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1 AMENDMENT TO HOUSE BILL 3677

2 AMENDMENT NO. _____. Amend House Bill 3677 by replacing
3 everything after the enacting clause with the following:

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.

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

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

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

10 (B) one or more of the cotenants acquired title from a
11 relative or, if a cotenant is an entity, from a relative of
12 a beneficiary, shareholder, partner, or member of the
13 entity, whether such relative is living or deceased; and

14 (C) Any of the following applies:

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

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

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

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

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

3 (8) "Partition in kind" means the division of heirs
4 property into physically distinct and separately titled
5 parcels.

6 (9) "Record" means information that is inscribed on a
7 tangible medium or that is stored in an electronic or other
8 medium and is retrievable in perceivable form.

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

13 Section 3. Applicability; relation to other law.

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

16 (b) In an action to partition real property under Article
17 XVII of the Code of Civil Procedure the court shall determine
18 whether the property is heirs property. If the court determines
19 that the property is heirs property, the property must be
20 partitioned under this Act unless all of the cotenants
21 otherwise agree in a record.

22 (c) This Act supplements Article XVII of the Code of Civil
23 Procedure and, if an action is governed by this Act, replaces
24 provisions of Article XVII of the Code of Civil Procedure that
25 are inconsistent with this Act.

1 Section 4. Service; notice by posting.

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

4 (b) If the plaintiff in a partition action seeks an order
5 of notice by publication and the court determines that the
6 property may be heirs property, the plaintiff, not later than
7 10 days after the court's determination, shall post and
8 maintain while the action is pending a conspicuous sign on the
9 property that is the subject of the action. The sign must state
10 that the action has commenced and identify the name and address
11 of the court and the common designation by which the property
12 is known. The court may require the plaintiff to publish on the
13 sign the name of the plaintiff and the known defendants.

14 Section 5. Commissioners. If the court appoints a
15 commissioner pursuant to Article XVII of the Code of Civil
16 Procedure, the commissioner, in addition to the requirements
17 and disqualifications applicable to commissioners in Article
18 XVII of the Code of Civil Procedure, must be disinterested and
19 impartial and not a party to or a participant in the action.

20 Section 6. Determination of value.

21 (a) Except as otherwise provided in subsections (b) and
22 (c), if the court determines that the property that is the
23 subject of a partition action is heirs property, the court

1 shall determine the fair market value of the property by
2 ordering an appraisal pursuant to subsection (d).

3 (b) If all cotenants have agreed to the value of the
4 property or to another method of valuation, the court shall
5 adopt that value or the value produced by the agreed method of
6 valuation.

7 (c) If the court determines that the evidentiary value of
8 an appraisal is outweighed by the cost of the appraisal, the
9 court, after an evidentiary hearing, shall determine the fair
10 market value of the property and shall order the plaintiff to
11 send notice to the parties of the value.

12 (d) If the court orders an appraisal, the court shall
13 appoint a disinterested real estate appraiser licensed in this
14 State to determine the fair market value of the property
15 assuming sole ownership of the fee simple estate. On completion
16 of the appraisal, the appraiser shall file a sworn or verified
17 appraisal with the court.

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

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

23 (2) that the appraisal is available at the clerk's
24 office; and

25 (3) that a party may file with the court an objection
26 to the appraisal not later than 30 days after the notice is

1 sent, stating the grounds for the objection.

2 (f) If an appraisal is filed with the court pursuant to
3 subsection (d), the court shall conduct a hearing to determine
4 the fair market value of the property not sooner than 30 days
5 after a copy of the notice of the appraisal is sent to each
6 party under subsection (e), whether or not an objection to the
7 appraisal is filed under subsection (e)(3). In addition to the
8 court-ordered appraisal, the court may consider any other
9 evidence of value offered by a party.

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

15 Section 7. Cotenant buyout.

16 (a) If any cotenant requested partition by sale, after the
17 determination of value under Section 6, the court shall order
18 the plaintiff to send notice to the parties that any cotenant
19 except a cotenant that requested partition by sale may buy all
20 the interests of the cotenants that requested partition by
21 sale.

22 (b) Not later than 45 days after the notice is sent under
23 subsection (a), any cotenant except a cotenant that requested
24 partition by sale may give notice to the court that it elects
25 to buy all the interests of the cotenants that requested

1 partition by sale.

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

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

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

11 (2) If more than one cotenant elects to buy all the
12 interests of the cotenants that requested partition by
13 sale, the court shall allocate the right to buy those
14 interests among the electing cotenants based on each
15 electing cotenant's existing fractional ownership of the
16 entire parcel divided by the total existing fractional
17 ownership of all cotenants electing to buy and send notice
18 to all the parties of that fact and of the price to be paid
19 by each electing cotenant.

20 (3) If no cotenant elects to buy all the interests of
21 the cotenants that requested partition by sale, the court
22 shall order the plaintiff to send notice to all the parties
23 of that fact and resolve the partition action under Section
24 8(a) and (b).

