

Chart  
Uniform Partition of Heirs Property Act

- Ten states have enacted the Uniform Partition of Heirs Property Act: Alabama, Arkansas, Connecticut, Georgia, Hawaii, Montana, Nevada, New Mexico, South Carolina, and Texas.
- Three other jurisdictions have introduced the Uniform Partition of Heirs Property Act this year: District of Columbia, Mississippi, and Missouri.

Note:

- The information in this chart was developed using Westlaw during the period July-August 2017.
- Highlighting shows language that deviates from the Uniform Act language.

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<p>(1) <b>ALA</b></p> <p>Ala. Code 1975 §§ 35-6A-1 to 35-6A-14</p> <p>2014 Alabama Laws Act 2014-299 (S.B. 162)</p>	<p><b>§ 35-6A-1. Short title.</b></p> <p>This chapter shall be known and may be cited as the Alabama Uniform Partition of Heirs Property Act.</p> <p><b>§ 35-6A-2. Definitions.</b></p> <p>For the purposes of this chapter, the following terms shall have the following meanings:</p> <p>(1) ASCENDANT. An individual who precedes another individual in lineage, in the direct line of ascent from the other individual.</p> <p>(2) COLLATERAL. An individual who could inherit from, or whose estate could descend to, the related individual under the law of intestate succession of Alabama but who is not the other individual's ascendant or descendant.</p> <p>(3) DESCENDANT. An individual who follows another individual in lineage, in the direct line of descent from the other individual.</p> <p>(4) DETERMINATION OF VALUE. A court order determining the fair market value of heirs property under Section 6 or Section 10 or adopting the valuation of the property agreed to by all cotenants.</p> <p>(5) HEIRS PROPERTY. Real property held in tenancy in common which satisfies all of the following requirements as of the filing of a partition action:</p> <p>(A) There is no agreement in a record binding all the cotenants which governs the partition of the property;</p> <p>(B) One or more of the cotenants acquired title from a relative, whether living or deceased; and</p> <p>(C) Any of the following applies:</p> <p>(i) Twenty percent or more of the interests are held by cotenants who are relatives;</p> <p>(ii) Twenty percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or</p>	<p>ALABAMA COMMENT to § 35-6A-2</p> <p>This section is identical to Section 2 of the Uniform Partition of Heirs Property Act (the Uniform Act) except as follows:</p> <p>In subsection (2) “Collateral” was changed to clarify that the individual must be an individual who is eligible to inherit from a relative.</p>
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(iii) Twenty percent or more of the cotenants are relatives.

(6) PARTITION BY SALE. A court-ordered sale of the entire heirs property, whether by auction, sealed bids, or open market sale conducted under Section 10.

(7) PARTITION IN KIND. The division of heirs property into physically distinct and separately titled parcels.

(8) 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.

(9) RELATIVE. An ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this state other than this act.

### **§ 35-6A-3. Application and construction of chapter.**

(a) This chapter applies to partition actions filed on or after January 1, 2015.

(b) In an action to partition real property under Chapter 6 of Title 35, Code of Alabama 1975, 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 this chapter unless all of the cotenants otherwise agree in a record.

(c) This chapter supplements Chapter 6 of Title 35, Code of Alabama 1975, and, if an action is governed by this chapter, replaces those provisions of Chapter 6 of Title 35, Code of Alabama 1975, that are inconsistent with this chapter.

(d) This chapter does not supplant or otherwise change the provisions for fees as a part of the cost under Section 34-3-60, Code of Alabama 1975.

### **§ 35-6A-4. Service of process.**

(a) Service of process shall be in accordance with Section 35-6-20 and Section 35-6-25, Code of Alabama 1975.

(b) When service of process is obtained by publication and the court determines that the property may be heirs property, the plaintiff, not later than 10 days after the court's

ALABAMA COMMENT to § 35-6A-3 Subsections (a), (b), and (c) are identical to Section 3 of the Uniform Act except for the additions in subsections (b) & (c) that reference Chapter 6 of Title 35 Code of Alabama (Alabama's general Partition Act). Pursuant to subsection (c), this act supplements Chapter 6 of Title 35. However, under subsection (b), if the property to be partitioned under Chapter 6 of Title 35 is heir property, this act controls. In contrast, since this act is supplemental to Chapter 6 of Title 35, Article 4A would be applicable in non-heir property cases.

Subsection (d) was added since the Uniform Act did not address attorney's fees or costs. The Act does not change the current law on attorneys' fees or cost now found in the general Partition Act.

