

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2245 (Ramos)
Version: March 24, 2022
Hearing Date: June 8, 2022
Fiscal: No
Urgency: No
TSG

SUBJECT

Partition of real property

DIGEST

This bill modifies the default legal procedures for the partition of real property co-owned by multiple people as tenants in common regardless of how the property was acquired.

EXECUTIVE SUMMARY

Under California law, when multiple people each own a partial but undivided interest in a piece of property, they are referred to as tenants in common. Under such an ownership structure, each co-owner is at the mercy of the others, because everyone has the power to force partition, meaning either division of the property into separate pieces with separate owners, or sale of the whole property and distribution of the proceeds among the co-owners. Over the past century, land speculators in California and other states have taken advantage of tenancies in common – which often arise when family members inherit property – to wrest control of property owned in this fashion by buying one small fractional interest in the property, demanding partition, and using the ensuing process to obtain the land at a discount. To address this problem, California and other states recently enacted legislation revising the partition process in scenarios involving inherited family land. The resulting procedure better protects families from losing inherited family property along with the connection to the land and the intergenerational wealth it represents. On the belief that the resulting procedures actually work better for *all* co-owners facing partition, this bill now applies those same procedures to all scenarios involving partition of property held by tenants-in-common, regardless of how they acquired the property.

The bill is sponsored by the California Association of Realtors. There is no known support or opposition on file. The bill passed off of the Assembly Floor as a special consent item. If the bill passes out of this Committee, it will next be heard on the Senate Floor.

PROPOSED CHANGES TO THE LAW

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 for items to be treated as goods (such as industrial crops). (Civ. Code § 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. (Civ. Code § 682.)
- 3) Defines “interest in common” as one owned by several persons, not in joint ownership or partnership. (Civ. Code § 685.)
- 4) Establishes comprehensive procedures governing actions for partition of real and personal property. (Code Civ. Proc. §§ 872.020-874.240.)
- 5) Establishes special procedures, under the Uniform Partition of Heirs Property Act (UPHPA), governing actions for partition of “heirs property,” meaning real property owned by two or more tenants in common, with a specified percentage of co-owners who are relatives or inherited their property from relatives. (Code Civ. Proc. §§ 874.311-874.322.)

This bill:

- 1) Enacts the Partition of Real Property Act (Act) by removing references to “heirs property” and related terminology in the UPHPA, so that the procedures for partition under UPHPA become applicable to partition of any real property owned by tenants in common.
- 2) Specifies that the UPHPA partition procedures should be followed in situations where there is no other agreed upon and recorded procedure for partition which binds all the cotenants.
- 3) Applies the Act prospectively to actions for partition of real property filed on or after January 1, 2023.
- 4) Specifies that the Act supersedes any conflicting provisions of the title of the Code of Civil Procedure that governs partition of property.

COMMENTS

1. Background on property ownership as tenants in common and partition

In California, there are four ways in which multiple people can own real property together simultaneously: joint interests, partnership interests, interests in common, or spouses' community interests. (Civ. Code § 682.) This bill concerns just one of those forms of property ownership, "interests in common," also known as tenancy in common. Tenancy in common means that each co-owner owns a fractional interest in the undivided whole of the property. Each co-owner can sell or give away their fractional interest if they wish, and if one of the co-owners dies, that co-owner's fractional interest passes to that co-owner's heirs by will or intestate succession.

All of this is fine so long as all the various co-owners agree to continue owning the whole property together. At any time, however, any one of the co-owners has the power to bring the co-ownership to an end by seeking partition of the property. Partition is a civil court proceeding with one of two possible outcomes: "partition in kind," in which the court oversees the division of the property into physically distinct and separately-titled parcels, or "partition by sale," in which the court orders the sale of the entire property and distributes the proceeds to each co-owner in proportion with the size of their fractional interest in the whole. (Code Civ. Proc. §§ 872.020-874.240.)

The power of each separate co-owner to force partition renders tenancy in common a very unstable form of property ownership. As the sponsor of the bill, the California Realtors Association, puts it:

[t]here are very few safeguards that exist in the law to protect property owners who are co-tenants when those co-owners seek to partition the property either via partition by sale or partition in kind. Any one co-tenant can easily force a sale of the property and the sale can easily be ordered as an auction, meaning a lower price for the property than would exist as a market sale transaction.

2. Prior legislation to address the problem when heirs are involved

The problems associated with partition are especially acute in the case of property passed down within the same family over several generations. Whenever there are multiple heirs to a co-owners' fractional interest – as often occurs with intestate succession – each of those heirs takes a subfraction of the fractional interest. Over generations, this leads to a steady dilution of ownership and builds a longer and longer lists of co-owners, each of whom still retains the power to force partition. Across the country over the past century, opportunistic speculators have exploited this vulnerability to acquire a single family member's interest in inherited property and forcing the sale of the whole thing, often at below-market value. This dynamic has most

harmed historically disadvantaged communities, particularly African-American families, who, from 1910 to 1997, lost approximately 90 percent of their farmland.¹

In an effort to address this problem, the Uniform Law Commission adopted the Uniform Partition of Heirs Property Act (UPHPA) in 2010. That Act establishes a revised set of procedures for carrying out partitions when the land in question is co-owned by a specified percentage of people who inherited it from family members. The revised procedures are designed to keep inherited property in the family or at least ensure that the family receives equitable compensation for the property. California adopted the UPHPA into state law last year. (AB 633, Calderon, Ch. 119, Stats. 2021.)

3. Key differences between California’s UPHPA and non-UPHPA partition procedures

The revised partition procedures under UPHPA diverge from California’s procedures for partition of other property owned by tenants in common in at least three significant ways.

