

Date of Hearing: March 23, 2021

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
AB 633 (Calderon) – As Amended March 15, 2021

PROPOSED CONSENT

**SUBJECT:** PARTITION OF REAL PROPERTY: UNIFORM PARTITION OF HEIRS PROPERTY ACT

**KEY ISSUE:** SHOULD CALIFORNIA STRENGTHEN PROTECTIONS AGAINST FORCED SALE BY PARTITION OF INHERITED REAL PROPERTY, THEREBY FACILITATING INTERGENERATIONAL WEALTH TRANSFER FOR LOW AND MODERATE-INCOME FAMILIES, AND IT IS HOPED, HELP REDUCE THE RACIAL WEALTH GAP?

**SYNOPSIS**

*This bill, sponsored by the California Association of Realtors, would enact in California the Uniform Partition of Heirs Property Act. The Act addresses a longstanding problem: the exploitation of laws governing the inheritance, ownership, and sale of property by unscrupulous speculators, who acquire a small ownership interest in real property owned by a group of heirs and then force the sale of the property at below-market prices.*

*When individuals die without a will, their property is generally inherited, and held, by their heirs as tenants in common. If this process repeats over time, ownership becomes increasingly fragmented. Under existing law, any cotenant may initiate a partition act: a civil proceeding to either obtain clear title to some portion of the property (a partition in kind) or to force a sale of the property as a whole and obtain a portion of the proceeds (a partition by sale). Partitions by sale are often conducted in the form of an auction, which often results in a sale at a below-market price. This affords an opportunity for unscrupulous individuals to obtain property on the cheap by buying a cotenant's interest, no matter how small; suing to trigger a partition by sale; and then purchasing the whole property for a below-market price. If successful, this method deprives heirs of both short-term and long-term wealth.*

*To short-circuit this process, this bill would enact a series of protections when partition of "heirs property" (a term defined in the bill, meant to encompass property inherited from relatives and held by cotenants) is sought, including notice, determination of fair market value, a right of first refusal, and meaningful statutory preference for partition in kind, and when necessary, open-market sale, all of which is to occur under court supervision. It is the bill's goal to facilitate retention of real property wealth, both during a cotenant's lifetime and intergenerationally, by halting exploitation of partition statutes to force property sales. This bill is supported by the California Low-Income Consumer Coalition and has no opposition.*

**SUMMARY:** Enacts the Uniform Partition of Heirs Property Act, which is meant to enhance opportunities for intergenerational wealth accumulation and transfer, particularly in communities of color that have historically been the target of predatory real estate practices. Specifically, **this bill:**

- 1) Enacts the Uniform Partition of Heirs Property Act (Act).

- 2) Establishes that the Act will apply to actions to partition real property that are filed on or after January 1, 2022.
- 3) Defines “ascendant” to mean an individual who precedes another individual in lineage, where the two individuals are in a direct line of ascent from one another.
- 4) Defines “descendant” to mean an individual who follows another individual in lineage, where the two individuals are in a direct line of descent from one another.
- 5) Defines “collateral” to mean an individual who is related to another individual under the law of intestate succession, but is neither an ascendant nor descendant.
- 6) Defines “relative” to mean an ascendant, a descendant, a collateral, or another individual who is related to an individual by blood, marriage, adoption, or under another state law.
- 7) Defines “record” to mean information inscribed on a tangible medium or that is stored in an electronic or other medium and retrievable in perceivable form.
- 8) Defines “heirs property” to mean real property that meets all of the following conditions:
  - a) It is held in tenancy in common.
  - b) Its partition is not governed by an agreement in a record that binds all of the cotenants.
  - c) One or more of the cotenants acquired title in the property from a relative, whether living or deceased.
  - d) At least one of the following conditions applies:
    - i) Twenty percent or more of the interests in the property are held by cotenants who are relatives.
    - ii) Twenty percent or more of the interests in the property are held by an individual who acquired title from a relative, whether living or deceased.
    - iii) Twenty percent or more of the cotenants are relatives.
- 9) Defines “partition in kind” to mean the division of heirs property into physically distinct and separately-titled parcels.
- 10) Defines “partition by sale” to mean the court-ordered sale of the entire heirs property under the provisions of the Act, whether by auction, sealed bids, or open-market sale.
- 11) Requires, in any action to partition real property brought under the Code of Civil Procedure, that the court first determine whether the property is heirs property. If it is heirs property, the real property must be partitioned under this Act, unless all of the cotenants agree otherwise in a record.
- 12) Deems the Act to control over any provisions of the title of the Code of Civil Procedure governing partition of real and personal property that may be inconsistent with the Act.

