's commission; and
- 4 (7) other material facts relevant to the sale.

5 Section 12. Costs. In all proceedings for the partition of

6 heirs property, the court shall apportion the costs of the

7 proceedings, including a reasonable fee for the plaintiff's

8 attorney, among the parties in interest in the action, as the

9 court deems just and equitable. In determining the just and

10 equitable apportionment of the costs and attorney's fees, the

11 court may consider, among other things, the good faith attempt

12 of the parties to agree prior to the initiation of the

13 complaint. If any defendant interposes a good and substantial

14 defense to the complaint, the party or parties making such

15 substantial defense shall recover their costs against the

16 plaintiff according to justice and equity.

17 Section 60. The Code of Civil Procedure is amended by

18 changing Sections 17-101, 17-102, 17-105, and 17-106 as

19 follows:

20 (735 ILCS 5/17-101) (from Ch. 110, par. 17-101)

21 Sec. 17-101. Compelling partition. When lands, tenements,

22 or hereditaments are held in joint tenancy or tenancy in

23 common, other than in accordance with the Uniform Partition of

1 Heirs Property Act, or other form of co-ownership and
2 regardless of whether any or all of the claimants are minors or
3 adults, any one or more of the persons interested therein may
4 compel a partition thereof by a verified complaint in the
5 circuit court of the county where the premises or part of the
6 premises are situated. If lands, tenements or hereditaments
7 held in joint tenancy or tenancy in common are situated in 2 or
8 more counties, the venue may be in any one of such counties,
9 and the circuit court of any such county first acquiring
10 jurisdiction shall retain sole and exclusive jurisdiction.
11 Ownership of an interest in the surface of lands, tenements, or
12 hereditaments by a co-owner of an interest in minerals
13 underlying the surface does not prevent partition of the
14 mineral estate. This amendatory Act of the 92nd General
15 Assembly is a declaration of existing law and is intended to
16 remove any possible conflicts or ambiguities, thereby
17 confirming existing law pertinent to the partition of interests
18 in minerals and applies to all actions for the partition of
19 minerals now pending or filed on or after the effective date of
20 this amendatory Act of the 92nd General Assembly. Nothing in
21 this amendatory Act of the 92nd General Assembly shall be
22 construed as allowing an owner of a mineral interest in coal to
23 mine and remove the coal by the surface method of mining
24 without first obtaining the consent of all of the owners of the
25 surface to the mining and removal of coal by the surface method
26 of mining. Ownership of an interest in minerals by a co-owner

1 of an interest in the surface does not prevent partition of the
2 surface. The ownership of an interest in some, but not all, of
3 the mineral estate by a co-owner of an interest in other
4 minerals does not prevent the partition of the co-owned mineral
5 estate.

6 (Source: P.A. 92-379, eff. 8-16-01; 93-925, eff. 8-12-04.)

7 (735 ILCS 5/17-102) (from Ch. 110, par. 17-102)

8 Sec. 17-102. Complaint. The verified complaint shall
9 particularly describe the premises sought to be divided, and
10 shall set forth the interests of all parties interested
11 therein, so far as the same are known to the plaintiffs,
12 including tenants for years or for life, and of all persons
13 entitled to the reversion, remainder or inheritance, and of
14 every person who, upon any contingency, may be or become
15 entitled to any beneficial interest in the premises, so far as
16 the same are known to the plaintiffs, and shall ask for the
17 division and partition of the premises according to the
18 respective rights of the parties interested therein, or in
19 accordance with the Uniform Partition of Heirs Property Act, ~~if~~
20 ~~a division and partition of the same cannot be made without~~
21 ~~manifest prejudice to the owners, that a sale thereof be made~~
22 ~~and the proceeds divided according to the respective rights of~~
23 ~~the parties.~~

24 (Source: P.A. 82-280.)

1 (735 ILCS 5/17-105) (from Ch. 110, par. 17-105)

2 Sec. 17-105. Judgment. The court shall ascertain and
3 declare the rights, titles and interest of all the parties in
4 such action, the plaintiffs as well as the defendants, and
5 shall enter judgment according to the rights of the parties.
6 After entry of judgment adjudicating the rights, titles, and
7 interests of the parties, the court upon further hearing shall
8 determine whether or not the premises or any part thereof can
9 be divided among the parties without manifest prejudice to the
10 parties in interest. If the court finds that a division can be
11 made, then the court shall enter further judgment fairly and
12 impartially dividing the premises among the parties with or
13 without owelty. If the court finds that the whole or any part
14 of the premises sought to be partitioned cannot be divided
15 without manifest prejudice to the owners thereof and is not
16 governed by the Uniform Partition of Heirs Property Act, then
17 the court shall order the premises not susceptible of division
18 to be sold at public sale in such manner and upon such terms
19 and notice of sale as the court directs. If the court orders
20 the sale of the premises or any part thereof, the court shall
21 fix the value of the premises to be sold. No sale may be
22 approved for less than two-thirds of the total amount of the
23 valuation of the premises to be sold. If it appears to the
24 court that any of the premises will not sell for two-thirds of
25 the amount of the valuation thereof, the court upon further
26 hearing may either revalue the premise and approve the sale or

1 order a new sale.

2 (Source: P.A. 93-925, eff. 8-12-04.)

3 (735 ILCS 5/17-106) (from Ch. 110, par. 17-106)

4 Sec. 17-106. Appointment of commissioner and surveyor. The
5 court in its discretion, sua sponte, or on the motion of any
6 interested party, must ~~may~~ appoint a disinterested
7 commissioner who, subject to direction by the court, shall
8 report to the court in writing under oath as to whether or not
9 the premises are subject to division without manifest prejudice
10 to the rights of the parties and, if so, report how the
11 division may be made. The court may authorize the employment of
12 a surveyor to carry out or assist in the division of the
13 premises. The fees and expenses of the commissioner and of the
14 surveyor and the person making the sale shall be taxed as costs
15 in the proceedings.

16 (Source: P.A. 93-925, eff. 8-12-04.)

17 Section 99. Effective date. This Act takes effect upon
18 becoming law.