

HOUSE No. 1559

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>1/29/2021</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>1/29/2021</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>2/1/2021</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>6/2/2021</i>
<i>Orlando Ramos</i>	<i>9th Hampden</i>	<i>7/1/2021</i>
<i>Kathleen R. LaNatra</i>	<i>12th Plymouth</i>	<i>7/1/2021</i>
<i>Patricia A. Duffy</i>	<i>5th Hampden</i>	<i>7/7/2021</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>	<i>7/8/2021</i>
<i>James M. Kelcourse</i>	<i>1st Essex</i>	<i>7/15/2021</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>9/10/2021</i>
<i>Richard M. Haggerty</i>	<i>30th Middlesex</i>	<i>10/20/2021</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>12/15/2021</i>

HOUSE No. 1559

By Representative Ehrlich of Marblehead and Senator Lesser, a joint petition (accompanied by bill, House, No. 1559) of Lori A. Ehrlich, Eric P. Lesser and Brian M. Ashe relative to uniform partition of heirs property. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4092 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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 partition
17 of the property;

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

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

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

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

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

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

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

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

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

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

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

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

56 (5) If an appraisal is conducted pursuant to subsection(d) (4), not later than 10 days after
57 the appraisal is filed, the court shall send notice to each party with a known address stating: (i)
58 the appraised fair market value of the property; (ii) that the appraisal is available at the clerk's
59 office; and (iii) that a party may file with the court an objection to the appraisal not later than 31
60 days after the notice is sent, stating the grounds for the objection.

61 (6) If an appraisal is filed with the court pursuant to subsection(d)(4), the court shall
62 conduct a hearing to determine the fair market value of the property not sooner than 31 days after
63 a copy of the notice of the appraisal is sent to each party under paragraph (d)(5), whether or not
64 an objection to the appraisal is filed under subsection(d)(5) (iii). In addition to the court-ordered
65 appraisal, the court may consider any other evidence of value offered by a party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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