- 13) Defines “determination of value” to mean a court order that establishes the fair market value of heirs property under the Act’s procedures.
- 14) Mandates that if the plaintiff in a partition action seeks an order permitting notice of the action by publication, and the court determines that the property may be heirs property, then the plaintiff must, within ten days, post a conspicuous sign, containing specified information, on the property.
- 15) Requires a court to utilize the following procedures to conduct a determination of value of heirs property:
  - a) If the cotenants agree on the value of the property, the court must adopt that value.
  - b) If the cotenants agree to a method of valuation, the court must adopt the value produced by that method of valuation.
  - c) If the court determines that the cost of an appraisal would exceed the evidentiary value of an appraisal, the court must itself determine the property’s fair market value and notify the parties of that value.
  - d) Otherwise, the court is to appoint a disinterested California-licensed real estate appraiser to determine the fair market value of the property, assuming the property were held in fee simple by a single owner. If this method is utilized, the court must then hold an evidentiary hearing in which it hears any objections filed to the appraisal as well as any other evidence of value offered by a party to the partition action.
- 16) Requires a court, once a determination of value is completed, to notify the cotenants that any of them (except those cotenants who requested partition by sale) may buy the interests of the cotenants who requested partition by sale.
- 17) Provides that any cotenant (except those cotenants who requested partition by sale) may give timely notice to the court of their intent to buy the requesting cotenants’ interests for a purchase price, which in turn is determined by statutory formula.
- 18) Enacts procedures to handle a situation in which more than one cotenant notifies the court of an intent to purchase the interests of those cotenants who requested partition by sale.
- 19) Obligates a court, if either (a) any interests of cotenants that requested partition by sale are not purchased by other cotenants or (b) there is a remaining cotenant who requests partition in kind, to order partition in kind, unless the court finds that partition in kind would result in great prejudice to the cotenants as a group.
- 20) Sets forth the following factors to be considered by a court in determining whether partition in kind would result in great prejudice to the cotenants as a group (with the added proviso that no one factor is dispositive and a court must weigh the totality of all relevant factors and circumstances):
  - a) Whether the heirs property can practicably be divided among the cotenants.

- b) Whether the aggregate fair market of the divided parcels would be less than the value of the property if it were sold as a whole, taking into account the conditions under which any court-ordered sale would likely occur.
  - c) How long the property has been held by a cotenant, as well as any predecessors in title or possession who were the cotenant's relatives.
  - d) A cotenant's sentimental attachment to the property, including due to its ancestral value.
  - e) A cotenant's lawful use of the property, and the degree of harm to the cotenant if they could not continue the same use.
  - f) The degree to which cotenants have contributed their pro rata share of property taxes, insurance, and other expenses associated with maintaining property ownership, or have contributed to the property's physical improvement, maintenance, or upkeep.
  - g) Any other relevant factor.
- 21) Deems open-market sale to be the appropriate method for a court-ordered sale of heirs property unless a 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.
- 22) Provides procedures for a real estate broker licensed in California to conduct an open-market sale of heirs property. The broker must offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court; further, the broker must file a mandatory report with the court after receiving a qualifying offer.
- 23) Provides that if a court orders sale by sealed bids or auction, that the court set the terms and conditions of the sale, and that any such auction be conducted under the procedures used to auction non-heirs property following a partition action.
- 24) States that in applying and construing the Act, that consideration be given to the need to promote uniformity of the law among the states that enact it.
- 25) Includes a provision to ensure that the Act is not preempted by the federal Electronic Signatures in Global and National Commerce Act (E-SIGN).

