

HOUSE No. 4092

The Commonwealth of Massachusetts

PRESENTED BY:

Lori A. Ehrlich and Eric P. Lesser

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to uniform partition of heirs property.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>9/12/2019</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>9/12/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>9/16/2019</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>9/16/2019</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>9/17/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>9/17/2019</i>
<i>Maria Duaiame Robinson</i>	<i>6th Middlesex</i>	<i>9/17/2019</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>	<i>9/17/2019</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>9/17/2019</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>9/20/2019</i>

HOUSE No. 4092

By Representative Ehrlich of Marblehead and Senator Lesser, a joint petition (subject to Joint Rule 12) of Lori A. Ehrlich, Eric P. Lesser and others relative to uniform partition of heirs property. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to uniform partition of heirs property.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 241, as appearing in the 2018 Official Edition of the General Laws,
2 is hereby amended by inserting after section 37 the following section: -

3 Section 38. (a) For the purposes of this section, the following terms shall have the
4 following meanings: -

5 “Ascendant,” an individual who precedes another individual in lineage, in the direct line
6 of ascent from the other individual.

7 “Collateral,” an individual who is related to another individual under the law of intestate
8 succession of the commonwealth but who is not the other individual’s ascendant or descendant.

9 “Descendant,” an individual who follows another individual in lineage, in the direct line
10 of descent from the other individual.

11 “Determination of value,” a court order determining the fair market value of heirs
12 property pursuant to subsection (d) or subsection (h) or adopting the valuation of the property
13 agreed to by all cotenants.

14 “Heirs property,” real property held in tenancy in common which satisfies all of the
15 following requirements as of the filing of a partition action:

16 (a) there is no agreement in a record binding all the cotenants which governs the
17 partition of the property;

18 (b) one or more of the cotenants acquired title from a relative, whether living or
19 deceased;

20 (c) and any of the following applies: (i) 20 percent or more of the interests are held
21 by cotenants who are relatives; (ii) 20 percent or more of the interests are held by an individual
22 who acquired title from a relative, whether living or deceased; (iii) or 20 percent or more of the
23 cotenants are relatives.

24 “Partition by sale,” a court-ordered sale of the entire heirs property, whether by open-
25 market sale, sealed bids, or auction conducted under subsection (h).

26 “Partition in kind,” the division of heirs property into physically distinct and separately
27 titled parcels.

28 “Record,” information that is inscribed on a tangible medium or that is stored in an
29 electronic or other medium and is retrievable in perceivable form.

30 “Relative,” an ascendant, descendant, or collateral or an individual otherwise related to
31 another individual by blood, marriage, adoption, or law of the commonwealth other than section
32 38 of chapter 241.

33 (b) If the plaintiff in a partition action seeks an order of notice by publication and the
34 court determines that the property may be heirs property, the plaintiff, not later than 10 days after
35 the court’s determination, shall post, and maintain while the action is pending, a conspicuous
36 sign on the property that is the subject of the action. The sign must state that the action has
37 commenced and identify the name and address of the court and the common designation by
38 which the property is known. The court may require the plaintiff to publish on the sign the name
39 of the plaintiff and the known defendants.

40 (c) If the court appoints commissioners pursuant to chapter 241, each commissioner, in
41 addition to the requirements and disqualifications applicable to commissioners in chapter 241,
42 must be impartial and not a party to or a participant in the action.

43 (d) (1) Except as otherwise provided in subsection (d) (2) and (3), if the court determines
44 that the property that is the subject of a partition action is heirs property, the court shall
45 determine the fair market value of the property by ordering an appraisal pursuant to subsection
46 (d)(4).

47 (2) If all cotenants have agreed to the value of the property or to another method of
48 valuation, the court shall adopt that value or the value produced by the agreed method of
49 valuation.

50 (3) If the court determines that the evidentiary value of an appraisal is outweighed by the
51 cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value
52 of the property and send notice to the parties of the value.