First, UPHPA assures that, before any partition of the land takes place, the co-owners who did not seek partition have the opportunity to purchase the interest of the co-owner seeking partition. (Code Civ. Proc. § 874.317.) This makes it harder for speculators to pick off one co-owner, buy that co-owners interest in the property, and then use that interest to force a partition. In other words, it gives the other co-owners a chance to stave off partition, albeit provided they can afford to exercise this right of first refusal.

Second, UPHPA alters the standard under which a court decides whether to order partition in kind or partition by sale. Specifically, under the non-UPHPA partition procedures in California, the court is to order partition in kind unless the parties agree to sale or the plaintiff establishes that sale and division of the proceeds according to the parties’ interests would be more equitable. (Code Civ. Proc. §§ 872.810, 872.820.) By contrast, UPHPA requires the court to examine all factors and circumstances involved, including things like how long the property has been owned by the co-owners and the nature of their attachment to it. (Code Civ. Proc. § 874.319.) The court is only authorized to order partition by sale if it finds that partition in kind would result in “great prejudice” to the cotenants as a group. (Code Civ. Proc. § 874.318(a).) As a result, UPHPA establishes a much more meaningful preference for partition by kind, increasing the chances that the existing co-owners will get to remain on the land.

¹ Lizzie Presser, *Kicked Off the Land: Why so many black families are losing their property* (Jul. 15, 2019) New Yorker <https://www.newyorker.com/magazine/2019/07/22/kicked-off-the-land> (as of May 28, 2022); co-published in ProPublica <https://features.propublica.org/black-land-loss/heirs-property-rights-why-black-families-lose-land-south/> (as of May 28, 2022).

Finally, once a court has determined that partition by sale is necessary, UPHPA directs the court to order an open-market sale conducted by a licensed real estate broker, with a sale price no lower than the fair market value as determined by an independent appraiser under the direction of the court. (Code Civ. Proc. § 874.320(b).) UPHPA admonishes courts not to resort to sale by sealed bids or auction – methods that frequently yield a lower sale price – unless the court determines that sealed bids or auction would, for some reason, be more economically advantageous. (Code Civ. Proc. § 874.320(a).) Taken together, UPHPA’s strong preference for open market sales and its mechanism for helping to ensure that the sale obtains a return at or close to fair market value help to ensure that co-owners retain full compensation for their property in the event that a partition by sale does ultimately take place.

(For a detailed breakdown of each step in the non-UPHPA procedure in comparison to the UPHPA procedures, *see* Assem. Com. on Judiciary Analysis of Assem. Bill No. 2245 (2021-2022 Reg. Sess.) as amended Mar. 24, 2022 at p. 5-6.)

While these differences between the UPHPA and non-UPHPA partition procedures are especially helpful for preventing families from losing intergenerational wealth and attachment to the land, UPHPA’s heightened protections could be beneficial to anyone co-owning land under a tenancy in common, whether they are heirs to the property or not. Accordingly, this bill proposes to apply UPHPA’s procedures to all actions to partition land owned by tenants in common, regardless of how the land was acquired.

4. Precedent in Virginia

The author and sponsors point out that, should California enact this bill and apply the revised UPHPA procedures to partition of all property held by tenants in common, regardless of how it was acquired, it will not be the first state to do so. More than 17 other states have incorporated UPHPA into their laws. When Virginia did so in 2020, it decided that UPHPA’s reforms to the partition process were sufficiently beneficial to co-owners that it made little sense to limit their application to scenarios involving inherited property. Instead, much like this bill proposes to do, Virginia simply applied UPHPA’s partition reforms to all property held by tenants in common, regardless of how they acquired the property.²

5. Arguments in support of the bill

According to the author:

With the lack of inventory and general supply shortage in California’s housing market, more and more unrelated people are

² Gogal, *Virginia’s Approach to the Uniform Partition of Heirs Property Act (UPHPA) as Adopted by the General Assembly in 2020* (Nov. 9, 2020) https://www.pecva.org/wp-content/uploads/virginia_and_the_uphpa_2020_ga_david_gogal.pdf (as of May 28, 2022).

choosing to buy property together as a means of acquiring home ownership and beginning to generate wealth and equity through property ownership. This bill seeks to extend the protections in AB 633 to all property owners, not just heirs property owners to provide safeguards if and when a co-owner (co-tenant) chooses to seek to sell or split his/her share of the property.

As sponsor of the bill, the California Association of Realtors writes:

It simply makes sense to extend the protections offered in the uniform law, including notice, appraisal, right of first refusal, and a market sale to all tenancies in common and not just heirs property owners. This ensures that safeguards are available if and when a co-owner (co-tenant) chooses to seek to sell or split his/her share of the property. For those co-tenants wishing to create alternate arrangements for the dissolution of their ownership interests, AB 2245 does not apply when another contract governing the partition has been agreed to. Preventing forced sales and preserving equity is in everyone's interest [...].

SUPPORT

California Association of Realtors (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 1323 (Archuleta, 2022) inserts a new stage into California's non-judicial foreclosure process during which an attempt would be made to sell the property through a multiple-listing service before the property is auctioned off, if the total amount owed by the homeowner does not exceed 90 percent of the appraised market value of the property. SB 1323 is currently pending consideration before the Assembly Judiciary Committee.

Prior Legislation: AB 633 (Calderon, Ch. 119, Stats. 2021) enacted the Uniform Partition of Heirs Property Act, which establishes a set of legal protections related to partition sales designed to help families keep land that has been passed down to them without a will.

PRIOR VOTES:

Assembly Floor (Ayes 67, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)