**EXISTING LAW:**

- 1) Defines "real property" as consisting of land, that which is affixed to land, that which is incidental or appurtenant to land, and that which is immovable by law, with certain exceptions (such as for industrial crops) for items to be treated as goods. (Civil Code Section 658.)
- 2) Specifies that ownership of property by more than one person must take one of the following four forms: joint interests, partnership interests, interests in common, or spouses' community interests. (Civil Code Section 682.)
- 3) Defines "interest in common" as one owned by several persons, not in joint ownership or partnership.

- 4) Establishes comprehensive procedures governing actions for partition of real and personal property. (Code of Civil Procedure Section 872.020-874.240.)
- 5) Establishes E-SIGN, a federal law legalizing the use of electronic signatures and records in any transaction in, or affecting, interstate or foreign commerce. (15 U.S.C. Section 7001.)
- 6) Sets forth the requirements that a state law must meet in order to modify, limit, or supersede E-SIGN without being federally preempted. (15 U.S.C. Section 7002.)

**FISCAL EFFECT:** As currently in print this bill is keyed non-fiscal.

**COMMENTS:** The Uniform Partition of Heirs Property Act, which this bill would enact in California, is meant to address a longstanding problem: the exploitation of laws governing inheritance, ownership, and sale of property by unscrupulous speculators, who acquire a small ownership interest in real property owned by a group of heirs and then force the sale of the property at a below-market price. As detailed by academics and investigative journalists, Black property owners have often been the group most victimized by such practices. As a recent ProPublica article recounts:

David Dietrich, a former co-chair of the American Bar Association’s Property Preservation Task Force, has called heirs’ property “the worst problem you never heard of.” The U.S. Department of Agriculture has recognized it as “the leading cause of Black involuntary land loss.” Heirs’ property is estimated to make up more than a third of Southern black-owned land—3.5 million acres, worth more than \$28 billion. These landowners are vulnerable to laws and loopholes that allow speculators and developers to acquire their property. Black families watch as their land is auctioned on courthouse steps or forced into a sale against their will. Between 1910 and 1997, African Americans lost about 90% of their farmland. This problem is a major contributor to America’s racial wealth gap; the median wealth among black families is about a tenth that of white families. Now, as reparations have become a subject of national debate, the issue of black land loss is receiving renewed attention. (Presser, *Their Family Bought Land One Generation After Slavery. The Reels Brothers Spent Eight Years in Jail for Refusing to Leave It*, ProPublica (Jul. 15, 2019), available at <https://features.propublica.org/black-land-loss/heirs-property-rights-why-black-families-lose-land-south/>.)

The Act aims at stopping further loss of inherited real property wealth through forced sale practices. It is the brainchild of Texas A&M University School of Law Professor Thomas W. Mitchell, who won a 2020 MacArthur Fellowship (aka “genius grant”) for his work in this area. In a seminal law review article, Professor Mitchell diagnosed how seemingly neutral laws regarding property transfer and sale operated to dispossess African-Americans of land ownership. (*From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence and Community Through Partition Sales of Tenancies in Common* (2001) 95 Northwestern U. L. Rev. 505.) He wrote therein:

African Americans acquired approximately fifteen million acres of land in the South in the fifty years following Emancipation. [...] A remarkable history of land acquisition has given way to extraordinary levels of land loss in the past half century. Today, the most current census of agriculture reveals that African American owner-

operators of farms—whether full or part owners—own at most little more than two million acres of land in the United States. Despite hard-fought struggles to retain their land, many African Americans have lost land involuntarily. [...]

[O]ne of the primary causes of involuntary black land loss in recent times [is] partition sales of black-owned land held under tenancies in common. A partition sale can be viewed as a "private" forced sale of land held under a concurrent ownership arrangement, typically a tenancy in common.