53 (4) If the court orders an appraisal, the court shall appoint a disinterested real estate
54 appraiser licensed in the commonwealth to determine the fair market value of the property
55 assuming sole ownership of the fee simple estate. One completion of the appraisal, the appraiser
56 shall file a sworn or verified appraisal with the court.

57 (5) If an appraisal is conducted pursuant to subsection(d) (4), not later than 10 days after
58 the appraisal is filed, the court shall send notice to each party with a known address stating: (i)
59 the appraised fair market value of the property; (ii) that the appraisal is available at the clerk's
60 office; and (iii) that a party may file with the court an objection to the appraisal not later than 30
61 days after the notice is sent, stating the grounds for the objection.

62 (6) If an appraisal is filed with the court pursuant to subsection(d)(4), the court shall
63 conduct a hearing to determine the fair market value of the property not sooner than 30 days after
64 a copy of the notice of the appraisal is sent to each party under paragraph (d)(5), whether or not
65 an objection to the appraisal is filed under subsection(d)(5) (iii). In addition to the court-ordered
66 appraisal, the court may consider any other evidence of value offered by a party.

67 (7) After a hearing under subsection(d)(6), but before considering the merits of the
68 partition action, the court shall determine the fair market value of the property and send notice to
69 the parties of the value.

70 (e) (1) If any cotenant requested partition by sale, after the determination of value under
71 subsection (d), the court shall send notice to the parties that any cotenant except a cotenant that

72 requested partition by sale may buy all the interests of the cotenants that requested partition by
73 sale.

74 (2) Not later than 45 days after the notice is sent pursuant to subsection (e)(1), any
75 cotenant except a cotenant that requested partition by sale may give notice to the court that it
76 elects to buy all the interests of the cotenants that requested partition by sale.

77 (3) The purchase price for each of the interests of the cotenant that requested partition by
78 sale is the value of the entire parcel determined under subsection (d) multiplied by the cotenant's
79 fractional ownership of the entire parcel.

80 (4) After expiration of the period pursuant to subsection (e)(2) , the following rules apply:
81 (i) if only one cotenant elects to buy all the interests of the cotenants that requested partition by
82 sale, the court shall notify all the parties of that fact; (ii) if more than one cotenant elects to buy
83 all the interests of the cotenants that requested partition by sale, the court shall allocate the right
84 to buy those interests among the electing cotenants based on each electing cotenant's existing
85 fractional ownership of the entire parcel divided by the total existing fractional ownership of all
86 cotenants electing to buy and send notice to all the parties of that fact and of the price to be paid
87 by each electing cotenant; and (iii) if no cotenant elects to buy all the interests of the cotenants
88 that requested partition by sale, the court shall send notice to all the parties of that fact and
89 resolve the partition action under subsection (f)(1) and (2).

90 (5) If the court sends notice to the parties under subsection (e)(4) (i) or (ii), the court shall
91 set a date, not sooner than 60 days after the date the notice was sent, by which electing cotenants
92 must pay their apportioned price into the court. After this date, the following rules shall apply: (i)
93 if all electing cotenants timely pay their apportioned price into court, the court shall issue an

94 order reallocating all the interests of the cotenants and disburse the amounts held by the court to
95 the persons entitled to them; (ii) if no electing cotenant timely pays its apportioned price, the
96 court shall resolve the partition action under subsection (f) (1) and (2) as if the interests of the
97 cotenants that requested partition by sale were not purchased, (iii) if one or more but not all of
98 the electing cotenants fail to pay their apportioned price on time, the court, on motion, shall give
99 notice to the electing cotenants that paid their apportioned price of the interest remaining and the
100 price for all that interest.