ALABAMA COMMENT to § 35-6A-4 This section is substantially different from the Uniform Act. Subsection (a) requires the service of process to follow the current service of process law in

determination, shall post a conspicuous and durable sign of at least 11 x 17 inches in size on the property that is the subject of the action. The sign shall 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.

**§ 35-6A-5. Commissioners.**

If the court appoints commissioners pursuant to Section 35-6-45 and Section 35-6-62, Code of Alabama 1975, each commissioner, in addition to the requirements and disqualifications applicable to commissioners in Sections 35-6-45, 35-6-46, and 35-6-62, shall be disinterested and impartial and not a party to or a participant in the action.

**§ 35-6A-6. Determination of value of property; appraisal; notice and hearing.**

(a) Except as otherwise provided in subsection (b) and subsection (c), 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).

(b) 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.

(c) 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.

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

(e) If an appraisal is conducted pursuant to subsection (d), not later than 10 days after the appraisal is filed, the court shall send notice to each party with a known address, stating all of the following:

- (1) The appraised fair market value of the property.

partition actions.

Subsection (b) provides that when service is obtained by publication, in addition to publication, there must be a “durable” sign 11 x 17 inches in size placed on the property.

ALABAMA COMMENT to § 35-6A-5  
This section is identical to Section 5 of the Uniform Act except for the addition of the references to the Alabama Code sections under the general partition law.

ALABAMA COMMENT to § 35-6A-6  
Alabama made no changes to Section 6 of the Uniform Act.

(2) That the appraisal is available at the clerk's office.

(3) 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.

(f) If an appraisal is filed with the court pursuant to subsection (d), 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 subsection (e), whether or not an objection to the appraisal is filed under subdivision (3) of subsection (e). In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

(g) After a hearing under subsection (f), 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.

**§ 35-6A-7. Request for partition by sale; purchase of interests.**

(a) In each petitioner's initial pleading in a partition action, the petitioner shall state whether the petitioner requests partition by sale. If the petitioner fails to so state, the petitioner shall be deemed to have not requested partition by sale.

(b) In each cotenant's initial responsive pleading, the cotenant shall state whether the cotenant requests partition by sale.

(1) If a cotenant files a responsive pleading but fails to so state, the cotenant shall be deemed to have not requested partition by sale.

(2) If a guardian ad litem is appointed to represent one or more cotenants including, but not limited to, unknown, unlocatable, and legally incapacitated cotenants, the guardian ad litem may, but is not required to, state whether or not such cotenant requests partition by sale, and the guardian ad litem shall have no liability for making or failing to make the election. If a guardian ad litem files a responsive pleading but fails to so state, such cotenant shall be deemed to have not requested partition by sale.

(c) If a cotenant is named as a defendant and served with the complaint but does not appear in the action, the cotenant shall be deemed to have not requested partition by sale, unless the court approves a request to authorize the sale of the cotenant's interest as set forth in subdivisions (1) to (3), inclusive.

ALABAMA COMMENT to § 35-6A-7  
This section is extensively revised from the original Section 7 of the Uniform Partition of Heirs Property Act regarding Cotenant Buyout. As revised, the section provides for the following procedure:

1. Petitioner and each cotenant would have to state in their initial pleadings whether or not they request partition by sale. If nobody requests partition by sale, the court would determine whether the property could be partitioned in kind. If not, the action would be dismissed without prejudice.

2. If any cotenant (including the petitioner) requests partition by sale, cotenants who did not request partition by sale would have the right to buy out the interests of cotenants who did