The combined effect of two sets of legal rules contributes to the loss of black-owned rural land as a result of partition actions. First, like many other poor Americans, rural African American landowners have tended not to make wills; at the owner's death, state intestacy laws enable a broad class of heirs to acquire an interest in real property of the decedent. Interests in property transferred by intestacy from one generation to another become highly fragmented, splintering the fee into hundreds and even thousands of interests. [...]

Second, the resulting tenancies in common are governed by common ownership rules that fail to distribute rights and responsibilities fairly among the tenants in common. Any tenant in common, whether a cotenant holding a minute interest or a substantial interest, may force a sale of the land, thereby ending the tenancy in common. Any cotenant may sell her interest to someone outside of the family or ownership group, bringing a stranger into the circle of cotenants, without seeking the consent of the other cotenants. [...]

**Opportunistic lawyers and land speculators have taken advantage of these legal rules in order to force sales of black-owned land.** (*Id.* at 507-8 [emphasis added].)

Such forced sales produce numerous ill effects. They often result in property being sold for a below-market price, creating an immediate deprivation of wealth. Assuming the property that is sold becomes more valuable over time, these forced sales then also remove opportunities to build intergenerational wealth. Forced sales dispossess co-tenants who would have preferred to retain ownership and develop the property. They also significantly erode community ties, no small thing given the historic vulnerability of minority communities to displacement.

Innumerable law review articles outline a problem and conclude by suggesting a few solutions; these articles sit on shelves, mostly unremembered. Professor Mitchell's article was not one of these. His research instead led to the Uniform Law Commission's 2010 issuance of the Uniform Partition of Heirs Property Act, which this bill would enact in California. Professor Mitchell was the Act's principal drafter. Since 2010, the Act has been adopted in 17 states: Alabama, Arkansas, Connecticut, Florida, Georgia, Hawaii, Illinois, Iowa, Mississippi, Missouri, Montana, Nevada, New Mexico, New York, South Carolina, Texas, and Virginia. (*See* Uniform Law Commission, *Partition of Heirs Property Act*, available at <https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d>.)

According to the author:

Unfortunately, two-thirds of Americans do not have a will. Upon the death of property owners without a will, their property is passed down to heirs through what is known as “intestate transfer”. This means that each heir receives a fractional interest in the undivided whole property. This type of ownership, known as tenancy in common, is highly volatile because one tenant can initiate a partition action, when one tenant wishes to sell their ownership stake, and petition the court to order a forced sale.

Issues begin to arise in the event one of the tenants in common seeks as a partition action. If the tenants cannot agree on how to split a property, they can go to court and petition the court for a judgment allowing partition by sale. Unfortunately, over the years, real estate speculators and developers have taken advantage of these tenants by acquiring a small share of a property and forcing a sale.

Many low and middle-income families in California are vulnerable to this type of property loss. These partition sales are not unique to the urban and suburban areas of a community, as rural land is also heirs property. Often, heirs property has been passed down multiple generations and constitutes the only form of generational wealth a family has. As more and more tenants in common have ownership in heirs property, the greater chance there is one cotenant elects for a partition sale.

AB 633 will modernize partition law and implement a fair process for heirs during a partition sale.

***What is “heirs property”?*** The key definition in this bill is of “heirs property,” which this bill would govern the partition of. “Heirs property” is defined as follows:

“Heirs property” means real property held in tenancy in common which satisfies all of 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:
  - (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.
  - (C) Twenty percent or more of the cotenants are relatives.

Requirements (1) and (2) are satisfied if a natural person dies intestate (without a will) and a relative inherits their interest in real property—provided that the property as a whole is held by more than one person as tenants in common.