25 (e) If the court sends notice to the parties under
26 subsection (d)(1) or (2), the court shall set a date, not

1 sooner than 60 days after the date the notice was sent, by
2 which electing cotenants must pay their apportioned price to
3 the clerk of court or as otherwise ordered by the court. After
4 this date, the following rules apply:

5 (1) If all electing cotenants timely pay their
6 apportioned price to the clerk of court or as otherwise
7 ordered by the court, the court shall issue an order
8 reallocating all the interests of the cotenants and
9 disburse the amounts held to the persons entitled to them.

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

14 (3) If one or more but not all of the electing
15 cotenants fail to pay their apportioned price on time, the
16 court, on motion, shall order the plaintiff to give notice
17 to the electing cotenants that paid their apportioned price
18 of the interest remaining and the price for all that
19 interest.

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

25 (1) If only one cotenant pays the entire price for the
26 remaining interest, the court shall issue an order

1 reallocate the remaining interest to that cotenant. The
2 court shall issue promptly an order reallocating the
3 interests of all of the cotenants and disburse the amounts
4 held to the persons entitled to them.

5 (2) If no cotenant pays the entire price for the
6 remaining interest, the court shall resolve the partition
7 action under Section 8(a) and (b) as if the interests of
8 the cotenants that requested partition by sale were not
9 purchased.

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

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

1 (h) If the court receives a timely request under subsection
2 (g), the court, after hearing, may deny the request or
3 authorize the requested additional sale on such terms as the
4 court determines are fair and reasonable, subject to the
5 following limitations:

6 (1) a sale authorized under this subsection may occur
7 only after the purchase prices for all interests subject to
8 sale under subsections (a) through (f) have been paid into
9 court and those interests have been reallocated among the
10 cotenants as provided in those subsections; and

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

14 Section 8. Partition alternatives.

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

25 (b) If the court does not order partition in kind under

1 subsection (a), the court shall order partition by sale
2 pursuant to Section 10 or, if no cotenant requested partition
3 by sale, the court shall dismiss the action.

4 (c) If the court orders partition in kind pursuant to
5 subsection (a), the court may require that one or more
6 cotenants pay one or more other cotenants amounts so that the
7 payments, taken together with the value of the in-kind
8 distributions to the cotenants, will make the partition in kind
9 just and proportionate in value to the fractional interests
10 held.

11 (d) If the court orders partition in kind, the court shall
12 allocate to the cotenants that are unknown, unlocatable, or the
13 subject of a default judgment, if their interests were not
14 brought pursuant to Section 7, a party of the property
15 representing the combined interests of those cotenants as
16 determined by the court.

17 Section 9. Consideration for partition in kind.

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

21 (1) whether the heirs property practicably can be
22 divided among the cotenants;

23 (2) whether partition in kind would apportion the
24 property in such a way that the aggregate fair market value
25 of the parcels resulting from the division would be

1 materially less than the value of the property if it were
2 sold as a whole, taking into account the condition under
3 which a court-ordered sale likely would occur;

4 (3) evidence of the collective duration of ownership or
5 possession of the property by a cotenant and one or more
6 predecessors in title or predecessors in possession to the
7 cotenant who are or were relatives of the cotenant or each
8 other;

9 (4) a cotenant's sentimental attachment to the
10 property, including any attachment arising because the
11 property has ancestral or other unique or special value to
12 the cotenant;

13 (5) the lawful use being made of the property by a
14 cotenant and the degree to which the cotenant would be
15 harmed if the cotenant could not continue the same use of
16 the property;

17 (6) the degree to which the cotenants have contributed
18 their pro rata share of the property taxes, insurance, and
19 other expenses associated with maintaining ownership of
20 the property or have contributed to the physical
21 improvement, maintenance, or upkeep of the property;

22 (7) the tax consequences; and

23 (8) any other relevant factor.

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

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

2 (a) If the court orders a sale of heirs property, the sale
3 must be an open-market sale unless the court finds that a sale
4 by sealed bids or an auction would be more economically
5 advantageous and in the best interest of the cotenants as a
6 group.

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

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

21 (1) the broker shall comply with the reporting
22 requirements in Section 11; and

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

25 (d) If the broker appointed under subsection (b) does not

1 obtain within a reasonable time an offer to purchase the
2 property for at least the determination of value, the court,
3 after hearing, may:

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

5 (2) redetermine the value of the property and order
6 that the property continue to be offered for an additional
7 time; or

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

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

14 (f) If a purchaser is entitled to a share of the proceeds
15 of the sale, the purchaser is entitled to a credit against the
16 price in an amount equal to the purchaser's share of the
17 proceeds.

18 Section 11. Report of open-market sale.

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

25 (b) The report required by subsection (a) must contain the

1 following information:

2 (1) a description of the property to be sold to each
3 buyer;

4 (2) the name of each buyer;

5 (3) the proposed purchase price;

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

8 (5) the amounts to be paid to lienholders;

9 (6) a statement of contractual or other arrangements or
10 conditions of the broker's commission; and

11 (7) other material facts relevant to the sale.

