

House Bill 744 (AS PASSED HOUSE AND SENATE)

By: Representatives Lindsey of the 54th, Ashe of the 56th, Allison of the 8th, Neal of the 1st, Maddox of the 127th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 7 of Chapter 6 of Title 44 of the Official Code of Georgia
2 Annotated, relating to partition, so as to enact the "Uniform Partition of Heirs Property Act";
3 to provide for a short title; to provide for definitions; to provide for applicability and its
4 relationship to existing law; to provide for notice of certain actions for partition by posting
5 a sign; to provide for partitioners; to provide for determining property value; to provide for
6 cotenant buyouts; to provide for partition alternatives; to provide for consideration for
7 partitions in kind; to provide for open-market sale, sealed bids, or public sale; to provide for
8 reporting of open-market sales; to provide for uniform application and construction; to
9 provide for construction with federal law; to amend Code Section 24-7-706 of the Official
10 Code of Georgia Annotated, relating to court appointed experts, so as to include
11 cross-references; to provide for related matters; to provide for an effective date; to repeal
12 conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 SECTION 1.

15 This Act shall be known and may be cited as the "Uniform Partition of Heirs Property Act."

16 SECTION 2.

17 Part 2 of Article 7 of Chapter 6 of Title 44 of the Official Code of Georgia Annotated,
18 relating to partition, is amended by adding a new subpart to read as follows:

19 "Subpart 3

20 44-6-180.

21 As used in this subpart, the term:

22 (1) 'Ascendant' means an individual who precedes another individual in lineage in a
23 direct line of ascent from the other individual.

24 (2) 'Broker' means any individual or entity issued a broker's real estate license by the
 25 Georgia Real Estate Commission pursuant to Chapter 40 of Title 43. Such term shall
 26 include the broker's affiliated licensees.

27 (3) 'Collateral' means an individual who is related to another individual under the law of
 28 intestate succession of this state but who is not the other individual's ascendant or
 29 descendant.

30 (4) 'Descendant' means an individual who follows another individual in lineage in a
 31 direct line of descent from the other individual.

32 (5) 'Heirs property' means real property held in tenancy in common which satisfies all
 33 of the following requirements on the date of the filing of a partition action:

34 (A) There is no agreement in a record binding all the cotenants which governs the
 35 partition of the property;

36 (B) One or more of the cotenants acquired title from a relative, whether living or
 37 deceased; and

38 (C) Any of the following applies:

39 (i) Twenty percent or more of the interests are held by cotenants who are relatives;

40 (ii) Twenty percent or more of the interests are held by an individual who acquired
 41 title from a relative, whether living or deceased; or

42 (iii) Twenty percent or more of the cotenants are relatives.

43 (6) 'Partition by sale' means a court ordered sale of the entire heirs property, whether by
 44 public sale, sealed bids, or open-market sale conducted under Code Section 44-6-187.

45 (7) 'Partition in kind' means the division of heirs property into physically distinct and
 46 separately titled parcels.

47 (8) 'Record' means information that is inscribed on a tangible medium or that is stored
 48 in an electronic or other medium and is retrievable in perceivable form.

49 (9) 'Relative' means an ascendant, descendant, or collateral or an individual otherwise
 50 related to another individual by blood, marriage, adoption, or law of this state other than
 51 this subpart.

52 44-6-181.

53 (a) This subpart shall apply to partition actions filed on or after January 1, 2013.

54 (b) In an action to partition real property under subpart 1 or 2 of this part, the court shall
 55 determine whether the property is heirs property. If the court determines that the property
 56 is heirs property, the property shall be partitioned pursuant to this subpart unless all of the
 57 cotenants otherwise agree in a record.

58 44-6-182

59 If an order for service by publication of the summons for a writ of partition is granted and
60 the court determines that the property may be heirs property, the plaintiff, not later than ten
61 days after the court's determination that the property may be heirs property, shall post a
62 sign in the right of way adjacent to the property which is the subject of the writ of partition,
63 and the plaintiff shall maintain such sign while the action is pending. The sign shall state
64 that a writ of partition has commenced, the name and address of the court in which the
65 action is pending, and the common designation by which the property is known. The court
66 may require the plaintiff to publish the name of the plaintiff and names of the known
67 defendants on the sign.

68 44-6-183.

69 If the court appoints partitioners as described in Code Section 44-6-163, each partitioner
70 shall be a discreet person, disinterested, impartial, and not a party to or a participant in the
71 writ of partition.

72 44-6-184.

