

1 SB162
2 155634-3
3 By Senators Fielding, Marsh, Whatley, Allen, Smitherman,
4 Bedford, Figures, Irons, Blackwell, Glover, Scofield, Reed,
5 Holley, Ward, Taylor, Williams, Hightower, Brewbaker, Dial and
6 Pittman
7 RFD: Judiciary
8 First Read: 14-JAN-14

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To create the Alabama Uniform Partition of Heirs
12 Property Act.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. This act shall be known and may be cited
15 as the Alabama Uniform Partition of Heirs Property Act.

16 Section 2. For the purposes of this act, the
17 following terms shall have the following meanings:

18 (1) ASCENDANT. An individual who precedes another
19 individual in lineage, in the direct line of ascent from the
20 other individual.

21 (2) COLLATERAL. An individual who could inherit
22 from, or whose estate could descend to, the related individual
23 under the law of intestate succession of Alabama but who is
24 not the other individual's ascendant or descendant.

25 (3) DESCENDANT. An individual who follows another
26 individual in lineage, in the direct line of descent from the
27 other individual.

1 (4) DETERMINATION OF VALUE. A court order
2 determining the fair market value of heirs property under
3 Section 6 or Section 10 or adopting the valuation of the
4 property agreed to by all cotenants.

5 (5) HEIRS PROPERTY. 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
9 the cotenants which governs the partition of the property;

10 (B) One or more of the cotenants acquired title from
11 a relative, whether living or deceased; and

12 (C) Any of the following applies:

13 (i) Twenty percent or more of the interests are held
14 by cotenants who are relatives;

15 (ii) Twenty percent or more of the interests are
16 held by an individual who acquired title from a relative,
17 whether living or deceased; or

18 (iii) Twenty percent or more of the cotenants are
19 relatives.

20 (6) PARTITION BY SALE. A court-ordered sale of the
21 entire heirs property, whether by auction, sealed bids, or
22 open market sale conducted under Section 10.

23 (7) PARTITION IN KIND. The division of heirs
24 property into physically distinct and separately titled
25 parcels.

1 (8) RECORD. Information that is inscribed on a
2 tangible medium or that is stored in an electronic or other
3 medium and is retrievable in perceivable form.

4 (9) RELATIVE. An ascendant, descendant, or
5 collateral or an individual otherwise related to another
6 individual by blood, marriage, adoption, or law of this state
7 other than this act.

8 Section 3. (a) This act applies to partition actions
9 filed on or after January 1, 2015.

10 (b) In an action to partition real property under
11 Chapter 6 of Title 35, Code of Alabama 1975, the court shall
12 determine whether the property is heirs property. If the court
13 determines that the property is heirs property, the property
14 shall be partitioned under this act unless all of the
15 cotenants otherwise agree in a record.

16 (c) This act supplements Chapter 6 of Title 35, Code
17 of Alabama 1975, and, if an action is governed by this act,
18 replaces those provisions of Chapter 6 of Title 35, Code of
19 Alabama 1975, that are inconsistent with this act.

20 (d) This act does not supplant or otherwise change
21 the provisions for fees as a part of the cost under Section
22 34-3-60, Code of Alabama 1975.

23 Section 4. (a) Service of process shall be in
24 accordance with Section 35-6-20 and Section 35-6-25, Code of
25 Alabama 1975.

26 (b) When service of process is obtained by
27 publication and the court determines that the property may be

1 heirs property, the plaintiff, not later than 10 days after
2 the court's determination, shall post a conspicuous and
3 durable sign of at least 11 x 17 inches in size on the
4 property that is the subject of the action. The sign shall
5 state that the action has commenced and identify the name and
6 address of the court and the common designation by which the
7 property is known. The court may require the plaintiff to
8 publish on the sign the name of the plaintiff and the known
9 defendants.

10 Section 5. If the court appoints commissioners
11 pursuant to Section 35-6-45 and Section 35-6-62, Code of
12 Alabama 1975, each commissioner, in addition to the
13 requirements and disqualifications applicable to commissioners
14 in Sections 35-6-45, 35-6-46, and 35-6-62, shall be
15 disinterested and impartial and not a party to or a
16 participant in the action.