	<p>(1) Not later than 14 days after the court sends notice to the parties pursuant to subsection (e) or subdivision (1) of subsection (f), any cotenant entitled to buy an interest under this section may request the court to authorize the sale pursuant to this section of the interests of cotenants named as defendants and served with the complaint but not appearing in the action.</p> <p>(2) If the court receives a timely request under subdivision (1), the court, after a hearing, may deny the request or may authorize the requested sale of the interests of any or all cotenants named as defendants and served with the complaint who did not appear in the action.</p> <p>(3) If the court approves the request made pursuant to subdivision (1) with respect to any cotenant who was named as a defendant and served with the complaint but did not appear in the action, that cotenant shall be deemed to have requested partition by sale for purposes of this section, and shall be treated for all purposes hereunder as having requested partition by sale.</p> <p>(d) If no cotenant, including the petitioner, has requested partition by sale, the court shall determine whether the property can be partitioned in kind pursuant to subsections (a), (c), and (d) of Section 8 and Section 9. If the court determines the property cannot be partitioned in kind, the court shall dismiss the action without prejudice.</p> <p>(e) If any cotenant, including the petitioner, has requested partition by sale, after the determination of value under Section 6, 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.</p> <p>(1) Not later than 30 days after the notice is sent, 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.</p> <p>(2) The purchase price for the interests of a cotenant that requested partition by sale shall be the value of the entire parcel determined under Section 6 multiplied by the cotenant's fractional ownership of the entire parcel.</p> <p>(3) After expiration of the period in subdivision (1), if only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all the</p>	<p>request partition by sale.</p> <p>a. The price would be based on the fractional interest of each cotenant requesting sale multiplied by the value determined by the court under Section 6.</p> <p>b. If more than one cotenant wanted to buy the interests of the cotenants requesting sale, each buying cotenant would be able to buy a share of the selling cotenants' interests based on the buyers' respective fractional interests.</p> <p>c. If one or more cotenants bought out all the interests of the cotenants requesting sale, the action would end, and the property would not be partitioned.</p> <p>3. If none of the cotenants who did not request partition by sale bought all the interests of the cotenants requesting sale, then cotenants who did request partition by sale would have the right to buy out the interests of other cotenants who do request partition by sale.</p> <p>a. The price would be based on the fractional interest of each cotenant requesting sale multiplied by the value determined by the court under Section 6.</p> <p>b. If more than one cotenant wanted to buy the interests of the cotenants</p>
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parties of that fact and of the price to be paid by the electing cotenant calculated pursuant to subdivision (2). 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 calculated pursuant to subdivision (2).

(4) The court shall set a date, not sooner than 60 days after the end of the applicable notice period in subdivision (1), by which electing cotenants must pay their apportioned price into the court.

(A) 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, and the court shall thereafter enter such other orders as may be appropriate and dismiss the action without prejudice.

(B) If one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court shall give notice to the electing cotenants that paid their apportioned price of the remaining interests of the cotenants that requested partition by sale and the total price for those interests.

(C) If no electing cotenant timely pays its apportioned price, the court shall proceed according to subsection (f) as if the interests of the cotenants that requested partition by sale were not purchased pursuant to this subsection.

(5) Not later than 20 days after the court gives notice pursuant to paragraph (B) of subdivision (4), any cotenant that paid may elect to purchase all of the remaining interests of the cotenants that requested partition by sale by paying the entire price into the court.

(A) If only one cotenant timely pays the entire price for the remaining interests of the cotenants that requested partition by sale, the court shall issue an order reallocating the remaining interests of the cotenants that requested partition by sale to that cotenant. The court shall issue promptly an order reallocating the interests of all of the cotenants and disburse the amounts held by it to the persons entitled to them.

(B) If more than one cotenant timely pays the entire price for the remaining interests of the cotenants that requested partition by sale, the court shall reapportion the remaining

requesting sale, each buying cotenant would be able to buy a share of the selling cotenants' interests based on the buyers' respective fractional interests.

c. If one or more cotenants bought out all the interests of the cotenants requesting sale, the action would end, and the property would not be partitioned.

d. If nobody bought all the interests of the cotenants requesting sale, the court would then determine whether partition in kind is possible, and if not the property would be sold.

4. Cotenants who appear but fail to state whether they request partition by sale are deemed to not request partition by sale.

5. Cotenants who are served but do not timely respond are deemed to not request partition by sale. However, another cotenant could request that the court authorize the sale of the [interests of the] non-appearing cotenants. If approved with respect to any non-appearing cotenants, such cotenants would be deemed to have requested partition by sale.

6. With respect to cotenants for whom a guardian ad litem is appointed, including unknown, unlocatable, and legally incapacitated cotenants, the

interests of the cotenants that requested partition by sale 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 interests of the cotenants that requested partition by sale. 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.

(C) If no cotenant pays the entire price for the remaining interests of the cotenants that requested partition by sale, the court shall proceed according to subsection (f) as if the interests of the cotenants that requested partition by sale were not purchased pursuant to subsection (f).

(f) If no cotenant elects pursuant to subsection (e) to buy all the interests of the cotenants that requested partition by sale, the court shall proceed as follows:

(1) The court shall send notice to the parties that no cotenant elected pursuant to subsection (e) to buy all the interests of the cotenants that requested partition by sale and that any cotenant that requested partition by sale may buy all the interests of the other cotenants that requested partition by sale.