Requirement (3) can be satisfied in any number of ways. For example, a parent of three children may own 30% of a piece of real property; if the parent dies intestate, each of the three siblings

will inherit a 10% ownership interest, turning the entire property into heirs property. It is important to note that the percentages in these definitions do not refer to the amount of land that is held, but to the percentage of property interests extant. It would be possible for, say, 85% of the acreage of a piece of property to be held by a single individual, and the remaining 15% to be divided into multiple interests, each held by a relative, and for the whole to be deemed heirs property. This categorization makes sense if the intent of the bill is to broadly capture as many of these fractured ownership situations as possible and place their partition under court supervision.

***Under this bill, how does an action to partition property owned by cotenants function?***

California's current partition statutes, codified at Code of Civil Procedure Section 872.010 *et seq.*, were enacted in 1976 pursuant to recommendations made by the Law Revision Commission. These statutes give broad authority to courts in hearing partition actions; courts are free to "make any decrees and orders necessary or incidental to carrying out the purposes of [the partition statutes]." (Code of Civil Procedure Section 872.120.) Nevertheless, case law interpreting the pre-1976 statutes remain generally applicable, except where there is an express conflict, in which case of course the current statute controls.

Any cotenant is free to commence a partition action. (Code of Civil Procedure Section 872.210 (a)(2).) "The object of a partition of the property itself is to enable each party to obtain the title to...some definite portion of the property owned in common..." (*McGillivray v. Evans* (1864) 27 Cal. 91, 96.) The only question for the court is whether the plaintiff has the right to obtain partition. (Code of Civil Procedure Section 872.710 (a).) "It is...accepted doctrine...that a cotenant is entitled to partition as a matter of absolute right [and] that he need not assign any reason for his demand.... The only indispensable requirement to its award is that a clear title be shown, and in no event is a partition to be denied because it will result in financial loss to the cotenants." (*De Roulet v. Mitchel* (1945) 70 Cal. App. 2d 120, 124.)

The plaintiff cotenant must join as defendants in the partition action everyone who either has, or claims, an interest in the real property that the plaintiff seeks to partition. (Code of Civil Procedure Section 872.510.) There are even procedures to name as defendants "all persons unknown claiming any interest in the property." (Code of Civil Procedure Section 872.550.) The partition action then generally proceeds as does any civil action. (Code of Civil Procedure Section 872.030.) Ultimately, the procedure has changed little since California's earliest days:

The parties named in the complaint, whether as plaintiffs or defendants, are all actors, each representing his own interest. Whether plaintiffs or defendants, they are required to set forth fully and particularly the origin, nature and extent of their respective interests in the property. This having been done, the interest of each, or all, may be put in issue by the others; and, if so, such issues are to be first tried and determined, and no partition can be made until the respective interests of all the parties have been ascertained and settled by a trial. (*Morenhout v. Higuera* (1867) 32 Cal. 239, 295.)

In other words, each party must fend for itself in a complex, multiparty civil action for which a party will almost certainly require legal representation in order to participate meaningfully.

California nonetheless does offer some protections for cotenants involuntarily named in a partition action. Precedent articulates a preference for partition in kind over partition by sale. "As a rule, the law favors partition in kind, since this does not disturb the existing form of inheritance or compel a person to sell his property against his will. Forced sales are strongly disfavored."



(*Richmond v. Dofflemyer* (1980) 105 Cal. App. 3d 745, 757.) Nevertheless, the 1976 amendments to the law changed the standard for allowing a sale of property from “great prejudice” to “more equitable than division of the property,” an easier standard to meet in order to trigger a forced sale. (See Code of Civil Procedure Section 872.820 (b).) Another protection for cotenants is the court’s power to order a partial sale of the property, while partitioning the remainder in kind. (Code of Civil Procedure Section 872.830.) Yet it is unclear that these protections would mean much to unrepresented, unsophisticated parties being sued by a plaintiff who is both represented by counsel and determined to force a sale.