17 Section 6. (a) Except as otherwise provided in
18 subsection (b) and subsection (c), if the court determines
19 that the property that is the subject of a partition action is
20 heirs property, the court shall determine the fair market
21 value of the property by ordering an appraisal pursuant to
22 subsection (d).

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

1 (c) If the court determines that the evidentiary
2 value of an appraisal is outweighed by the cost of the
3 appraisal, the court, after an evidentiary hearing, shall
4 determine the fair market value of the property and send
5 notice to the parties of the value.

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

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

16 (1) The appraised fair market value of the property.

17 (2) That the appraisal is available at the clerk's
18 office.

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

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

1 subsection (e). In addition to the court-ordered appraisal,
2 the court may consider any other evidence of value offered by
3 a party.

4 (g) After a hearing under subsection (f), but before
5 considering the merits of the partition action, the court
6 shall determine the fair market value of the property and send
7 notice to the parties of the value.

8 Section 7. (a) In each petitioner's initial pleading
9 in a partition action, the petitioner shall state whether the
10 petitioner requests partition by sale. If the petitioner fails
11 to so state, the petitioner shall be deemed to have not
12 requested partition by sale.

13 (b) In each cotenant's initial responsive pleading,
14 the cotenant shall state whether the cotenant requests
15 partition by sale.

16 (1) If a cotenant files a responsive pleading but
17 fails to so state, the cotenant shall be deemed to have not
18 requested partition by sale.

19 (2) If a guardian ad litem is appointed to represent
20 one or more cotenants including, but not limited to, unknown,
21 unlocatable, and legally incapacitated cotenants, the guardian
22 ad litem may, but is not required to, state whether or not
23 such cotenant requests partition by sale, and the guardian ad
24 litem shall have no liability for making or failing to make
25 the election. If a guardian ad litem files a responsive
26 pleading but fails to so state, such cotenant shall be deemed
27 to have not requested partition by sale.

1 (c) If a cotenant is named as a defendant and served
2 with the complaint but does not appear in the action, the
3 cotenant shall be deemed to have not requested partition by
4 sale, unless the court approves a request to authorize the
5 sale of the cotenant's interest as set forth in subdivisions
6 (1) to (3), inclusive.

7 (1) Not later than 14 days after the court sends
8 notice to the parties pursuant to subsection (e) or
9 subdivision (1) of subsection (f), any cotenant entitled to
10 buy an interest under this section may request the court to
11 authorize the sale pursuant to this section of the interests
12 of cotenants named as defendants and served with the complaint
13 but not appearing in the action.

14 (2) If the court receives a timely request under
15 subdivision (1), the court, after a hearing, may deny the
16 request or may authorize the requested sale of the interests
17 of any or all cotenants named as defendants and served with
18 the complaint who did not appear in the action.

19 (3) If the court approves the request made pursuant
20 to subdivision (1) with respect to any cotenant who was named
21 as a defendant and served with the complaint but did not
22 appear in the action, that cotenant shall be deemed to have
23 requested partition by sale for purposes of this section, and
24 shall be treated for all purposes hereunder as having
25 requested partition by sale.

26 (d) If no cotenant, including the petitioner, has
27 requested partition by sale, the court shall determine whether

1 the property can be partitioned in kind pursuant to
2 subsections (a), (c), and (d) of Section 8 and Section 9. If
3 the court determines the property cannot be partitioned in
4 kind, the court shall dismiss the action without prejudice.

5 (e) If any cotenant, including the petitioner, has
6 requested partition by sale, after the determination of value
7 under Section 6, the court shall send notice to the parties
8 that any cotenant except a cotenant that requested partition
9 by sale may buy all the interests of the cotenants that
10 requested partition by sale.

11 (1) Not later than 30 days after the notice is sent,
12 any cotenant except a cotenant that requested partition by
13 sale may give notice to the court that it elects to buy all
14 the interests of the cotenants that requested partition by
15 sale.

16 (2) The purchase price for the interests of a
17 cotenant that requested partition by sale shall be the value
18 of the entire parcel determined under Section 6 multiplied by
19 the cotenant's fractional ownership of the entire parcel.