(2) Not later than 30 days after the notice is sent under subdivision (1), any cotenant that requested partition by sale may give notice to the court that it elects to buy all the interests of the other cotenants that requested partition by sale.

(3) Notwithstanding the cotenant's prior request for partition by sale, any cotenant making an election to buy pursuant to this subdivision, for purposes of this subsection, shall be deemed to have not requested partition by sale.

(4) The purchase price for the interest of a cotenant that requested partition by sale shall be the value of the entire parcel determined under Section 6 multiplied by the cotenant's fractional ownership of the entire parcel.

(5) If only one cotenant elects to buy all the interests of the other cotenants that requested partition by sale, the court shall notify all the parties of that fact and of the price to be paid by the electing cotenant calculated pursuant to subdivision (4). If more than one cotenant elects to buy all the interests of the other cotenants that requested partition by sale, the court shall allocate the right to buy those interests among the electing cotenants based on each

GAL can state whether such cotenant requests partition by sale, but is not required to so state. The GAL would have no liability for making or failing to make an election. If a GAL files a response but fails to so state, the cotenant is deemed to have not requested partition by sale.



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 calculated pursuant to subdivision (4).

(6) The court shall set a date, not sooner than 60 days after the end of the applicable notice period in subdivision (1), by which electing cotenants must pay their apportioned price into the court.

(A) 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, and the court shall thereafter enter such other orders as may be appropriate and dismiss the action without prejudice.

(B) If one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court shall give notice to the electing cotenants that paid their apportioned price of the remaining interests of the cotenants that requested partition by sale and the total price for those interests.

(C) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under Section 8 to Section 11, inclusive, as if the interests of the cotenants that requested partition by sale were not purchased.

(7) Not later than 20 days after the court gives notice pursuant to paragraph (B) of subdivision (6), any cotenant that paid may elect to purchase all of the remaining interests of the cotenants that requested partition by sale by paying the entire price into the court.

(A) If only one cotenant timely pays the entire price for the remaining interests of the cotenants that requested partition by sale, the court shall issue an order reallocating the remaining interests of the cotenants that requested partition by sale to that cotenant. The court shall issue promptly an order reallocating the interests of all of the cotenants and disburse the amounts held by it to the persons entitled to them.

(B) If more than one cotenant timely pays the entire price for the remaining interests of the cotenants that requested partition by sale, the court shall reapportion the remaining interests of the cotenants that requested partition by sale 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 interests of the cotenants that requested partition by sale. 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.

(C) If no electing cotenant pays the entire price for the remaining interests of the cotenants that requested partition by sale, the court shall resolve the partition action under Section 8 to Section 11, inclusive, as if the interests of the cotenants that requested partition by sale were not purchased.

(8) If no cotenant elects to buy all the interests of the other cotenants that requested partition by sale, the court shall send notice to all the parties of that fact and resolve the partition action under Section 8 to Section 11, inclusive.

#### **§ 35-6A-8. Partition in kind -- Circumstances.**

(a) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to Section 7, or, if after conclusion of the buyout under Section 7, 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 Section 9, finds that partition in kind will result in great prejudice to the cotenants. 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.

(b) If the court does not order partition in kind under subsection (a), the court shall order partition by sale pursuant to Section 10 or, if no cotenant requested partition by sale, the court shall dismiss the action.

(c) If the court orders partition in kind pursuant to subsection (a), 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.

(d) 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 Section 7, a part of the property or value of the property representing the combined interests of these cotenants as determined by the court.

#### **ALABAMA COMMENT to § 35-6A-8**

This section is identical to Section 8 of the Uniform Act except as follows:

1. In subsection (a) “great” prejudice was chosen instead of “manifest” and “as a group” was deleted in the first sentence; and

2. In subsection (d) “default” judgment was chosen over “entry”. Also, Alabama added after “a part of the property” the alternative “or value of the property” and at the end of the sentence deleted “and this part of the property shall remain undivided.”

**§ 35-6A-9. Partition in kind -- Factors.**

(a) In determining under subsection (a) of Section 8 whether partition in kind would result in great prejudice to the cotenants, the court shall consider the following:

- (1) Whether the heirs property practicably can be divided among the cotenants;
- (2) 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;
- (3) 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;
- (4) 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;
- (5) 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;
- (6) 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
- (7) Any other relevant factor.

