

CONCURRENCE IN SENATE AMENDMENTS

AB 633 (Calderon)

As Amended June 24, 2021

Majority vote

SUMMARY

Enacts the Uniform Partition of Heirs Property Act (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.
- 2) Establishes that the Act will apply to actions to partition real property that are filed on or after January 1, 2022.
- 3) 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 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.
- 4) Requires, in any action to partition real property, that the court first determine whether the property is heirs property. If it is heirs property, the real property must be partitioned under the Act, unless all of the cotenants agree otherwise.
- 5) Defines "determination of value" to mean a court order that establishes the fair market value of heirs property, using the Act's procedures.
- 6) 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.
- 7) 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.

- 8) 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.
- 9) 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.

Senate Amendments

Clarify that the court can apportion the costs of partition, including any appraisal fee, among the parties in proportion to their interests. However, the court cannot make a party that opposes the partition pay costs unless doing so is equitable and consistent with the purposes of the Act.

COMMENTS

The Uniform Partition of Heirs Property Act (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 [United States] 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 an important law review article, Professor Mitchell diagnosed how seemingly neutral laws regarding property transfer and sale operated to dispossess African-Americans of land ownership, writing: "Opportunistic lawyers and land speculators have taken advantage of these legal rules in order to force sales of black-owned land." (*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, 507-8.)

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.

Professor Mitchell's article led to the Uniform Law Commission's 2010 issuance of the Uniform Partition of Heirs Property Act, which this bill would enact in California. 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>.)

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 in 3) in the Summary above. Requirements 3) a) to c), above, 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) d), above, 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 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 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.

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.

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.

Arguments in Opposition

No opposition on file.

FISCAL COMMENTS

None

VOTES:**ASM JUDICIARY: 11-0-0**

YES: Stone, Gallagher, Chau, Chiu, Davies, Lorena Gonzalez, Holden, Kalra, Kiley, Maienschein, Reyes

ASSEMBLY FLOOR: 74-0-4

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Muratsuchi, Nazarian, Nguyen, O'Donnell, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Wood, Rendon

ABS, ABST OR NV: Mullin, Patterson, Petrie-Norris, Wicks

UPDATED

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