20 (3) After expiration of the period in subdivision
21 (1), if only one cotenant elects to buy all the interests of
22 the cotenants that requested partition by sale, the court
23 shall notify all the parties of that fact and of the price to
24 be paid by the electing cotenant calculated pursuant to
25 subdivision (2). If more than one cotenant elects to buy all
26 the interests of the cotenants that requested partition by
27 sale, the court shall allocate the right to buy those

1 interests among the electing cotenants based on each electing
2 cotenant's existing fractional ownership of the entire parcel
3 divided by the total existing fractional ownership of all
4 cotenants electing to buy and send notice to all the parties
5 of that fact and of the price to be paid by each electing
6 cotenant calculated pursuant to subdivision (2).

7 (4) The court shall set a date, not sooner than 60
8 days after the end of the applicable notice period in
9 subdivision (1), by which electing cotenants must pay their
10 apportioned price into the court.

11 (A) If all electing cotenants timely pay their
12 apportioned price into court, the court shall issue an order
13 reallocating all the interests of the cotenants and disburse
14 the amounts held by the court to the persons entitled to them,
15 and the court shall thereafter enter such other orders as may
16 be appropriate and dismiss the action without prejudice.

17 (B) If one or more but not all of the electing
18 cotenants fail to pay their apportioned price on time, the
19 court shall give notice to the electing cotenants that paid
20 their apportioned price of the remaining interests of the
21 cotenants that requested partition by sale and the total price
22 for those interests.

23 (C) If no electing cotenant timely pays its
24 apportioned price, the court shall proceed according to
25 subsection (f) as if the interests of the cotenants that
26 requested partition by sale were not purchased pursuant to
27 this subsection.

1 (5) Not later than 20 days after the court gives
2 notice pursuant to paragraph (B) of subdivision (4), any
3 cotenant that paid may elect to purchase all of the remaining
4 interests of the cotenants that requested partition by sale by
5 paying the entire price into the court.

6 (A) If only one cotenant timely pays the entire
7 price for the remaining interests of the cotenants that
8 requested partition by sale, the court shall issue an order
9 reallocating the remaining interests of the cotenants that
10 requested partition by sale to that cotenant. The court shall
11 issue promptly an order reallocating the interests of all of
12 the cotenants and disburse the amounts held by it to the
13 persons entitled to them.

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

1 (C) If no cotenant pays the entire price for the
2 remaining interests of the cotenants that requested partition
3 by sale, the court shall proceed according to subsection (f)
4 as if the interests of the cotenants that requested partition
5 by sale were not purchased pursuant to subsection (f).

6 (f) If no cotenant elects pursuant to subsection (e)
7 to buy all the interests of the cotenants that requested
8 partition by sale, the court shall proceed as follows:

9 (1) The court shall send notice to the parties that
10 no cotenant elected pursuant to subsection (e) to buy all the
11 interests of the cotenants that requested partition by sale
12 and that any cotenant that requested partition by sale may buy
13 all the interests of the other cotenants that requested
14 partition by sale.

15 (2) Not later than 30 days after the notice is sent
16 under subdivision (1), any cotenant that requested partition
17 by sale may give notice to the court that it elects to buy all
18 the interests of the other cotenants that requested partition
19 by sale.

20 (3) Notwithstanding the cotenant's prior request for
21 partition by sale, any cotenant making an election to buy
22 pursuant to this subdivision, for purposes of this subsection,
23 shall be deemed to have not requested partition by sale.

24 (4) The purchase price for the interest of a
25 cotenant that requested partition by sale shall be the value
26 of the entire parcel determined under Section 6 multiplied by
27 the cotenant's fractional ownership of the entire parcel.

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

14 (6) The court shall set a date, not sooner than 60
15 days after the end of the applicable notice period in
16 subdivision (1), by which electing cotenants must pay their
17 apportioned price into the court.

18 (A) If all electing cotenants timely pay their
19 apportioned price into court, the court shall issue an order
20 reallocating all the interests of the cotenants and disburse
21 the amounts held by the court to the persons entitled to them,
22 and the court shall thereafter enter such other orders as may
23 be appropriate and dismiss the action without prejudice.

