

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Sixth Session
March 18, 2011**

The Committee on Judiciary was called to order by Chairman William C. Horne at 9:08 a.m. on Friday, March 18, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

Assemblyman Steven Brooks (excused)
Assemblywoman Marilyn Dondero Loop

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Jeffrey Eck, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Terry Care, Private Citizen, Las Vegas, Nevada

[The meeting was called to order. Roll was called.]

Chairman Horne:

Today, we have one bill on the agenda. That is Assembly Bill 244.

**Assembly Bill 244: Enacts the Uniform Partition of Heirs Property Act.
(BDR 3-329)**

Before we get started, there is some housekeeping. From here on, we could have a work session at any given time on bills that we have heard. There are a number of bills that people have agreed to work with. Mr. Ziegler will be reaching out to all of those parties to get their amendments from them, et cetera. Once we have a bill ready to be considered for passage, on any given day at the beginning or end of a hearing, I could bring it up for consideration. Be aware of that.

Also, with a number of our bills, there have been requests for rescheduling for various reasons. However, from this point on, you do that at your own peril. We have deadlines; we have a number of other bills coming into our Committee. I think there are approximately another 35 bills that will come to our Committee for which we will be requesting hearings. That will not happen with all of them, but our plate will continue to accumulate more items. Be aware of that, too. Mr. Sherwood, do you have a question?

Assemblyman Sherwood:

Regarding how we vote on these bills in committee, if I vote against something during a work session, and then some more information on the subject arises before a vote on the floor, can I change my vote? Are we okay doing that, considering the increasing pace of the legislative process?

Chairman Horne:

That is not an ordinary pace for a legislative session. I do not want that particular practice to be abused. I do not want it to be a default. One is supposed to use that procedure when he already has some concerns or when he does not want to hold up the Committee or the bill. He may need more information, but he will go ahead and vote, reserving the right to change his vote on the floor. I do not want it to happen in every instance.

Assemblyman Sherwood:

May we take it off-line with you, rather than declare our right to change our vote?

Chairman Horne:

You should always, in any committee, make the Chairman aware that you intend to change your vote in any way. The Chairman should never be surprised by committee members when the board lights up on the floor.

Assemblyman Sherwood:

My other question has to do with amendments. I do not see many of these coming from our Committee. If there is an amendment that we did not get out, may we bring the amendment up on the floor? Obviously, we would like to give you a heads-up. There would not be hidden amendments, hopefully.

Chairman Horne:

I do not anticipate passing something where there is no amendment to see. It happens sometimes, but I do not anticipate that. You will have the amendments before you 99 percent of the time, and you will be able to review the amendments.

Also, a few members have talked to me about the time we have to see the amendments when the amendments appear for a work session or even during the consideration of a bill during its initial hearing. I have already taken care of that, and I have asked the Committee Manager to start posting those early in the day before meetings so that there is a longer opportunity to look at exhibits and amendments.

Assemblyman Sherwood:

Obviously, that would be the exception, but I can see a possible scenario where an amendment had to be introduced on the floor.

Chairman Horne:

It happens. We have provisions where we can do amendments on the floor. We will handle that when it occurs.

Assemblyman Sherwood:

Very good.

Chairman Horne:

I will open the hearing on A.B. 244. Mr. Segerblom is here, and Senator Care is in Las Vegas.

Assemblyman Segerblom:

This is another of Senator Care's Uniform bills. I ask that he be allowed to make the presentation. [Submitted [Exhibit C](#) and [Exhibit D](#).]

Chairman Horne:

Absolutely. Senator Care.

Terry Care, Private Citizen, Las Vegas, Nevada:

This Uniform Act, unlike some others that I have discussed before this Committee, is a brand new Act. No states have adopted it yet. This Uniform Act has been introduced in Nevada and Oregon, and it delves into the world of real property.

This is the Uniform Partition of Heirs Property Act. I will have to use some terms used in this Act in my discussion of the Act. For example, "tenancy in common" refers to when there is more than one person with an interest in a particular parcel of real property. That does not mean that you own a specific parcel of a larger parcel. It simply means that you have an interest in the property, as does at least one other tenant in common.

