

ASSEMBLY BILL NO. 244—ASSEMBLYMEN SEGERBLOM
AND OHRENSCHALL

MARCH 9, 2011

Referred to Committee on Judiciary

SUMMARY—Enacts the Uniform Partition of Heirs Property Act.
(BDR 3-329)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted-material] is material to be omitted.

AN ACT relating to real property; enacting the Uniform Partition of
Heirs Property Act; and providing other matters properly
relating thereto.

Legislative Counsel's Digest:

Existing law provides procedures for civil actions to partition real property which is owned by two or more persons as joint tenants or tenants in common. (NRS 39.010-39.490) This bill enacts the Uniform Partition of Heirs Property Act to provide supplemental procedures and to replace certain provisions of existing law in actions to partition heirs property. Under **section 8** of this bill, heirs property is real property owned by two or more persons as tenants in common where: (1) the property is not subject to an agreement governing its partition; (2) one or more of the cotenants acquired title from a relative; and (3) a certain percentage of the interests in the property are owned by relatives or an individual who acquired title from a relative or a certain percentage of the persons who own interests in the property are relatives of each other.

Section 13 of this bill requires the court hearing an action to partition real property to determine whether the property is heirs property. If pursuant to **section 13** the property is heirs property, **section 16** of this bill requires the court to determine the fair market value of the real property assuming sole ownership of the entire property by: (1) ordering an appraisal by a disinterested real estate appraiser licensed in this State; (2) adopting the value agreed to by the cotenants or produced by the method of valuation agreed to by the cotenants; or (3) determining the fair market value of the property after an evidentiary hearing before the court.

Section 17 of this bill provides, as a first alternative to a partition of heirs property by sale, a mechanism for the buyout of the interests of persons who requested the sale and a method for determining the purchase price of those interests based on the court's determination of the fair market value of the property. If all the interests of the cotenants that requested the partition of the property by sale are not purchased or if there is a cotenant requesting a partition by physical



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division of the property, **section 18** of this bill requires the court to order such a partition unless the court, after considering certain factors listed in **section 19** of this bill, finds that such a partition will result in great prejudice to the cotenants as a group. Under **section 18**, if the court makes such a finding and if a cotenant has requested a sale of the property, the court must order the sale of the property. **Section 20** of this bill requires any sale of heirs property which is ordered by the court to be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group. **Section 20** also provides for the appointment of a real estate broker licensed in this State to offer the property for sale and the procedures to be followed by the broker in selling the property.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 39 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 23, inclusive, of this act.

Sec. 2. *Sections 2 to 23, inclusive, of this act may be cited as the Uniform Partition of Heirs Property Act.*

Sec. 3. *As used in this sections 2 to 23, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 12, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4. *“Ascendant” means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.*

Sec. 5. *“Collateral” means an individual who is related to another individual under the law of intestate succession of this State but who is not the other individual’s ascendant or descendant.*

Sec. 6. *“Descendant” means an individual who follows another individual in lineage, in the direct line of descent from the other individual.*

Sec. 7. *“Determination of value” means an order of a court determining the fair market value of heirs property under section 16 or 20 of this act or adopting the valuation of the property agreed to by all cotenants.*

Sec. 8. *“Heirs property” means real property held in tenancy in common which satisfies all the following requirements as of the filing of a partition action:*

1. There is no agreement in a record binding all the cotenants which governs the partition of the property.

2. One or more of the cotenants acquired title from a relative, whether living or deceased.

3. Any of the following applies:



1 (a) Twenty percent or more of the interests are held by
2 cotenants who are relatives;

3 (b) Twenty percent or more of the interests are held by an
4 individual who acquired title from a relative, whether living or
5 deceased; or

6 (c) Twenty percent or more of the cotenants are relatives.

7 **Sec. 9.** *"Partition by sale" means a court-ordered sale of the*
8 *entire heirs property, whether by auction, sealed bids or open-*
9 *market sale conducted under section 20 of this act.*

10 **Sec. 10.** *"Partition in kind" means the division of heirs*
11 *property into physically distinct and separately titled parcels.*

12 **Sec. 11.** *"Record" means information that is inscribed on a*
13 *tangible medium or that is stored in an electronic or other medium*
14 *and is retrievable in perceivable form.*

15 **Sec. 12.** *"Relative" means an ascendant, descendant, or*
16 *collateral or an individual otherwise related to another individual*
17 *by blood, marriage, adoption or law of this State other than*
18 *sections 2 to 23, inclusive, of this act.*

