



HOUSE BILL 367: Uniform Partition of Heirs Property Act.

2021-2022 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	May 4, 2021
Introduced by:	Reps. Szoka, K. Hall, White, Turner	Prepared by:	Brian Gwyn
Analysis of:	PCS to First Edition H367-CSBE-21		Staff Attorney

OVERVIEW: *House Bill 367 would enact the "Uniform Partition of Heirs Property Act" (UPHPA) and would require property determined to be heirs property to be partitioned under the provisions of the UHPA. The PCS would require the petitioner to notify the parties in certain situations instead of the court and would change the effective date to July 1, 2022.*

CURRENT LAW: Article 2 of Chapter 46A governs partitions of real property. G.S. 46A-26 identifies four methods of partition of real property:

- Actual partition (also known as a partition in kind), where property is apportioned between the cotenants so that each has ownership of a distinct unit.
- Partition sale, where property is sold and the proceeds are distributed to the cotenants.
- Actual partition of part and partition sale of the remaining part.
- Partition of part (either by actual partition or partition sale) with the remainder continuing to be held in cotenancy.

Under G.S. 46A-75, in a proceeding to partition real property, the court must first consider whether an actual partition can be made without causing substantial injury to the parties involved. The court can only order a partition sale after considering evidence in favor of actual partition and in favor of a sale, and finding by a preponderance of the evidence that an actual partition cannot be made without causing substantial injury to any of the parties.

BILL ANALYSIS: The PCS would enact the "Uniform Partition of Heirs Property Act" (UPHPA) as Part 4 of Article 2 of Chapter 46A of the General Statutes. The UHPA would govern the partition of real property that is determined to be heirs property. Heirs property would be defined as real property that meets all of the following:

- No existing agreement in a record binding all the cotenants which governs the partition of the property.
- One or more cotenants acquired title from a relative, whether living or deceased.
- Any of the following apply:
 - 20% or more of the interests are held by cotenants who are relatives.
 - 20% or more of the interests are held by an individual who acquired title from a relative, whether living or deceased.
 - 20% or more of the cotenants are relatives.

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In a proceeding to partition real property, the court would be required to determine whether the property is heirs property. If so, the provisions of the UHPA would apply to the proceeding rather than other provisions of Article 2 of Chapter 46A.

Under the UHPA, if the petitioner seeks to provide notice by publication and the court determines that the property may be heirs property, the petitioner must provide notice by posting a conspicuous sign on the property no later than 10 days after the court's determination.

Unless the fair market value is otherwise agreed to by the cotenants, the court would be required to determine the fair market value of the property after ordering an independent appraisal. After the appraisal is filed with the court, the court would order the petitioner to notify each party of the appraised value and of the option to object to the appraisal no later than 30 days after the notice is sent. No sooner than 30 days after the notice of the appraisal is sent to the parties, the court must hold a hearing to determine the fair market value. At the hearing, the court would consider the appraisal and could also consider other evidence offered by a party.

If a partition by sale is requested, the UHPA provides cotenants with a right of first refusal to buy out the interests of the cotenant(s) who petitioned for partition. The cotenants would have 45 days to exercise this right, and would have an additional 60 days to arrange for financing.

If the other cotenants do not purchase the interest belonging to the cotenant seeking partition, then the court must order a partition in kind unless such a partition would result in substantial injury to the cotenants as a group, based on certain identified factors. The factors that must be considered include:

- Whether the heirs property can be practicably divided among the cotenants.
- Whether the aggregate fair market value of the partitioned property would be materially less than the property as a whole.
- The collective duration of ownership or possession of the property by a cotenant and his or her predecessors in title or possession who were relatives.
- A cotenant's sentimental attachment to the property.
- The extent a cotenant's lawful use of the property would be harmed if that use could not be continued.
- Whether cotenants have contributed their pro rata share of expenses.
- Other relevant factors.

In the event the factors weigh in favor of showing a partition in kind would result in substantial injury, the court must order a partition by sale, or dismiss the proceeding if no cotenant requested a partition by sale.

If the court orders a partition by sale, it must 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 interests of the cotenants.

EFFECTIVE DATE: The PCS would become effective July 1, 2022, and would apply to petitions for partition filed on or after that date.

BACKGROUND: The [Uniform Law Commission](#) approved the UHPA in 2010.