73 (a) Except as otherwise provided in subsections (b) and (c) of this Code section, if the
74 court determines that the property that is the subject of a partition action is heirs property,
75 the court shall determine the fair market value of the property by ordering an appraisal
76 pursuant to subsection (d) of this Code section.

77 (b) If all cotenants have agreed to the value of the property or to another method of
78 valuation, the court shall adopt that value or the value produced by the agreed method of
79 valuation.

80 (c) If the court determines that the evidentiary value of an appraisal is outweighed by the
81 cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market
82 value of the property and send notice to the parties of the value.

83 (d) If the court orders an appraisal, the court shall appoint a disinterested real estate
84 appraiser licensed in this state to determine the fair market value of the property assuming
85 sole ownership of the fee simple estate. Upon completion of the appraisal, the appraiser
86 shall file a sworn or verified appraisal with the court.

87 (e) If an appraisal is conducted pursuant to subsection (d) of this Code section, not later
88 than ten days after the appraisal is filed, the court shall send notice to each party with a
89 known address, stating:

90 (1) The appraised fair market value of the property;

91 (2) That the appraisal is available at the clerk's office; and

92 (3) That a party may file with the court an objection to the appraisal not later than 30
93 days after the notice is sent, stating the grounds for the objection.
94 (f) If an appraisal is filed with the court pursuant to subsection (d) of this Code section, the
95 court shall conduct a hearing to determine the fair market value of the property not sooner
96 than 30 days after a copy of the notice of the appraisal is sent to each party under
97 subsection (e) of this Code section, whether or not an objection to the appraisal is filed
98 under paragraph (3) of subsection (e) of this Code section. In addition to the court ordered
99 appraisal, the court may consider any other evidence of value offered by a party.
100 (g) After a hearing under subsection (f) of this Code section, but before considering the
101 merits of the partition action, the court shall determine the fair market value of the property
102 and send notice to the parties of the value.

103 44-6-185.

104 (a) If any cotenant requests partition by sale, after the court determines the fair market
105 value of the heirs property under Code Section 44-6-184 or accepts the evaluation of the
106 property agreed to by all cotenants, the court shall send notice to the parties that any
107 cotenant except a cotenant that requested partition by sale may buy all the interests of the
108 cotenants that requested partition by sale.

109 (b) Not later than 45 days after the notice is sent under subsection (a) of this Code section,
110 any cotenant except a cotenant that requested partition by sale may give notice to the court
111 that it elects to buy all the interests of the cotenants that requested partition by sale.

112 (c) The purchase price for each of the interests of a cotenant that requested partition by
113 sale shall be the value of the entire parcel determined pursuant to Code Section 44-6-184
114 multiplied by the cotenant's fractional ownership of the entire parcel.

115 (d) After expiration of the period in subsection (b) of this Code section:

116 (1) If only one cotenant elects to buy all the interests of the cotenants that requested
117 partition by sale, the court shall notify all the parties of that fact;

118 (2) If more than one cotenant elects to buy all the interests of the cotenants that requested
119 partition by sale, the court shall allocate the right to buy those interests among the
120 electing cotenants based on each electing cotenant's existing fractional ownership of the
121 entire parcel divided by the total existing fractional ownership of all cotenants electing
122 to buy and send notice to all the parties of that fact and of the price to be paid by each
123 electing cotenant; or

124 (3) If no cotenant elects to buy all the interests of the cotenants that requested partition
125 by sale, the court shall send notice to all the parties of that fact and resolve the partition
126 action under subsections (a) and (b) of Code Section 44-6-186.

127 (e) If the court sends notice to the parties under paragraphs (1) or (2) of subsection (d) of
128 this Code section, the court shall set a date, not sooner than 60 days after the date the notice
129 was sent, by which electing cotenants shall pay their apportioned price into the court. After
130 this date:

131 (1) If all electing cotenants timely pay their apportioned price into court, the court shall
132 issue an order reallocating all the interests of the cotenants and disburse the amounts held
133 by the court to the persons entitled to them;

134 (2) If no electing cotenant timely pays its apportioned price, the court shall resolve the
135 partition action under subsections (a) and (b) of Code Section 44-6-186 as if the interests
136 of the cotenants that requested partition by sale were not purchased; or

137 (3) If one or more but not all of the electing cotenants fail to pay their apportioned price
138 on time, the court shall give notice to the electing cotenants that paid their apportioned
139 price of the interest remaining and the price for all that interest.