19 **Sec. 13. 1.** *In an action to partition real property under*
20 *NRS 39.010 to 39.490, inclusive, the court shall determine*
21 *whether the property is heirs property. If the court determines that*
22 *the property is heirs property, the property must be partitioned*
23 *under sections 2 to 23, inclusive, of this act, unless all the*
24 *cotenants agree otherwise in a record.*

25 **2.** *Sections 2 to 23, inclusive, of this act supplement the*
26 *provisions of NRS 39.010 to 39.490, inclusive, and, if an action is*
27 *governed by sections 2 to 23, inclusive, of this act, replace*
28 *provisions of NRS 39.010 to 39.490, inclusive, that are*
29 *inconsistent with sections 2 to 23, inclusive, of this act.*

30 **Sec. 14. 1.** *Sections 2 to 23, inclusive, of this act do not*
31 *limit or affect the method by which service of a summons and*
32 *complaint in a partition action may be made.*

33 **2.** *If the plaintiff in a partition action seeks to provide notice*
34 *by publication pursuant to NRS 39.060 and the court determines*
35 *that the property may be heirs property, the plaintiff, not later than*
36 *10 days after the court's determination, shall post, and maintain*
37 *while the action is pending, a conspicuous sign on the property*
38 *that is the subject of the action. The sign must state that the action*
39 *has commenced and identify the name and address of the court*
40 *and the common designation by which the property is known. The*
41 *court may require the plaintiff to publish on the sign the name of*
42 *the plaintiff and the known defendants.*

43 **Sec. 15.** *If the court appoints a master pursuant to the*
44 *provisions of NRS 39.010 to 39.490, inclusive, each master, in*
45 *addition to the requirements and disqualifications applicable to*



1 *masters in NRS 39.010 to 39.490, inclusive, must be disinterested,*
2 *impartial and neither a party to nor a participant in the action.*

3 **Sec. 16.** 1. *Except as otherwise provided in subsections 2*
4 *and 3, if the court determines that the property which is the*
5 *subject of the partition action is heirs property, the court shall*
6 *determine the fair market value of the property by ordering an*
7 *appraisal pursuant to subsection 4.*

8 2. *If all cotenants have agreed to the value of the property or*
9 *to another method of valuation, the court shall adopt that value or*
10 *the value produced by the agreed method of valuation.*

11 3. *If the court determines that the evidentiary value of an*
12 *appraisal is outweighed by the cost of the appraisal, the court,*
13 *after an evidentiary hearing, shall determine the fair market value*
14 *of the property and send notice to the parties of the value.*

15 4. *If the court orders an appraisal, the court shall appoint a*
16 *disinterested real estate appraiser licensed in this State to*
17 *determine the fair market value of the property assuming sole*
18 *ownership of the fee simple estate. On completion of the appraisal,*
19 *the appraiser shall file a sworn or verified appraisal with the*
20 *court.*

21 5. *If an appraisal is conducted pursuant to subsection 4, not*
22 *later than 10 days after the appraisal is filed, the court shall send*
23 *notice to each party with a known address, stating:*

24 (a) *The appraised fair market value of the property;*

25 (b) *That the appraisal is available at the clerk of the court's*
26 *office; and*

27 (c) *That a party may object to the appraisal not later than 30*
28 *days after the notice is sent, stating the grounds for the objection.*

29 6. *If an appraisal is filed with the court pursuant to*
30 *subsection 4, the court shall conduct a hearing to determine the*
31 *fair market value of the property not earlier than 30 days after a*
32 *copy of the notice of appraisal is sent to each party under*
33 *subsection 5, whether or not an objection to the appraisal is filed*
34 *under paragraph (c) of subsection 5. In addition to the court-*
35 *ordered appraisal, the court may consider any other evidence of*
36 *value that is offered by a party.*

37 7. *After the hearing under subsection 6, but before*
38 *considering the merits of the partition action, the court shall*
39 *determine the fair market value of the property and send notice to*
40 *the parties of the value.*

41 **Sec. 17.** 1. *If any cotenant requested partition by sale, after*
42 *the determination of value under section 16 of this act, the court*
43 *shall send notice to the parties that any cotenant except a cotenant*
44 *that requested partition by sale may buy the interest of any*
45 *cotenant that requested partition by sale.*



2. Not later than 45 days after the notice is sent under subsection 1, any cotenant except a cotenant that requested partition by sale may give notice to the court that it elects to buy all the interests of the cotenants that requested partition by sale.

3. The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined under section 16 of this act multiplied by that cotenant's fractional ownership of the entire parcel.

4. After expiration of the period in subsection 2, the following rules apply:

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

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

(c) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall send notice to all the parties of that fact and resolve the partition action under subsections 1 and 2 of section 18 of this act.

