

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5510

**STATE OF NEW JERSEY**

DATED: MAY 12, 2021

The Assembly Judiciary Committee reports favorably Assembly Bill No. 5510.

This bill, titled the “Uniform Partition of Heirs Property Act,” 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 as the National Conference of Commissioners on Uniform State Laws).

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, 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 add new requirements to the partition 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 it is, the property would be partitioned in accordance with the process set forth in the bill.

The bill would require 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 evidentiary value of an appraisal would be outweighed by the appraisal's cost (in which case the court would determine fair market value), or the cotenants agreed to the property's value or to another valuation method. If conducted, the completed appraisal would be filed with the court.

If any cotenant requests a partition by sale, after the determination of the property's value, a notice would be sent to all parties that any cotenant, except a cotenant that requested partition by sale, could buy all of the interests of the one or more cotenants requesting partition by sale. Any cotenant could then elect to buy all of those interests by giving notice to the court. The purchase price for each of the interests would be the value of the entire parcel of property multiplied by the cotenant's fractional ownership of the entire parcel. The court would establish a date by which all cotenants electing to purchase interests would have to pay their apportioned price into the court, after which the property interests would be reallocated amongst the remaining cotenants and the money held by the court disbursed to the one or more cotenants who have been bought-out.

At the conclusion of the buyout period, if all of the interests of the one or more cotenants that requested partition by sale are not purchased by other cotenants, or any cotenant remains that requested 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 such a case, the court would then 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.