12 Section 12. Costs. In all proceedings for the partition of
13 heirs property, the court shall apportion the costs of the
14 proceedings, including a reasonable fee for the plaintiff's
15 attorney, among the parties in interest in the action, as the
16 court deems just and equitable. In determining the just and
17 equitable apportionment of the costs and attorney's fees, the
18 court may consider, among other things, the good faith attempt
19 of the parties to agree prior to the initiation of the
20 complaint. If any defendant interposes a good and substantial
21 defense to the complaint, the party or parties making such
22 substantial defense shall recover their costs against the
23 plaintiff according to justice and equity.

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

1 changing Sections 17-101, 17-102, 17-105, and 17-106 as
2 follows:

3 (735 ILCS 5/17-101) (from Ch. 110, par. 17-101)

4 Sec. 17-101. Compelling partition. When lands, tenements,
5 or hereditaments are held in joint tenancy or tenancy in
6 common, other than in accordance with the Uniform Partition of
7 Heirs Property Act, or other form of co-ownership and
8 regardless of whether any or all of the claimants are minors or
9 adults, any one or more of the persons interested therein may
10 compel a partition thereof by a verified complaint in the
11 circuit court of the county where the premises or part of the
12 premises are situated. If lands, tenements or hereditaments
13 held in joint tenancy or tenancy in common are situated in 2 or
14 more counties, the venue may be in any one of such counties,
15 and the circuit court of any such county first acquiring
16 jurisdiction shall retain sole and exclusive jurisdiction.
17 Ownership of an interest in the surface of lands, tenements, or
18 hereditaments by a co-owner of an interest in minerals
19 underlying the surface does not prevent partition of the
20 mineral estate. This amendatory Act of the 92nd General
21 Assembly is a declaration of existing law and is intended to
22 remove any possible conflicts or ambiguities, thereby
23 confirming existing law pertinent to the partition of interests
24 in minerals and applies to all actions for the partition of
25 minerals now pending or filed on or after the effective date of

1 this amendatory Act of the 92nd General Assembly. Nothing in
2 this amendatory Act of the 92nd General Assembly shall be
3 construed as allowing an owner of a mineral interest in coal to
4 mine and remove the coal by the surface method of mining
5 without first obtaining the consent of all of the owners of the
6 surface to the mining and removal of coal by the surface method
7 of mining. Ownership of an interest in minerals by a co-owner
8 of an interest in the surface does not prevent partition of the
9 surface. The ownership of an interest in some, but not all, of
10 the mineral estate by a co-owner of an interest in other
11 minerals does not prevent the partition of the co-owned mineral
12 estate.

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

14 (735 ILCS 5/17-102) (from Ch. 110, par. 17-102)

15 Sec. 17-102. Complaint. The verified complaint shall
16 particularly describe the premises sought to be divided, and
17 shall set forth the interests of all parties interested
18 therein, so far as the same are known to the plaintiffs,
19 including tenants for years or for life, and of all persons
20 entitled to the reversion, remainder or inheritance, and of
21 every person who, upon any contingency, may be or become
22 entitled to any beneficial interest in the premises, so far as
23 the same are known to the plaintiffs, and shall ask for the
24 division and partition of the premises according to the
25 respective rights of the parties interested therein, or in

1 accordance with the Uniform Partition of Heirs Property Act, ~~if~~
2 ~~a division and partition of the same cannot be made without~~
3 ~~manifest prejudice to the owners, that a sale thereof be made~~
4 ~~and the proceeds divided according to the respective rights of~~
5 ~~the parties.~~

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

7 (735 ILCS 5/17-105) (from Ch. 110, par. 17-105)

8 Sec. 17-105. Judgment. The court shall ascertain and
9 declare the rights, titles and interest of all the parties in
10 such action, the plaintiffs as well as the defendants, and
11 shall enter judgment according to the rights of the parties.
12 After entry of judgment adjudicating the rights, titles, and
13 interests of the parties, the court upon further hearing shall
14 determine whether or not the premises or any part thereof can
15 be divided among the parties without manifest prejudice to the
16 parties in interest. If the court finds that a division can be
17 made, then the court shall enter further judgment fairly and
18 impartially dividing the premises among the parties with or
19 without owelty. If the court finds that the whole or any part
20 of the premises sought to be partitioned cannot be divided
21 without manifest prejudice to the owners thereof and is not
22 governed by the Uniform Partition of Heirs Property Act, then
23 the court shall order the premises not susceptible of division
24 to be sold at public sale in such manner and upon such terms
25 and notice of sale as the court directs. If the court orders

1 the sale of the premises or any part thereof, the court shall
2 fix the value of the premises to be sold. No sale may be
3 approved for less than two-thirds of the total amount of the
4 valuation of the premises to be sold. If it appears to the
5 court that any of the premises will not sell for two-thirds of
6 the amount of the valuation thereof, the court upon further
7 hearing may either revalue the premise and approve the sale or
8 order a new sale.

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

10 (735 ILCS 5/17-106) (from Ch. 110, par. 17-106)

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

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

24 Section 99. Effective date. This Act takes effect upon

1 becoming law.".