5. If the court sends notice to the parties under either paragraph (a) or (b) of subsection 4, the court shall set a date, not earlier than 60 days after the date the notice was sent, by which electing cotenants must pay their apportioned price into the court. After this date, the following rules apply:

(a) If all electing cotenants timely pay their apportioned price, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them.

(b) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under subsections 1 and 2 of section 18 of this act as if the interests of the cotenants that requested partition by sale were not purchased.

(c) If one or more but not all the electing cotenants fail to timely pay their apportioned price, the court shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

6. Not later than 20 days after the court gives the notice described in paragraph (c) of subsection 5, any cotenant that paid may elect to purchase all the remaining interest by paying the



1 *entire price to the court. After the 20-day period, the following*
2 *rules apply:*

3 *(a) If only one cotenant pays the entire price for the remaining*
4 *interest, the court shall issue an order reallocating the remaining*
5 *interest to that cotenant. The court shall issue promptly an order*
6 *reallocating all the interests of all the cotenants and disburse the*
7 *amounts held by the court to the persons entitled to them.*

8 *(b) If no cotenant pays the entire price for the remaining*
9 *interest, the court shall resolve the partition action under*
10 *subsections 1 and 2 of section 18 of this act as if the interests of*
11 *the cotenants that requested partition by sale were not purchased.*

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

22 *7. Not later than 45 days after the court sends notice to the*
23 *parties pursuant to subsection 1, any cotenant entitled to buy an*
24 *interest under this section may request the court to authorize the*
25 *sale as part of the pending action of the interests of cotenants*
26 *named as defendants and served with the complaint but that did*
27 *not appear in the action.*

28 *8. If the court receives a timely request under subsection 7,*
29 *the court, after hearing, may deny the request or authorize the*
30 *requested additional sale on such terms as the court determines*
31 *are fair and reasonable, subject to the following limitations:*

32 *(a) A sale authorized under this subsection may occur only*
33 *after the purchase prices for all interests subject to sale under*
34 *subsections 1 to 6, inclusive, have been paid into the court and*
35 *those interests have been reallocated among the cotenants as*
36 *provided in those subsections; and*

37 *(b) The purchase price for the interest of a nonappearing*
38 *cotenant is based on the court's determination of value under*
39 *section 16 of this act.*

40 **Sec. 18. 1.** *If all the interests of all cotenants that requested*
41 *partition by sale are not purchased by other cotenants pursuant to*
42 *section 17 of this act or if, after conclusion of the buyout under*
43 *section 17 of this act, a cotenant remains that has requested*
44 *partition in kind, the court shall order partition in kind unless the*
45 *court, after consideration of the factors listed in section 19 of this*



1 *act, finds that partition in kind will result in great prejudice to the*
2 *cotenants as a group. In considering whether to order partition in*
3 *kind, the court shall approve a request by two or more parties to*
4 *have their individual interests aggregated.*

5 *2. If the court does not order partition in kind under*
6 *subsection 1, the court shall order partition by sale pursuant to*
7 *section 20 of this act or, if no cotenant requested partition by sale,*
8 *the court shall dismiss the action.*

9 *3. If the court orders partition in kind pursuant to subsection*
10 *1, the court may require that one or more cotenants pay one or*
11 *more other cotenants amounts so that the payments, taken*
12 *together with the value of the in-kind distributions to the*
13 *cotenants, will make the partition in kind just and proportionate in*
14 *value to the fractional interests held.*

15 *4. If the court orders partition in kind, the court shall allocate*
16 *to the cotenants that are unknown, unlocatable or are the subject*
17 *of a default judgment, if their interests were not bought out*
18 *pursuant to section 17 of this act, a part of the property*
19 *representing the combined interests of these cotenants as*
20 *determined by the court and this part of the property shall remain*
21 *undivided.*

22 **Sec. 19. 1.** *In determining under subsection 1 of section 18*
23 *of this act whether partition in kind would result in great prejudice*
24 *to the cotenants as a group, the court shall consider the following:*

25 *(a) Whether the heirs property practicably may be divided*
26 *among the cotenants;*

27 *(b) Whether partition in kind would apportion the property in*
28 *such a way that the aggregate fair market value of the parcels*
29 *resulting from the division would be materially less than the value*
30 *of the property if it were sold as a whole, taking into account the*
31 *condition under which the court-ordered sale likely would occur;*

32 *(c) Evidence of the collective duration of ownership or*
33 *possession of the property by a cotenant and one or more*
34 *predecessors in title or predecessors in possession to the cotenant*
35 *who are or were relatives of that cotenant or each other;*

