

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### **SENATE, No. 860**

with committee amendments

# STATE OF NEW JERSEY

DATED: FEBRUARY 13, 2023

The Senate Judiciary Committee reports favorably Senate Bill No. 860.

This bill, titled the “Uniform Partition of Heirs Property Act,” as amended by the committee, would provide an alternative process for handling partition actions filed in court concerning real property with multiple owners, at least one of whom had acquired title to the property from a relative. The bill is based on the 2010 uniform act of the same name drafted and approved by the Uniform Law Commission (formerly known, and sometimes still referred to, as the National Conference of Commissioners on Uniform State Laws).

Currently, any real property held by multiple owners as tenants in common (cotenants) may be subject to a partition action filed in Superior Court, which may result in (1) a partition in kind, which is the physical division of the property proportionate to individual owners’ interests, or (2) partition by sale, for which individual owners are then compensated out of the total purchase price proportionate to their interests. See N.J.S.2A:56-1 et seq. This bill would preempt some parts of the existing partition law in order to create new requirements for the process intended to more greatly protect the interests of cotenant property owners who may object to another owner’s action seeking to partition any property which meets the following characteristics and is referred to in the bill as “heirs property”:

- there is no agreement in a record binding all the cotenants which governs the partition of the property;
- one or more of the cotenants acquired title from a relative, whether living or deceased; and
- any one of the following applies: 20 percent or more of the interests are held by cotenants who are relatives; 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or 20 percent or more of the cotenants are relatives.

When a partition action is filed pursuant to the partition law, N.J.S.2A:56-1 et seq., the court would make a determination, based on information contained in the partition complaint, or upon motion of a party to the action or the court’s own motion, whether the subject property is “heirs property.” If so determined, the property would be

partitioned in accordance with the process set forth in the bill. The court could appoint a special master to generally oversee the process and, when appropriate to carry out a partition in kind (the physical division of property), appoint a commissioner or commissioners pursuant R.4:63-1 of the Rules of Court “to ascertain and report in writing the metes and bounds of each [cotenant’s] share.” Any such appointed commissioner would be required to be disinterested, impartial, and not a party to or participant in the partition action.

Throughout the process, the court could order the party who filed the partition action, if seeking an order of notice by publication, to post and maintain a conspicuous sign on the subject property. That sign would state information about the partition action and the common designation by which the property is known, and the court could also require the party to include the party’s name and the known defendants (other cotenants).

An appointed special master would direct a disinterested real estate appraiser licensed in the State to make a determination of the property’s fair market value, assuming sole ownership of the fee simple estate, unless the cotenants have agreed to the property’s value or to another valuation method, in which case the special master could accept that value or the value produced by the agreed upon method. If an appraisal was conducted, the completed appraisal would be distributed to the parties in the action and filed with the special master. Within 30 days after the appraisal is filed, any party could file an objection with the special master. Thereafter, following notice of a hearing, the special master could conduct an appraisal hearing to determine the fair market value of the property, during which the special master could consider evidence offered by any party in addition to the real estate appraisal on file.

If any cotenant requests a partition by sale, after the determination of the property’s value, a notice would be sent within 30 days by the party who filed the partition action to all parties and the special master indicating that any cotenant, except a cotenant that requested partition by sale, could buy all of the interests of the one or more cotenants requesting the sale. Within 30 days thereafter, any eligible cotenant or cotenants could then elect to buy all of those interests by giving notice of such to the parties and the special master. The purchase price for each of the interests of a cotenant requesting the partition by sale would be the determined value of the entire parcel of property multiplied by the cotenant’s fractional ownership of the entire parcel.

