HOUSE DOCKET, NO. 4488 FILED ON: 9/12/2019

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

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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:

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

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

"Ascendant," an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.

"Collateral," an individual who is related to another individual under the law of intestate succession of the commonwealth but who is not the other individual's ascendant or descendant.

"Descendant," an individual who follows another individual in lineage, in the direct line of descent from the other individual.

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

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

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

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

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

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

"Partition in kind," the division of heirs property into physically distinct and separately titled parcels.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) (1) If the court orders a sale of heirs property, the sale 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 interest of the cotenants as a group.

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

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

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

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

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

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

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

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

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

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

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

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

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