140 (f) Not later than 20 days after the court gives notice pursuant to paragraph (3) of
141 subsection (e) of this Code section, any cotenant that paid their apportioned price of the
142 interest may elect to purchase all of the remaining interest by paying the entire price into
143 the court. After the 20 day period:

144 (1) If only one cotenant pays the entire price for the remaining interest, the court shall
145 issue an order reallocating the remaining interest to that cotenant. The court shall issue
146 promptly an order reallocating the interests of all of the cotenants and disburse the
147 amounts held by it to the persons entitled to them;

148 (2) If no cotenant pays the entire price for the remaining interest, the court shall resolve
149 the partition action under subsections (a) and (b) of Code Section 44-6-186 as if the
150 interests of the cotenants that requested partition by sale were not purchased; or

151 (3) If more than one cotenant pays the entire price for the remaining interest, the court
152 shall reapportion the remaining interest among those paying cotenants, based on each
153 paying cotenant's original fractional ownership of the entire parcel divided by the total
154 original fractional ownership of all cotenants that paid the entire price for the remaining
155 interest. The court shall issue promptly an order reallocating all of the cotenants'
156 interests, disburse the amounts held by it to the persons entitled to them, and promptly
157 refund any excess payment held by the court.

158 (g) Not later than 45 days after the court sends notice to the parties pursuant to subsection
159 (a) of this Code section, any cotenant entitled to buy an interest under this Code section
160 may request the court to authorize the sale as part of the pending action of the interests of
161 cotenants named as defendants and served with the writ or application for partition but that
162 did not appear in the action.

163 (h) If the court receives a timely request under subsection (g) of this Code section, the
 164 court, after hearing, may deny the request or authorize the requested additional sale on such
 165 terms as the court determines are fair and reasonable, subject to the following limitations:

166 (1) A sale authorized under this subsection may occur only after the purchase prices for
 167 all interests subject to sale under subsections (a) through (f) of this Code section have
 168 been paid into court and those interests have been reallocated among the cotenants as
 169 provided in those subsections; and

170 (2) The purchase price for the interest of a nonappearing cotenant shall be based on the
 171 court's determination of the fair market value of the heirs property under Code Section
 172 44-6-184 or the evaluation of the property agreed to by all cotenants.

173 44-6-186.

174 (a)(1) If all the interests of all cotenants that requested partition by sale are not purchased
 175 by other cotenants pursuant to Code Section 44-6-185, or if after conclusion of the buyout
 176 under Code Section 44-6-185, a cotenant remains that has requested partition in kind, the
 177 court shall order partition in kind unless the court, after consideration of the factors listed
 178 in Code Section 44-6-187, finds that partition in kind will result in manifest prejudice to
 179 the cotenants as a group. In considering whether to order partition in kind, the court shall
 180 approve a request by two or more parties to have their individual interests aggregated.

181 (2)(A) In determining under paragraph (1) of this subsection whether partition in kind
 182 would result in manifest prejudice to the cotenants as a group, the court shall consider
 183 the following:

184 (i) Whether the heirs property practicably can be divided among the cotenants;

185 (ii) Whether partition in kind would apportion the property in such a way that the
 186 aggregate fair market value of the parcels resulting from the division would be
 187 materially less than the value of the property if it were sold as a whole, taking into
 188 account the condition under which a court ordered sale likely would occur;

189 (iii) Evidence of the collective duration of ownership or possession of the property
 190 by a cotenant and one or more predecessors in title or predecessors in possession to
 191 the cotenant who are or were relatives of the cotenant or each other;

192 (iv) A cotenant's sentimental attachment to the property, including any attachment
 193 arising because the property has ancestral or other unique or special value to the
 194 cotenant;

195 (v) The lawful use being made of the property by a cotenant and the degree to which
 196 the cotenant would be harmed if the cotenant could not continue the same use of the
 197 property;

198 (iv) The degree to which the cotenants have contributed their pro rata share of the
199 property taxes, insurance, and other expenses associated with maintaining ownership
200 of the property or have contributed to the physical improvement, maintenance, or
201 upkeep of the property; and

202 (vii) Any other relevant factor.

203 (B) The court shall not consider any one factor listed in subparagraph (A) of this
204 paragraph to be dispositive without weighing the totality of all relevant factors and
205 circumstances.

206 (b) If the court does not order partition in kind under subsection (a) of this Code section,
207 the court shall order partition by sale pursuant to Code Section 44-6-187 or, if no cotenant
208 requested partition by sale, the court shall dismiss the action.