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

**§ 35-6A-10. Methods of sale.**

(a) If the court orders a sale of heirs property, the court shall order that the sale be conducted by one or more of the following methods of sale: Open market sale with or without a broker or brokers; by sealed bids; public auction; or private sale. The court shall choose a method which shall be more economically advantageous and in the best interest of the cotenants as a group.

ALABAMA COMMENT to § 35-6A-9  
This section is identical to Section 9 of the Uniform Act except for the changes made in subsection (a).

In subsection (a) “great” prejudice was chosen instead of “manifest” to be consistent with the identical change made in Section 8(a). Further, Alabama deleted “as a group”. Thus, the court may consider whether partition “in kind” would constitute “great prejudice” to a cotenant individually rather than the cotenants as a group.

ALABAMA COMMENT to § 35-6A-10  
This section is substantially different from Section 10 of the Uniform Act:

(b) If the court orders an open market sale with or without a broker and the parties, not later than 10 days after the entry of the order, agree on a real estate broker or brokers licensed in this state to offer the property for sale, the court shall appoint the broker or brokers and establish terms of the listing agreement. If the parties do not agree on a broker or brokers, the court shall appoint a disinterested real estate broker licensed in this state to offer the property for sale and shall establish reasonable terms. The broker or brokers shall offer the property for sale in a commercially reasonable manner on the terms and conditions established by the court, at a price no lower than the determination of value unless the court orders otherwise for good cause shown.

(c) If, in an open market sale, an offer is obtained to purchase the property for at least the determination of value or the amount ordered by the court and within a reasonable time, not to exceed 180 days:

(1) The broker or seller shall comply with the reporting requirements in Section 11; and

(2) The sale may be completed in accordance with state law.

(d) If, in an open market sale, an offer is not obtained to purchase the property within a reasonable time, not to exceed 180 days, for at least the determination of value or the amount ordered by the court, the court after hearing may:

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

(2) Order that the property continue to be offered for an additional time, with or without redetermining the value of the property; or

(3) Order that the property be sold by sealed bids or at an auction.

(e) If the court orders a sale by auction, unless the parties otherwise agree or the court for good cause shown orders otherwise, the auction shall be conducted at the front door or main entrance to the courthouse of the county where the land or a substantial and material part thereof is located. The sale shall be held at a time specified by the court between the legal hours of sale of 11 a.m. to 4 p.m. on the day designated for the exercise of the auction to sell heirs property.

(f) If a purchaser is entitled to a share of the net proceeds of the sale, the purchaser is entitled to

This section has been revised to clarify that when a court orders a sale it can be conducted by one of several specific methods which are listed. The court can choose the method more economically advantageous to the cotenants as a whole.

An open market sale may be held with or without brokers. The court may also determine the terms, the listing agreement and the length of the listing term.

Offers obtained in an open market sale must be made within 180 days unless a shorter date is set by the court.

When an offer is not made within 180 days, the court may, among other choices, extend the time with or without re-evaluating the property.

Subsection (e) delineated the appropriate places and times to hold an auction at the courthouse.

a credit against the price in an amount equal to the purchaser's share of the proceeds.

**§ 35-6A-11. Report required for open market sale.**

(a) In an open market sale of heirs property, a broker or seller shall file a report with the court not later than seven days after receiving an offer to purchase the property for at least the determination of value or the amount ordered by the court.

(b) The report required by subsection (a) shall contain all of the following information:

- (1) A description of the property to be sold to each buyer.
- (2) The name of each buyer.
- (3) The proposed purchase price.
- (4) The terms and conditions of the proposed sale, including the terms of any owner financing.
- (5) The amounts to be paid to lien holders.
- (6) A statement of contractual or other arrangements or conditions of the broker's commission.
- (7) Other material facts relevant to the sale.

**§ 35-6A-12. Effect on mortgage, lien, or obligation.**

A partition, sale or other disposition of property pursuant to this chapter shall not affect or displace a mortgage or other lien on the property, and shall not affect or displace the obligations of any person who is a party to the mortgage or other lien or who is obligated on any note or other agreement secured by the mortgage or other lien.

**§ 35-6A-13. Construction with other laws.**

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the uniform act.

ALABAMA COMMENT to § 35-6A-11

This section is similar to Section 11 of the Uniform Act except that subsection (a) has been redrafted to be consistent with other modifications that Alabama has made to the Uniform Act.

In an open market sale a report must be filed with the court not later than seven days after the receipt of an offer for value or the amount ordered in the court.