The shares do not have to be equal. For example, it is possible that somebody has a 70 percent interest, and someone else might have a 30 percent interest. In a tenancy in common, any cotenant may dispose of his or her share freely at any time. Also, a tenant in common may initiate a forced sale by partition. A tenancy in common is also the default structure when two or more family members, for example, inherit a property. In the absence of some sort of governing will or other document, the people who inherit the property take it as tenants in common.

I will also use the term "heirs property," which is a defined term in section 8 of the bill. The purpose of this Act addresses the fact that we have in this country what can sometime be referred to as "ancestral property." This could be the old family homestead that was homesteaded by grandpa years ago and has been passed down through the family. It is not just that the property has economic value. It also has sentimental value. For example, in my case, we used to think of the family homestead in western Oklahoma as "the old

Care place.” Some of you may have had similar experiences. That is the kind of property that we are talking about here. “Heirs property” is the term that the drafters of this Act came up with.

The issue is, as family property like this is handed down, the number of cotenants can grow with each generation. A tenant in common, if a family member, is not required to hold onto that property. If he wants to sell it or give it away, he can sell or give his interest to any third party who is not a family member and would not have any sort of sentimental attachment to the property. But, with real property held as tenants in common, any tenant in common can seek partition of the real property at any time, even if it is somebody who has only owned the interest in the land for a month. So, the situation arises where there is a new tenant in common. The new cotenant may be a real estate speculator who wants to purchase all of the land. This can also be done by a long-term family member. This Act was promulgated by the Uniform Law Commission. The Commission was looking at the case of the outsider who comes in with the intent of seeking a partition of the land because this person wants all of it. That in essence forces a sale. That means that the family members are compensated, but they end up losing the land that they have come to know as their family land.

Wealthy land owners or wealthy family members do not have this issue, because they normally have counsel and have set up their property in the form of limited liability companies or limited partnerships, or maybe have some sophisticated document that governs inheritance. A father might say, “I bequeath my interest in my land to my children in equal parts.” If that is all it says, then it means the children will be tenants in common. That is the kind of property that this Act contemplated when it was promulgated.

I should point out that we already have Nevada law that governs partition of land that is held in tenancy in common. That law is set forth in Chapter 39 of the *Nevada Revised Statutes* (NRS). This bill does not change existing law. Section 13, subsection 2 of the bill says that this Act will supplement the existing law. If you have land that a court determines is heirs property, then the real property is going to be treated a little differently than any other real property when a cotenant seeks partition of the land.

Sections 4-12 of the bill are definitions. The important section is section 8 regarding “heirs property.” Heirs property is defined as real property held in tenancy in common which satisfies the requirements set forth below as of the filing of a partition action.

The requirements in Section 8, subsections 1 and 2, are that there may not be an agreement in a record binding all the cotenants which governs the partition of the property, and one or more of the cotenants acquired title from a relative, whether living or deceased. In other words, if there is no claim of will or other document that describes how the land will be divided; the real property will be treated as a tenancy in common.

Section 8 states that "Any of the following applies: (a) Twenty percent or more of the interests are held by cotenants who are relatives; (b) Twenty percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or (c) Twenty percent or more of the cotenants are relatives."

You will note that the figure 20 percent is in each of the paragraphs (a), (b), and (c) of section 8, subsection 3. The Uniform Law Commission Drafting Committee believed that there should be a threshold where if you had enough family members, or a certain percentage of interest involving family members, then, by definition, this would be what the Act refers to as "heirs property."

Subsection 2 of section 13 says that this law supplements existing law. It does not disturb or change existing law; it means that this bill would act as a "carve-out" for property that the court has determined to be heirs property. Subsection 1 of section 13 provides that the court would have to determine whether the land in question fits the definition of heirs property. If it does, and one of the cotenants has requested a partition, then it must be partitioned, but not in accordance with existing law under NRS Chapter 39. It must be partitioned or handled in accordance with this Act, unless all of the cotenants agree otherwise in a record. If one of the cotenants decides to seek partition and files a petition to partition the land, it is possible that all of the cotenants could arrive at an agreement, in which case the matter goes away. That is how the heirs property gets partitioned.