36 *(d) A cotenant's sentimental attachment to the property,*
37 *including, without limitation, any attachment arising because the*
38 *property has ancestral or other unique or special value to the*
39 *cotenant;*

40 *(e) The lawful use being made of the property by a cotenant*
41 *and the degree to which the cotenant would be harmed if the*
42 *cotenant could not continue the same use of the property;*

43 *(f) The degree to which the cotenants have contributed their*
44 *pro rata share of the property taxes, insurance and other expenses*
45 *associated with maintaining ownership of the property or have*



1 contributed to the physical improvement, maintenance or upkeep
2 of the property; and

3 (g) Any other relevant factor.

4 2. The court may not consider any one factor in subsection 1
5 to be dispositive without weighing the totality of all relevant
6 factors and circumstances.

7 **Sec. 20.** 1. If the court orders a sale of heirs property, the
8 sale must be an open-market sale unless the court finds that a sale
9 by sealed bids or an auction would be more economically
10 advantageous and in the best interest of the cotenants as a group.

11 2. If the court orders an open-market sale and the parties, not
12 later than 10 days after the entry of the order, agree on a real
13 estate broker licensed in this State to offer the property for sale,
14 the court shall appoint that broker and establish a reasonable
15 commission. If the parties do not agree on a broker, the court shall
16 appoint a disinterested real estate broker licensed in this State to
17 offer the property for sale and shall establish a reasonable
18 commission. The broker shall offer the property for sale in a
19 commercially reasonable manner at a price not lower than the
20 determination of value and on the terms and conditions
21 established by the court.

22 3. If the broker appointed under subsection 2 obtains within a
23 reasonable time an offer to purchase the property for at least the
24 determination of value:

25 (a) The broker shall comply with the reporting requirements
26 set forth in section 21 of this act; and

27 (b) The sale may be completed in accordance with state law
28 other than sections 2 to 23, inclusive, of this act.

29 4. If the broker appointed under subsection 2 does not obtain
30 within a reasonable time an offer to purchase the property for at
31 least the determination of value, the court, after hearing, may:

32 (a) Approve the highest outstanding offer, if any;

33 (b) Redetermine the value of the property and order that the
34 property continue to be offered for an additional time; or

35 (c) Order that the property be sold by sealed bids or at an
36 auction.

37 5. If the court orders a sale by sealed bids or an auction, the
38 court shall set terms and conditions of the sale. If the court orders
39 an auction, the auction must be conducted under the provisions of
40 NRS 39.010 to 39.490, inclusive.

41 6. If a purchaser is entitled to a share of the proceeds of the
42 sale, the purchaser is entitled to a credit against the price in an
43 amount equal to the purchaser's share of the proceeds.

44 **Sec. 21.** 1. Unless required to do so within a shorter time by
45 NRS 39.010 to 39.490, inclusive, a broker appointed under



1 *subsection 2 of section 20 of this act to offer heirs property for*
2 *open-market sale shall file a report not later than 7 days after*
3 *receiving an offer to purchase the property for at least the value*
4 *determined under section 16 or 20 of this act.*

5 *2. The report required by subsection 1 must contain the*
6 *following information:*

- 7 (a) *A description of the property to be sold to each buyer;*
8 (b) *The name of each buyer;*
9 (c) *The proposed purchase price;*
10 (d) *The terms and conditions of the proposed sale, including,*
11 *without limitation, the terms of any owner financing;*
12 (e) *The amounts to be paid to lienholders;*
13 (f) *A statement of contractual or other arrangements or*
14 *conditions of the broker's commission; and*
15 (g) *Other material facts relevant to the sale.*

16 **Sec. 22.** *In applying and construing this uniform act,*
17 *consideration must be given to the need to promote uniformity of*
18 *the law with respect to its subject matter among states that enact it.*

19 **Sec. 23.** *Sections 2 to 23, inclusive, of this act modify, limit*
20 *and supersede the federal Electronic Signatures in Global and*
21 *National Commerce Act, 15 U.S.C. §§ 7001 et seq., but do not*
22 *modify, limit or supersede section 101(c) of that act, 15 U.S.C. §*
23 *7001(c), or authorize electronic delivery of any of the notices*
24 *described in section 103(b) of that act, 15 U.S.C. § 7003(b).*

25 **Sec. 24.** *The amendatory provisions of this act apply to an*
26 *action to partition real property pursuant to NRS 39.010 to 39.040,*
27 *inclusive, that is filed on or after October 1, 2011.*