24 (B) If one or more but not all of the electing
25 cotenants fail to pay their apportioned price on time, the
26 court shall give notice to the electing cotenants that paid
27 their apportioned price of the remaining interests of the

1 cotenants that requested partition by sale and the total price
2 for those interests.

3 (C) If no electing cotenant timely pays its
4 apportioned price, the court shall resolve the partition
5 action under Section 8 to Section 11, inclusive, as if the
6 interests of the cotenants that requested partition by sale
7 were not purchased.

8 (7) Not later than 20 days after the court gives
9 notice pursuant to paragraph (B) of subdivision (6), any
10 cotenant that paid may elect to purchase all of the remaining
11 interests of the cotenants that requested partition by sale by
12 paying the entire price into the court.

13 (A) If only one cotenant timely pays the entire
14 price for the remaining interests of the cotenants that
15 requested partition by sale, the court shall issue an order
16 reallocating the remaining interests of the cotenants that
17 requested partition by sale to that cotenant. The court shall
18 issue promptly an order reallocating the interests of all of
19 the cotenants and disburse the amounts held by it to the
20 persons entitled to them.

21 (B) If more than one cotenant timely pays the entire
22 price for the remaining interests of the cotenants that
23 requested partition by sale, the court shall reapportion the
24 remaining interests of the cotenants that requested partition
25 by sale among those paying cotenants, based on each paying
26 cotenant's original fractional ownership of the entire parcel
27 divided by the total original fractional ownership of all

1 cotenants that paid the entire price for the remaining
2 interests of the cotenants that requested partition by sale.
3 The court shall issue promptly an order reallocating all of
4 the cotenants' interests, disburse the amounts held by it to
5 the persons entitled to them, and promptly refund any excess
6 payment held by the court.

7 (C) If no electing cotenant pays the entire price
8 for the remaining interests of the cotenants that requested
9 partition by sale, the court shall resolve the partition
10 action under Section 8 to Section 11, inclusive, as if the
11 interests of the cotenants that requested partition by sale
12 were not purchased.

13 (8) If no cotenant elects to buy all the interests
14 of the other cotenants that requested partition by sale, the
15 court shall send notice to all the parties of that fact and
16 resolve the partition action under Section 8 to Section 11,
17 inclusive.

18 Section 8. (a) If all the interests of all cotenants
19 that requested partition by sale are not purchased by other
20 cotenants pursuant to Section 7, or, if after conclusion of
21 the buyout under Section 7, a cotenant remains that has
22 requested partition in kind, the court shall order partition
23 in kind unless the court, after consideration of the factors
24 listed in Section 9, finds that partition in kind will result
25 in great prejudice to the cotenants. In considering whether to
26 order partition in kind, the court shall approve a request by

1 two or more parties to have their individual interests
2 aggregated.

3 (b) If the court does not order partition in kind
4 under subsection (a), the court shall order partition by sale
5 pursuant to Section 10 or, if no cotenant requested partition
6 by sale, the court shall dismiss the action.

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

14 (d) If the court orders partition in kind, the court
15 shall allocate to the cotenants that are unknown, unlocatable,
16 or the subject of a default judgment, if their interests were
17 not bought out pursuant to Section 7, a part of the property
18 or value of the property representing the combined interests
19 of these cotenants as determined by the court.

20 Section 9. (a) In determining under subsection (a)
21 of Section 8 whether partition in kind would result in great
22 prejudice to the cotenants, the court shall consider the
23 following:

24 (1) Whether the heirs property practicably can be
25 divided among the cotenants;

26 (2) Whether partition in kind would apportion the
27 property in such a way that the aggregate fair market value of

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

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

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

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

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

23 (7) Any other relevant factor.

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

1 Section 10. (a) If the court orders a sale of heirs
2 property, the court shall order that the sale be conducted by
3 one or more of the following methods of sale: Open market sale
4 with or without a broker or brokers; by sealed bids; public
5 auction; or private sale. The court shall choose a method
6 which shall be more economically advantageous and in the best
7 interest of the cotenants as a group.