***Under this bill, how would an action to partition heirs property function?*** If this bill is enacted, a court would have to take the following steps in a partition action involving heirs property:

1. Require, if any defendant cotenant cannot be personally served and the plaintiff instead seeks to provide notice by publication, that the plaintiff also post conspicuous notice of the action on the property itself.
2. Determine the fair market value of the property, with notice and opportunity to be heard provided to all parties regarding any value generated through an appraisal.
3. Provide an opportunity for all cotenants, other than the cotenants requesting sale, to purchase the interests of the cotenants requesting sale.
4. Absent such a purchase, order partition by kind unless the court finds that such a partition would cause “great prejudice” to the cotenants as a group. “Great prejudice” is statutorily defined to require an examination of the totality of the factors and circumstances involved, including how long the property has been held by the cotenant and prior owners, and a cotenant’s attachment to the land.
5. Order an open-market sale conducted by a licensed real estate broker, with a sale price no lower than the previously-determined fair market value. The court could only order sealed bids or a sale by auction if either method would be more economically advantageous and in the best interests of the cotenants as a group.

This sequence of steps, which provides numerous protections for cotenants and arguably does not require that a party be represented by an attorney, is quite different from the steps outlined above for a traditional partition action, which is essentially a civil lawsuit in which any represented party will have a significant advantage.

Ultimately, it is hoped that the procedures set forth in this bill will help preserve intergenerational family wealth inherited in the form of real property.

***Should the Act be extended to all partition actions involving tenancies in common?*** Rather than adopt the Uniform Act in its entirety, the Virginia General Assembly instead rewrote its partition statutes to incorporate many elements of the Act, so that these provisions would apply generally to all partition actions involving tenancies in common. (See 2020 Va. Acts Chap. 115.) It may be that California law governing partition actions ought to be similarly rewritten so as to govern all partitions sales of tenancies in common, rather than just those involving heirs property. This is a complex question, particularly because California’s expensive housing market has led to large numbers of multifamily rental properties (particularly in rent-controlled jurisdictions) being sold and converted into tenancies in common held by multiple unrelated

individuals (TICs). (See Khouri, *You can buy ‘cheap’ in L.A. But you won’t own your home and may oust a renter*, L.A. Times (Dec. 30, 2019), available at <https://www.latimes.com/business/story/2019-12-30/tenancy-in-common>.) TICs are generally governed by complex agreements between cotenants, and present a much different situation than the typical inherited property meant to be addressed by the present bill. (These agreements may in fact exclude TICs from the definition of “heirs property” under this bill, as the definition exempts properties governed by an agreement that binds all cotenants and addresses partition.) Given such nuances, a complete exploration of whether all tenancies in common ought to be governed by California’s existing partition laws, by the procedures in this bill, or by some hybrid of the two, is beyond the scope of this analysis. Nevertheless, the question should be considered as a potential subject of future legislation.

**Further resources.** An annotated version of the Act, which runs some 30 pages in length and explains the Act’s provisions in detail, is recommended for anyone seeking a deeper understanding of the law. (See National Conference of Commissioners on Uniform State Laws, *Uniform Partition of Heirs Property Act, with Prefatory Notes and Comments* (Oct. 19, 2010), available at <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=4617097f-e6aa-d511-3c68-f3f21b1927e9&forceDialog=1>.)

**ARGUMENTS IN SUPPORT:** California Association of Realtors contends that this bill will be of greatest benefit to non-affluent households:

All too often in our country’s history, real estate speculators have exploited the land holdings of heirs by acquiring a small share of heir’s property and forcing a partition action. The speculator then turns around and is able to acquire the property in a court ordered partition sale for far less than the market value, and, in turn, depletes a family’s inherited wealth. Property owners that have both the financial means and the expertise needed to access estate planning attorneys have the ability to avoid the harsh consequences of a partition sale. But low to moderate income and otherwise disadvantaged heirs’ property owners are vulnerable to these types of loss. [...] While these exploitive situations have classically occurred with rural landownership, in modern times, urban landowners have also found themselves subject to these losses.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Association of Realtors (sponsor)  
California Low-Income Consumer Coalition

### **Opposition**

None on file

**Analysis Prepared by:** Jith Meganathan / JUD. / (916) 319-2334