Alabama law adds a section to provide that a partition shall not affect or displace a mortgage or lien. [No Alabama comment to § 35-6A-12.]

Alabama law does not substantively deviate from Section 12 of the Uniform Act (Uniformity of Application and

	<p><b>§ 35-6A-14. Relation to federal law.</b></p> <p>This chapter 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 that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).</p>	<p>Construction).</p> <p>Alabama law does not substantively deviate from Section 13 (Relation to Electronic Signatures in Global and National Commerce Act).</p>
<p>(2) <b>GA</b></p> <p>Ga. Code Ann. §§ 44-6-180 to 44-6-189.1</p> <p>2012 Georgia Laws Act 585 (H.B. 744)</p>	<p><b>§ 44-6-180. Definitions</b></p> <p>As used in this subpart, the term:</p> <p>(1) “Ascendant” means an individual who precedes another individual in lineage in a direct line of ascent from the other individual.</p> <p>(2) “Broker” means any individual or entity issued a broker's real estate license by the Georgia Real Estate Commission pursuant to Chapter 40 of Title 43. Such term shall include the broker's affiliated licensees.</p> <p>(3) “Collateral” means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual's ascendant or descendant.</p> <p>(4) “Descendant” means an individual who follows another individual in lineage in a direct line of descent from the other individual.</p> <p>(5) “Heirs property” means real property held in tenancy in common which satisfies all of the following requirements <b>on the date</b> of the filing of a partition action:</p> <p>(A) There is no agreement in a record binding all the cotenants which governs the partition of the property;</p> <p>(B) One or more of the cotenants acquired title from a relative, whether living or deceased; and</p> <p>(C) Any of the following applies:</p> <p>(i) Twenty percent or more of the interests are held by cotenants who are relatives;</p>	<p>Georgia law adds a definition of "broker".</p> <p>Georgia law omits the definition of "determination of value".</p>

	<p>(ii) Twenty percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or</p> <p>(iii) Twenty percent or more of the cotenants are relatives.</p> <p>(6) “Partition by sale” means a court ordered sale of the entire heirs property, whether by <b>public sale</b>, sealed bids, or open-market sale conducted under Code Section 44-6-187.</p> <p>(7) “Partition in kind” means the division of heirs property into physically distinct and separately titled parcels.</p> <p>(8) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.</p> <p>(9) “Relative” means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this state other than this subpart.</p> <p><b>§ 44-6-181. Applicability; determination of heirs</b></p> <p>(a) This subpart shall apply to partition actions filed on or after January 1, 2013.</p> <p>(b) In an action to partition real property under Subpart 1 or 2 of this part, 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 pursuant to this subpart unless all of the cotenants otherwise agree in a record.</p> <p><b>§ 44-6-182. Sign stating writ of partition has commenced</b></p> <p>If an order for service by publication of the summons for a writ of partition is granted and the court determines that the property may be heirs property, the plaintiff, not later than ten days after the court's determination that the property may be heirs property, shall post a sign <b>in the right of way adjacent to the property</b> which is the subject of the writ of partition, and the plaintiff shall maintain such sign while the action is pending. The sign shall state that a writ of partition has commenced, the name and address of the court in which the action is pending, and the common designation by which the property is known. The court may require the plaintiff to publish the name of the plaintiff and names of the known defendants on the sign.</p>	<p>In the definition of "partition by sale", Georgia law substitutes "public sale" for "auction".</p> <p>Georgia law omits Section 3(c) of the Uniform Act, which further describes the relationship between the Uniform Act and general partition law.</p> <p>Georgia law provides that the sign shall be "in the right of way adjacent to the property".</p>
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**§ 44-6-183. Impartial appointed partitioner**

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

**§ 44-6-184. Appraisal to determine fair market value**

(a) Except as otherwise provided in subsections (b) and (c) of this Code section, 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) of this Code section.

(b) 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.

(c) 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.

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

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

- (1) The appraised fair market value of the property;
- (2) That the appraisal is available at the clerk's office; and
- (3) 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.

(f) If an appraisal is filed with the court pursuant to subsection (d) of this Code section, the

Georgia law does not substantively deviate from Section 5 (Commissioners).

Georgia law does not substantively deviate from Section 6 (Determination of Value).



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 subsection (e) of this Code section, whether or not an objection to the appraisal is filed under paragraph (3) of subsection (e) of this Code section. In addition to the court ordered appraisal, the court may consider any other evidence of value offered by a party.

(g) After a hearing under subsection (f) of this Code section, 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.

