

# SB499

Measure Title: RELATING TO PARTITION OF HEIRS PROPERTY.  
Report Title: Real Property; Partition; Heirs Property  
Description: Adopts Uniform Partition of Heirs Property Act. Establishes procedures and remedies for use in actions for partition of real property involving heirs property (real property held in tenancy in common that meets certain requirements).  
Companion:  
Package: None  
Current Referral: CPN, JDL  
Introducer(s): BAKER, CHUN OAKLAND, ENGLISH, KEITH-AGARAN, Espero, Kahele, Nishihara, Solomon

<u>Sort by Date</u>		<b>Status Text</b>
1/18/2013	S	Introduced.
1/22/2013	S	Passed First Reading.
1/22/2013	S	Referred to CPN, JDL.
1/24/2013	S	The committee(s) on CPN has scheduled a public hearing on 01-30-13 8:30AM in conference room 229.

TESTIMONY OF THE  
COMMISSION TO PROMOTE UNIFORM LEGISLATION

ON S.B. NO. 499

RELATING TO PARTITION OF HEIRS PROPERTY

BEFORE THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Wednesday, January 30, 2013, at 8:30 a.m.  
Conference Room 229, State Capitol

PERSON(S) TESTIFYING: LANI L. EWART, Commissioner  
Commission to Promote Uniform Legislation

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To Chair Baker, Vice Chair Galuteria, and Members of the Committee:

My name is Lani Ewart and I am testifying on behalf of the Commission to Promote Uniform Legislation, which supports passage of S. B. No. 499, Relating to **PARTITION OF HEIRS PROPERTY**.

In 2010, the Uniform Law Commission promulgated the **Uniform Partition of Heirs Property Act** (the "Act") to provide a fair, common-sense solution to the risks posed to those who own "heirs property". The Act does not displace existing partition law for non-heirs property, it does not prohibit a party from petitioning for a partition by sale, and it does not apply to situations where all the cotenants have a written agreement relating to partitioning their property. The Act does establish a hierarchy of remedies which are designed to protect a family's property holdings and their real property wealth to the extent practicable for partition actions involving heirs property. Overall, the Act provides cotenants with many of the protections and rights commonly found in private agreements governing the partition of tenancy-in-common property.

"Heirs property" is defined in the Act as real property that is held under a tenancy in common in which there is no binding agreement among the cotenants governing partition of the property. Additionally, one or more of the cotenants must have acquired title from a relative, and one of the following conditions must be true:

- 20% or more of the interests are held by cotenants who are relatives; or

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- 20% or more of the interests are held by an individual who acquired title from a relative; or
- 20% or more of the cotenants themselves are relatives.

In a tenancy-in-common, any cotenant may sell his or her interest without the consent of the other cotenants, making it easy for non-family members – including real estate speculators – to acquire an interest in the property. In a tenancy-in-common, any cotenant may file an action with the court to partition the property. In resolving a partition action, the court has two main remedies available: partition-in-kind or partition-by-sale. A partition-in-kind physically divides the property into shares of equal value and gives each cotenant full ownership of an individual share. However, if the cotenants cannot agree on parcels of equal value, the court will often order a partition-by-sale, whereby the property is sold as a single parcel and the cash distributed to the cotenants in equal shares. In many cases of heirs property, the partition-by-sale resulting from a court action initiated by a non-family cotenant often brings a price well below the market value and the family members lose their most valuable asset.

The Act uses a simple 5-step process to ensure all owners of heirs property are treated fairly when one or more cotenants wish to sell their share:

1. The cotenant requesting the partition must give notice to all of the other cotenants.
2. The court must order an appraisal to determine the property's fair market value. If any cotenant objects to the appraised value, the court must hold a hearing to consider other evidence.
3. Any cotenant (except the cotenant who requests partition) may buy the interest of the selling cotenant at the court-determined fair market value. The cotenants have 45 days to exercise their right of first refusal, and if exercised, another 60 days in which to arrange for financing. If more than one cotenant elects to buy the selling co-tenant's share, the court will prorate the seller's share among the buyers according to their existing fractional ownership percentages.
4. If no cotenant elects to purchase the selling cotenant's share, the court must order a partition-in-kind, unless the court determines that partition-in-kind will result in great prejudice

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to the co-tenants as a group. The Act specifies the factors a court must consider when determining whether partition-in-kind is appropriate.

5. If partition-in-kind is not appropriate and the court orders a partition-by-sale, the property must be offered for sale on the open market at a price no lower than the court-determined value for a reasonable period of time and in a commercially reasonable manner. If an open market sale is unsuccessful or the court determines that a sale by sealed bids or by auction would be more economically advantageous for the cotenants as a group, the court may order a sale by one of those methods.

In summary, the Act preserves the right of a cotenant to sell his or her interest in inherited real estate, while ensuring that the other cotenants will have the necessary due process to prevent a forced sale: notice, appraisal, and right of first refusal. If the other cotenants do not exercise their right to purchase property from the seller, the court must order a partition-in-kind if feasible, and if not, a commercially reasonable sale for fair market value.

We respectfully urge passage of S.B. No. 499 relating to the partition of heirs property.