Section 16 is an important part of the bill, because that deals with determination of value of the real property. The parties are free to agree what the value of the land is. That means if the cotenant who wants to partition and the tenants who are now going to be asked to sell can agree on a price, then that is fine. If they cannot, the court may appoint an appraiser. After the appraiser comes back, the court can still hold an evidentiary hearing. The court can accept what the appraiser says or, following the hearing, can decide whether there ought to be a different value altogether.

Section 17 addresses the cotenant buyout. It gives other cotenants the opportunity to buy first. That section of the bill is replete with subsections that determine fractional interests in particular property and formulas for deciding how much somebody is entitled to, et cetera. There is a formula in place for the cotenant buyout. Very simply, the court notifies the cotenants that they may purchase the interests of the other cotenants in the real property. The cotenant may give notice that it will buy all of the interest of the cotenants seeking the partition. The purchasing cotenants must pay, and then there is a provision for a possible buyout of cotenants who did not even appear in the action. In other words, there may be cotenants who are served with notice of the right to buy the interest of the selling cotenant. They might even have to be served by publication, because nobody is really sure where they are, although there should be a record somewhere. It is possible some of those cotenants may not even appear, so there is some language in section 17 that allows, in some cases at the court's discretion, for the possible buyouts of those cotenants who do not appear. They still get compensated; it is just that those interests can be purchased as well.

Section 18 address the partition alternatives, sometimes referred to as a "mixed remedy." The court can have a partition by sale, but there can also be a "partition in kind," where the parcels actually are divided proportionately in value to the fractional interests held.

In section 19, the factors that the court is required to consider before determining whether there will be a partition in kind are listed.

Section 20 addresses open market sales, sealed bids, or auction. The preference here is an open-market sale. However, there may be circumstances where the court might think it is more economically advantageous to do it some other way, such as a sealed bid or an auction. That is left up to the court.

Section 21 governs the report that is to be made by the broker who is appointed by the court of an offer to purchase the property unless the cotenants can agree on an offer to purchase the property at the offering price.

That may sound like a lot, Mr. Chairman. I do not practice in this area. The intent here is to provide a statutory scheme whereby family members who have had land passed down through the generations, and who have an attachment to that land that is not necessarily economical, can have an opportunity to keep that land in the event that one of the tenants in common has decided to seek partition. I do not know how frequently this might come up. The wealthy are not going to be concerned with something like this. However, there are instances where people do not have a lot of wealth and they just want to keep

the property, or at least not risk having a speculator purchase an interest in a tenancy in common and turn right around and seek partition from the court, with the intent of buying all of that land at probably a discounted price.

Chairman Horne:

How would this operate in instances where you have several different family members, but where the property, for instance, might be a property that generates revenue, and you have created a trust, perhaps an irrevocable trust for your children? Do those beneficiaries become parties? Perhaps maybe even the beneficiaries are not relatives; it may be a charity, because it is a revenue-generating property.

Terry Care:

Mr. Chairman, I will try to answer that question. That is not my bailiwick, but I think I understand. I think you are talking about somebody who is a cotenant, but nonetheless has executed a will, probably a pour-over will. Everything goes into the trust upon death, and that trust addresses how that interest in the tenancy in common is going to be passed on to the beneficiaries of the trust.

Chairman Horne:

Senator, if I can interrupt, that is not necessarily the case. Could you not create a living trust while you are still alive, one in which you have identified the beneficiaries in that trust? Now those beneficiaries have an interest in that property.

Terry Care:

I think you probably could, Mr. Chairman, and maybe Committee Counsel, Nick Anthony, could straighten me out. But, I think in that situation, if it is still a tenancy in common, I would assume that the trust itself becomes a cotenant in a tenancy in common. That might very well give standing to the beneficiaries, the children, to participate in this partition action.

Chairman Horne:

Thank you. Mr. Kite.

Assemblyman Kite:

The old Kite place was not too far from the old Care place. There were six of us kids. Our father passed away unexpectedly, and that left a division of the farm/ranch hybrid. We six kids were really fortunate, because we were able to agree that we could not make a living off that place, and we all agreed to sell it and split the money equally. However, if that situation did not happen, and one of the kids wanted to operate the ranch, and the other five had actual paying jobs and did not want to be involved with it, does this help settle that problem?