**§ 44-6-185. Cotenant requesting partition by sale**

(a) If any cotenant requests partition by sale, after the court determines the fair market value of the heirs property under Code Section 44-6-184 or accepts the evaluation of the property agreed to by all cotenants, 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.

(b) Not later than 45 days after the notice is sent under subsection (a) of this Code section, 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.

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

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

(1) 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;

(2) 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; or

Georgia law does not substantively deviate from Section 7 (Cotenant Buyout), except for elaborating that the property's valuation is either determined as the fair market value by the court or is agreed to by all the cotenants.

(3) 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 subsections (a) and (b) of Code Section 44-6-186.

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

(1) 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;

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

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

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

(1) 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. The court shall issue promptly an order reallocating the interests of all of the cotenants and disburse the amounts held by it to the persons entitled to them;

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

(3) If more than one cotenant pays the entire price for the remaining interest, 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. 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.

(g) Not later than 45 days after the court sends notice to the parties pursuant to subsection (a) of this Code section, any cotenant entitled to buy an interest under this Code section 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 writ or application for partition** but that did not appear in the action.

(h) If the court receives a timely request under subsection (g) of this Code section, 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:

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

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

#### **§ 44-6-186. Partition in kind**

(a)(1) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to Code Section 44-6-185, or if after conclusion of the buyout under Code Section 44-6-185, 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 Code Section 44-6-187, finds that partition in kind will result in manifest 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)(A) In determining under paragraph (1) of this subsection whether partition in kind would result in manifest prejudice to the cotenants as a group, the court shall consider the following:

Georgia law combines Section 8 (Partition Alternatives) and Section 9 (Considerations for Partition in Kind).

- (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.

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

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

(c) If the court orders partition in kind pursuant to subsection (a) of this Code section, 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.

(d) 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 Code Section 44-6-185, a part of the property representing the combined interests of these cotenants as determined by the court, and this portion of the property shall remain undivided.

**§ 44-6-187. Open-market sale; sale by sealed bids or public sale**

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

(b) If the court orders an open-market sale and the parties, not later than ten days after the entry of the order, agree on a broker to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties cannot agree on a broker, the court shall appoint a disinterested broker 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 fair market value determined by the court under Code Section 44-6-184 or the valuation of the property agreed upon by the cotenants and on the terms and conditions established by the court.

(c) If the broker appointed under subsection (b) of this Code section obtains within a reasonable time an offer to purchase the property for at least the fair market value determined by the court under Code Section 44-6-184 or the valuation of the property agreed upon by the cotenants:

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

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

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

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

Georgia law does not substantively deviate from Section 10 (Open-Market Sale, Sealed Bids, or Auction), except for elaborating that the property's valuation is either determined as the fair market value by the court or is agreed to by all the cotenants.

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

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

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

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

**§ 44-6-188. Report filed by broker**

(a) A broker appointed under subsection (b) of Code Section 44-6-187 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 Code Section 44-6-184 or 44-6-187.

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

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

(2) The name of each buyer;

(3) The proposed purchase price;

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

(5) The amounts to be paid to lienholders;

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

(7) Other material facts relevant to the sale.

Georgia law does not substantively deviate from Section 11 (Report of Open-Market Sale).

	<p><b>§ 44-6-189. Applicability and construction of this subpart</b></p> <p>In applying and construing this subpart, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the “Uniform Partition of Heirs Property Act.”</p> <p><b>§ 44-6-189.1. Superceding effect [sic]</b></p> <p>This subpart modifies, limits, and supersedes the federal 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 that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).</p>	<p>Georgia law does not substantively deviate from Section 12 (Uniformity of Application and Construction).</p> <p>Georgia law does not substantively deviate from Section 13 (Relation to Electronic Signatures in Global and National Commerce Act).</p>
<p>(3) SC</p> <p>Code 1976 §§ 15-61-310 to 15-61-420</p> <p>2016 South Carolina Laws Act 153 (H.3325)</p>	<p><b>§ 15-61-310. Short title.</b></p> <p>This article may be cited as the “Clementa C. Pinckney Uniform Partition of Heirs’ Property Act”.</p> <p><b>§ 15-61-320. Definitions.</b></p> <p>As used in this article:</p> <p>(1) “Ascendant” means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.</p> <p>(2) “Collateral” means an individual who is related to another individual under the law of intestate succession of this State, but who is not the other individual's ascendant or descendant.</p> <p>(3) “Descendant” means an individual who follows another individual in lineage, in the direct line of descent from the other individual.</p> <p>(4) “Determination of value” means a court order determining the fair market value of heirs' property under Section 15-61-360 or Section 15-61-400 or adopting the valuation of the property agreed to by all cotenants.</p> <p>(5) “Heirs’ property” means real property held in tenancy in common that satisfies all of the</p>	

following requirements as of the filing of a partition action:

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

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

(c) any of the following applies:

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

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

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

(6) “Manifest prejudice” or “Manifest injury” means a result that is obviously unfair or shocking to the conscience and is direct, obvious, and observable when considering the factors under Section 15-61-390(A).