101 (6) Not later than 20 days after the court gives notice pursuant to subsection (e)(5) (iii),
102 any cotenant that paid may elect to purchase all of the remaining interest by paying the entire
103 price into the court. After the 20-day period, the following rules apply: (i) if only one cotenant
104 pays the entire price for the remaining interest, the court shall issue an order reallocating the
105 remaining interest to that cotenant and the court shall issue promptly an order reallocating the
106 interests of all the cotenants and disburse the amounts held by it to the persons entitled to them;
107 (ii) if no cotenant pays the entire price for the remaining interest, the court shall resolve the
108 partition action under subsection (f) paragraphs (1) and (2) as if the interests of the cotenants that
109 requested partition by sale were not purchased; (iii) if more than one cotenant pays the entire
110 price for the remaining interests, the court shall reapportion the remaining interest among those
111 paying cotenants, based on each paying cotenant's original fractional ownership of the entire
112 parcel divided by the total original fractional ownership of all cotenants that paid the entire price
113 for the remaining interest and the court shall issue promptly an order reallocating all of the
114 cotenants' interests, disburse the amounts held by it to the persons entitled to them, and promptly
115 refund any excess payment held by the court.

116 (7) Not later than 45 days after the court sends notice to the parties pursuant to subsection
117 (e) (1), any cotenant entitled to buy an interest under this subsection may request the court to
118 authorize the sale as part of the pending action of the interests of cotenants named as defendants
119 and served with the complaint but that did not appear in the action.

120 (8) If the court receives a timely request under subsection (e) (7), the court, after hearing,
121 may deny the request or authorize the requested additional sale on such terms as the court
122 determines are fair and reasonable, subject to the following limitations: (i) a sale authorized
123 under this subsection (e)(8) may occur only after the purchase prices for all interests subject to
124 sale under subsection (e)(1) through (6) have been paid into court and those interests have been
125 reallocated among the cotenants as provided in those subsections; and (ii) the purchase price for
126 the interests of a nonappearing cotenant is based on the court's determination of value under
127 subsection (d).

128 (f) (1) If all the interests of all cotenants that requested partition by sale are not purchased
129 by other cotenants pursuant to subsection (e), or if after conclusion of the buyout under
130 subsection (e), a cotenant remains that has requested partition in kind, the court shall order
131 partition in kind unless the court, after consideration of the factors listed in subsection (g), finds
132 that partition in kind will result in great prejudice to the cotenants as a group. In considering
133 whether to order partition in kind, the court shall approve a request by two or more parties to
134 have their individual interests aggregated.

135 (2) If the court does not order partition in kind under subsection (f)(1), the court shall
136 order partition by sale pursuant to subsection (h), or if no cotenant requested partition by sale, the
137 court shall dismiss the action.

138 (3) If the court orders partition in kind pursuant to subsection (f)(1), the court may require
139 that one or more cotenants pay one or more other cotenants amounts so that the payments, taken
140 together with the value of the in-kind distributions to the cotenants, will make the partition in
141 kind just and proportionate in value to the fractional interests held.

142 (4) If the court orders partition in kind, the court shall allocate to the cotenants that are
143 unknown, unlocatable, or the subject of a default judgment, if their interests were not bought out
144 pursuant to subsection (e), a part of the property representing the combined interests of these
145 cotenants as determined by the court and this part of the property shall remain undivided.

146 (g) (1) In determining pursuant to subsection (f) (1), whether partition in kind would
147 result in great prejudice to the cotenants as a group, the court shall consider the following: (i)
148 whether the heirs property practicably can be divided among the cotenants; (ii) whether partition
149 in kind would apportion the property in such a way that the aggregate fair market value of the
150 parcels resulting from the division would be materially less than the value of the property if it
151 were sold as a whole, taking into account the condition under which a court-ordered sale likely
152 would occur; (iii) evidence of the collective duration of ownership or possession of the property
153 by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant
154 who are or were relatives of the cotenant or each other; (iv) a cotenant's sentimental attachment
155 to the property, including any attachment arising because the property has ancestral or other
156 unique or special value to the cotenant; (v) the lawful use being made of the property by a
157 cotenant and the degree to which the cotenant would be harmed if the cotenant could not
158 continue the same use of the property; (vi) the degree to which the cotenants have contributed
159 their pro rata share of the property taxes, insurance, and other expenses associated with

160 maintaining ownership of the property or have contributed to the physical improvement,
161 maintenance, or upkeep of the property; and (vii) any other relevant factor.