At the conclusion of the buyout notice period, the bill provides for the following:

- (1) If only one cotenant elected to buy all the interests of the cotenants that requested partition by sale, the cotenant would notify all the parties and the special master in writing;
- (2) If more than one cotenant elected to buy all the interests of the cotenants that requested partition by sale, the special master would allocate the right to buy those interests among the electing

cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy, and send written notice to all the parties of that fact and of the price to be paid by each electing cotenant; and

(3) If no cotenant elected to buy all the interests of the cotenants that requested partition by sale, the special master with notice to the parties would report in writing to the court, and the court would resolve the matter by ordering a partition in kind or partition by sale.

In situations when one or more cotenants elected to buy the available interests, each such cotenant would be required to pay their apportioned price within 30 days with notice to the special master. Upon timely payment by all purchasing cotenants, the special master would issue an order reallocating the interests amongst the remaining cotenants and the money held by the special master would be disbursed to the one or more cotenants who have been bought-out. If no one made timely payments, the special master would report this to the court, which in turn would resolve the matter by ordering a partition in kind or partition by sale. If only some made timely payments, those paying cotenants could file a motion with the special master to determine the outstanding interests and their purchase price, and one or more such cotenants could thereafter pay, based upon a new special master order, for the recalculated remaining interests within 30 days following issuance of the order. After this new 30-day period, if there remained any interests for sale that are not purchased, the court would resolve the matter by ordering a partition in kind or partition by sale.

Thus, whenever at the conclusion of the one or more buyout periods described above there remain any unpurchased interest from a cotenant that requested the partition by sale, or any cotenant remains that has requested a partition in kind, the special master would report to the court a recommendation to proceed with a partition in kind. The court would order the partitioning of the property into physically distinct and separately titled parcels, unless the court found that such partitioning would result in great prejudice to the cotenants as a group; the determination of "great prejudice" would be based on such factors as whether the property could be divided practicably amongst cotenants, whether doing so could decrease the aggregate values of the resulting parcels versus selling the property as a whole, and any cotenant's sentimental attachment to the property, including attachment arising because of any ancestral, unique, or special value to the cotenant. In a case in which a partition in kind would result in great prejudice, the court would order a partition by sale, unless no cotenant requested such action, resulting in the dismissal of the case and no further partitioning of the property.

Any partition by sale would be an open-market sale unless the 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. Any open-market sale would proceed under a licensed real estate broker, either agreed to by the parties or, absent agreement, appointed by the court. The real estate broker would be provided a reasonable commission on the sale as determined by the court.

The broker would offer the property for sale in a commercially reasonable manner at a price no lower than the previously determined value of the property, and on the terms and conditions established by the court. The broker, after receiving an offer to purchase the property, would file a report with the court containing information about the purchase price, name of each buyer, terms of the proposed sale, including the terms of any financing, any amounts to be paid to lienholders, and other material facts relevant to the sale. Thereafter, the purchase could be completed in accordance with applicable State law and payments distributed based upon the former cotenants various interests in the property.

This bill would take effect on the 30th day following enactment, and apply to any partition actions filed on or after that date.

The committee amendments to the bill:

- provide for the court to appoint a special master to generally oversee the partition action. Throughout the bill, actions for which the court was originally responsible are instead assigned by the amendments to the special master, and many of these responsibilities are detailed above in the statement;

- also provide for the court to appoint, when appropriate to carry out a partition in kind, a commissioner or commissioners pursuant to R.4:63-1 of the Rules of Court “to ascertain and report in writing the metes and bounds of each [cotenant’s] share”;

- make it discretionary as determined by the court, and not mandatory, for the party who filed the partition action to post a sign on the property that is the subject of the action whenever that party sought an order of notice on the action by publication;

- establish timeframes, typically 30-day periods, by which various notices are to be provided and activities fulfilled regarding the partition action as described in the statement above, many of which were originally set at the discretion of the court in the underlying bill;

- remove the option for the court to hold a hearing to determine the fair market value of the subject property instead of its value being determined by a professional appraisal;

- clarify throughout the bill that notices between cotenants, and provided to the special master or court, are to be set forth in writing; and

- change the effective date, from immediately to the 30th day next following enactment.