8 (b) If the court orders an open market sale with or
9 without a broker and the parties, not later than 10 days after
10 the entry of the order, agree on a real estate broker or
11 brokers licensed in this state to offer the property for sale,
12 the court shall appoint the broker or brokers and establish
13 terms of the listing agreement. If the parties do not agree on
14 a broker or brokers, the court shall appoint a disinterested
15 real estate broker licensed in this state to offer the
16 property for sale and shall establish reasonable terms. The
17 broker or brokers shall offer the property for sale in a
18 commercially reasonable manner on the terms and conditions
19 established by the court, at a price no lower than the
20 determination of value unless the court orders otherwise for
21 good cause shown.

22 (c) If, in an open market sale, an offer is obtained
23 to purchase the property for at least the determination of
24 value or the amount ordered by the court and within a
25 reasonable time, not to exceed 180 days:

26 (1) The broker or seller shall comply with the
27 reporting requirements in Section 11; and

1 (2) The sale may be completed in accordance with
2 state law.

3 (d) If, in an open market sale, an offer is not
4 obtained to purchase the property within a reasonable time,
5 not to exceed 180 days, for at least the determination of
6 value or the amount ordered by the court, the court after
7 hearing may:

8 (1) Approve the highest outstanding offer, if any;

9 (2) Order that the property continue to be offered
10 for an additional time, with or without redetermining the
11 value of the property; or

12 (3) Order that the property be sold by sealed bids
13 or at an auction.

14 (e) If the court orders a sale by auction, unless
15 the parties otherwise agree or the court for good cause shown
16 orders otherwise, the auction shall be conducted at the front
17 door or main entrance to the courthouse of the county where
18 the land or a substantial and material part thereof is
19 located. The sale shall be held at a time specified by the
20 court between the legal hours of sale of 11 a.m. to 4 p.m. on
21 the day designated for the exercise of the auction to sell
22 heirs property.

23 (f) If a purchaser is entitled to a share of the net
24 proceeds of the sale, the purchaser is entitled to a credit
25 against the price in an amount equal to the purchaser's share
26 of the proceeds.

1 Section 11. (a) In an open market sale of heirs
2 property, a broker or seller shall file a report with the
3 court not later than seven days after receiving an offer to
4 purchase the property for at least the determination of value
5 or the amount ordered by the court.

6 (b) The report required by subsection (a) shall
7 contain all of the following information:

8 (1) A description of the property to be sold to each
9 buyer.

10 (2) The name of each buyer.

11 (3) The proposed purchase price.

12 (4) The terms and conditions of the proposed sale,
13 including the terms of any owner financing.

14 (5) The amounts to be paid to lien holders.

15 (6) A statement of contractual or other arrangements
16 or conditions of the broker's commission.

17 (7) Other material facts relevant to the sale.

18 Section 12. A partition, sale or other disposition
19 of property pursuant to this act shall not affect or displace
20 a mortgage or other lien on the property, and shall not affect
21 or displace the obligations of any person who is a party to
22 the mortgage or other lien or who is obligated on any note or
23 other agreement secured by the mortgage or other lien.

24 Section 13. In applying and construing this uniform
25 act, consideration shall be given to the need to promote
26 uniformity of the law with respect to its subject matter among
27 states that enact the uniform act.

1 Section 14. This act modifies, limits, and
2 supersedes the Electronic Signatures in Global and National
3 Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
4 modify, limit, or supersede Section 101(c) of that act, 15
5 U.S.C. Section 7001(c), or authorize electronic delivery of
6 any of the notices described in Section 103(b) of that act, 15
7 U.S.C. Section 7003(b).

8 Section 15. This act shall become effective
9 immediately following its passage and approval by the
10 Governor, or its otherwise becoming law, for partition actions
11 filed on or after January 1, 2015.

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 14-JAN-14

Read for the second time and placed on the calen-
dar 1 amendment..... 23-JAN-14

Read for the third time and passed as amended 28-JAN-14

Yeas 21
Nays 0

Patrick Harris
Secretary