209 (c) If the court orders partition in kind pursuant to subsection (a) of this Code section, the
210 court may require that one or more cotenants pay one or more other cotenants amounts so
211 that the payments, taken together with the value of the in-kind distributions to the
212 cotenants, will make the partition in kind just and proportionate in value to the fractional
213 interests held.

214 (d) If the court orders partition in kind, the court shall allocate to the cotenants that are
215 unknown, unlocatable, or the subject of a default judgment, if their interests were not
216 bought out pursuant to Code Section 44-6-185, a part of the property representing the
217 combined interests of these cotenants as determined by the court, and this portion of the
218 property shall remain undivided.

219 44-6-187.

220 (a) If the court orders an open-market sale of heirs property, the sale shall be an
221 open-market sale unless the court finds that a sale by sealed bids or a public sale would be
222 more economically advantageous and in the best interest of the cotenants as a group.

223 (b) If the court orders an open-market sale and the parties, not later than ten days after the
224 entry of the order, agree on a broker to offer the property for sale, the court shall appoint
225 the broker and establish a reasonable commission. If the parties cannot agree on a broker,
226 the court shall appoint a disinterested broker to offer the property for sale and shall
227 establish a reasonable commission. The broker shall offer the property for sale in a
228 commercially reasonable manner at a price no lower than the fair market value determined
229 by the court under Code Section 44-6-184 or the valuation of the property agreed upon by
230 the cotenants and on the terms and conditions established by the court.

231 (c) If the broker appointed under subsection (b) of this Code section obtains within a
232 reasonable time an offer to purchase the property for at least the fair market value

233 determined by the court under Code Section 44-6-184 or the valuation of the property
 234 agreed upon by the cotenants:

235 (1) The broker shall comply with the reporting requirements in Code Section 44-6-188;
 236 and

237 (2) The sale may be completed in accordance with state law other than this subpart.

238 (d) If the broker appointed under subsection (b) of this Code section cannot obtain within
 239 a reasonable time an offer to purchase the property for at least the fair market value
 240 determined by the court under Code Section 44-6-184 or the valuation of the property
 241 agreed upon by the cotenants, the court, after hearing, shall:

242 (1) Approve the highest outstanding offer, if any;

243 (2) Redetermine the value of the property and order that the property continue to be
 244 offered for an additional time; or

245 (3) Order that the property be sold by sealed bids or at a public sale.

246 (e) If the court orders a sale by sealed bids or a public sale, the court shall set terms and
 247 conditions of the sale. If the court orders a public sale, the public sale shall be conducted
 248 as a public sale in accordance with Code section 44-6-167.

249 (f) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser shall be
 250 entitled to a credit against the price in an amount equal to the purchaser's share of the
 251 proceeds.

252

253 44-6-188.

254 (a) A broker appointed under subsection (b) of Code Section 44-6-187 to offer heirs
 255 property for open-market sale shall file a report with the court not later than seven days
 256 after receiving an offer to purchase the property for at least the value determined under
 257 Code Section 44-6-184 or 44-6-187.

258 (b) The report required by subsection (a) of this Code section shall contain the following
 259 information:

260 (1) A description of the property to be sold to each buyer;

261 (2) The name of each buyer;

262 (3) The proposed purchase price;

263 (4) The terms and conditions of the proposed sale, including the terms of any owner
 264 financing;

265 (5) The amounts to be paid to lienholders;

266 (6) A statement of contractual or other arrangements or conditions of the broker's
 267 commission; and

268 (7) Other material facts relevant to the sale.

269 44-6-189.

270 In applying and construing this subpart, consideration shall be given to the need to promote
271 uniformity of the law with respect to its subject matter among states that enact the 'Uniform
272 Partition of Heirs Property Act.'

273 44-6-189.1.

274 This subpart modifies, limits, and supersedes the federal Electronic Signatures in Global
275 and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit,
276 or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic
277 delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section
278 7003(b)."

279 **SECTION 3.**

280 Code Section 24-7-706 of the Official Code of Georgia Annotated, relating to court
281 appointed experts, is amended by revising the undesignated text as follows:

282 "Except as provided in Chapter 7 of Title 9 or Code Section 17-7-130.1, 17-10-66, 29-4-11,
283 29-5-11, 31-14-3, 31-20-3, ~~or 44-6-166.1, 44-6-184, or 44-6-187,~~ the following procedures
284 shall govern the appointment, compensation, and presentation of testimony of court
285 appointed experts:"

286 **SECTION 4.**

287 This Act shall become effective on January 1, 2013.

288 **SECTION 5.**

289 All laws and parts of laws in conflict with this Act are repealed.