162 (2) The court may not consider any one factor in subsection (g)(1) to be dispositive
163 without weighing the totality of all relevant factors and circumstances.

164 (h) (1) If the court orders a sale of heirs property, the sale must be an open-market sale
165 unless the court finds that a sale by sealed bids or an auction would be more economically
166 advantageous and in the best interest of the cotenants as a group.

167 (2) If the court orders an open-market sale and the parties, not later than 10 days after the
168 entry of the order, agree on a real estate broker licensed by the commonwealth to offer the
169 property for sale, the court shall appoint the broker and establish a reasonable commission. If the
170 parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed
171 by the commonwealth to offer the property for sale and shall establish a reasonable commission.
172 The broker shall offer the property for sale in a commercially reasonable manner at a price no
173 lower than the determination of value and on the terms and conditions established by the court.

174 (3) If the broker appointed pursuant to subsection (h)(2) obtains within a reasonable time
175 an offer to purchase the property for at least the determination of value: (i) the broker shall
176 comply with the reporting requirements in subsection (i); and (ii) the sale may be completed in
177 accordance with the General Laws other than section 38 of chapter 241.

178 (4) If the broker appointed pursuant to subsection (h)(2) does not obtain within a
179 reasonable time an offer to purchase the property for at least the determination of value, the
180 court, after hearing, may: (i) approve the highest outstanding offer, if any; (ii) redetermine the

181 value of the property and order that the property continue to be offered for an additional time; or
182 (iii) order that the property be sold by sealed bids or at an auction.

183 (5) If the court orders a sale by sealed bids or an auction, the court shall set terms and
184 conditions of the sale. If the court orders an auction, the auction must be conducted pursuant to
185 chapter 241.

186 (6) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled
187 to a credit against the price in an amount equal to the purchaser's share of the proceeds.

188 (i) A broker appointed pursuant to subsection (h) (2) to offer heirs property for open-
189 market sale shall file a report with the court not later than seven days after receiving an offer to
190 purchase the property for at least the value determined under subsection (d) or (h). The report
191 must contain the following information: (i) a description of the property to be sold to each buyer;
192 (ii) the name of each buyer; (iii) the proposed purchase price; (iv) the terms and conditions of the
193 proposed sale, including the terms of any owner financing; (v) the amounts to be paid to
194 lienholders; (vi) a statement of contractual or other arrangements or conditions of the broker's
195 commission; and (vii) other material facts relevant to the sale.

196 SECTION 2. In an action to partition real property pursuant to chapter 241 the court shall
197 determine whether the property is heirs property. If the court determines that the property is heirs
198 property, the property shall be partitioned under section 38 of chapter 241 unless all of the
199 cotenants otherwise agree in a record.

200 SECTION 3. This Act supplements chapter 241 and, if an action is governed by this Act,
201 replaces provisions of chapter 241 that are inconsistent with this Act.

202 SECTION 4. This Act does not limit or affect the method by which service of a petition
203 in a partition action may be made.

204 SECTION 5. In applying and construing this Act, consideration must be given to the need
205 to promote uniformity of the law with respect to its subject matter among states that enact it.

206 SECTION 6. This Act modifies, limits, and supersedes the Electronic Signatures in
207 Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit,
208 or supersede Section 101 (c) of said act, 15 U.S.C. Section 7001(c), or authorize electronic
209 delivery of any of the notices described in Section 103(b) of said act, 15 U.S.C. Section 7003(b).

210 SECTION 7. This Act applies to partitions actions filed on or after the date of enactment.