Terry Care:

I do not know whether your father left a will or he died intestate.

Assemblyman Kite:

He died intestate.

Terry Care:

By default, then, the heirs took that property as tenants in common. Everybody had an equal interest in the property. You are talking about the use of the land by one of the cotenants. I imagine that would require the approval of the other five. I am not sure about that. This bill would at least address the situation where one of the six children wants to partition the land. That sounds as though it would be heirs property. If one of the six sought a partition action, then this Act would govern. All of the safeguards would come into play.

Assemblyman Kite:

I have a question involving corporations or limited liability companies (LLCs). A lot of corporations have a buy-sell agreement between the corporate partners with an insurance policy to provide the funding for a buyout. If they did not have that, and one of the corporate owners passed away, and three or four heirs inherited that share of stock, what option do the heirs have to sell that stock or to continue to operate it? Is that scenario covered with this? Does it affect the buy-sell agreement at all?

Terry Care:

If you are talking about the conveyance of stock certificates or membership interest in an LLC, there are other statutes that govern those conveyances. This only affects real property. I think if you had LLCs, for example, or a limited partnership that owns an interest in real property, that is not heirs property. It is difficult for me to imagine where that would happen. If you are talking about the conveyance of stock certificates, for example, then there are issues regarding restrictions on the transfer of stock certificates, et cetera. Respectfully, I do not think your question applies to the kind of heirs property that is contemplated under this Act. I think you are probably talking about sophisticated people who have attorneys. Any kind of an interest in real property is probably covered under all the governing documents of the LLC or its articles of incorporation.

Assemblyman Kite:

I just wanted to see whether there was any crossover between the two. Thank you.

Chairman Horne:
Mr. Daly.

Assemblyman Daly:

In section 16, where the court determines a valuation, an appraisal is made to value the property, and then there is a speculator or developer who probably will try to force a fire sale. Once the court determines the valuation, is that then supposed to be used if they still want to accomplish a partition by sale? That is the selling price for the potential buyer and the seller. Is that the intention of having the court determine the value? Hopefully, you can try to mitigate some of the games that are being played to force a fire sale. Are they bound by that appraised value?

Terry Care:

Section 16 addresses the determination of value, and you are correct. The appraiser would be appointed by the court unless the parties can agree on a value for the real property. Once it is signed off by the court, the determination of the appraiser becomes the value that is going to be placed on it. That is the initial asking price. That is the price for which the property will be advertised, if it is going to be an open, public sale.

Chairman Horne:

Are there any other questions? I see none. Thank you, Senator Care. Mr. Segerblom, is there additional testimony?

Assemblyman Segerblom:

No, that is all we have.

Chairman Horne:

We will move to the opposition. Is anybody opposed to A.B. 244? Is there anybody in Las Vegas?

Does anyone wish to speak in the neutral position? I see none. We will close the hearing on A.B. 244. Mr. McArthur.

Assemblyman McArthur:

Are we turning this into a work session? I am not comfortable with the bill, so I just want to let you know that if you are trying to move this bill.

Chairman Horne:

We do not have to move this today. We can hold it.

Assemblyman McArthur:

I still have some technical questions, but my problem is I am still wondering why we really need this bill. I understand it is a supplement. We have Nevada law that already covers this. I am a little hesitant to add another nine pages of law for something I am not sure we really need. Maybe we can have some help on that in the work session.

Chairman Horne:

There are no proposed amendments as of now, so we will hold it for a bit. Mr. Segerblom or Senator Care can talk to you and maybe fill in some of the blanks for you.

Assemblyman McArthur:

That would be fine. That would make me more comfortable. Thank you.

Chairman Horne:

Is there any other business to come before the Committee? We are adjourned [at 9:39 a.m.].

RESPECTFULLY SUBMITTED:

Jeffrey Eck
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 18, 2011

Time of Meeting: 9:08 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Assemblyman Segerblom	Letters to the National Conference of Commissioners on Uniform State Laws
	D	Assemblyman Segerblom	Partition of Heirs Property Act Fact Sheet