(7) “Partition by allotment” means a court-ordered partition of the heirs' property where ownership to all or a portion of the heirs' property is granted to one or more cotenants proportionate in value to their interests in the entire heirs' property parcel, with adjustments being made for payment to compensate other cotenants for the value of their respective interests in the heirs' property.

(8) “Partition by sale” means a court-ordered sale of the entire heirs' property, whether by auction, sealed bids, or open-market sale, conducted under Section 15-61-400.

(9) “Partition in kind” means the division of heirs' property into physically distinct and separately titled parcels.

(10) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) “Relative” means an ascendant, descendant, or collateral, or an individual otherwise related to another individual by blood, marriage, adoption, or law of this State other than

South Carolina law adds a definition of "manifest prejudice" or "manifest injury".

South Carolina law adds a definition of "partition by allotment" where the court awards all or a portion of the property to one or more cotenants.



this article, and for purposes of this article, who owned or owns an interest in the heirs' property.

(12) "Time computed" means computation of time as prescribed by this section, which shall be governed by Rule 6, South Carolina Rules of Civil Procedure, so that when the period of time prescribed or allowed is seven days or less, intermediate Saturdays, Sundays, and holidays are excluded in the computation.

**§ 15-61-330. Preliminary determination whether property is heirs' property; construction with Article 1.**

(A) In an action to partition real property under Article 1, upon motion of a party or from statements contained in the pleadings, the court shall determine, in a preliminary hearing held after the filing of the action, whether the property is heirs' property. If the court determines that the property is heirs' property, the partition of the heirs' property is governed by the provisions of this article, unless all cotenants otherwise agree in a record.

(B) This article supplements the provisions of Article 1 and if the provisions of this article differ from the provisions of Article 1, the provisions of this article control for partitions of heirs' property.

**§ 15-61-340. Service of pleading; notice by publication.**

(A) This article does not limit or affect the method by which service of pleading in a partition action may be made.

(B) If the plaintiff in a partition action seeks notice by publication and the court determines that notice by publication is required and, pursuant to Section 15-61-330, that the property may be heirs' property, the plaintiff, not later than ten days after the determination of the court, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action in addition to compliance with the requirements for notice by publication. 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, through its order, the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

**§ 15-61-350. Sale may be ordered without writ upon testimony taken.**

South Carolina law adds a definition of "time computed".

South Carolina law does not substantively deviate from Section 3 (Applicability; Relation to Other Law).

South Carolina law does not substantively deviate from Section 4 (Service; Notice by Posting).

South Carolina law allows a court to decide not to issue a writ of partition, if

Pursuant to Rule 71, South Carolina Rules of Civil Procedure, this article does not affect a court's power, in partition proceedings, to dispense with the issuing of a writ of partition when, in the judgment of the court, it would involve unnecessary expense to issue such a writ. A court may, in all partition proceedings, without recourse to such writ, determine by means of testimony taken before the proper officer and reported to the court whether a partition in kind or partition by allotment among the parties is practicable or expedient and, when such cannot be fairly and equally made, may order the sale of the property and a division of the proceeds according to the rights of the parties. If a court issues a writ of partition and appoints commissioners pursuant to Rule 71, South Carolina Rules of Civil Procedure, each commissioner, in addition to the requirements and disqualifications applicable to commissioners in Rule 71, must be disinterested and impartial and not a party to or a participant in the action.

**§ 15-61-360. Determination of value of property.**

(A) Except as otherwise provided in subsections (B) and (C), if a court determines that 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).

(B) 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.

(C) 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 establish by order the fair market value of the property. The court shall send notice of the order to the party that filed the partition action. Within one week from the date notice was sent, the party that filed the partition action shall send a copy of the order establishing the fair market value of the property to all other cotenants with a known address.

(D) If a court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this State to determine the fair market value of the property assuming sole ownership of the fee simple estate. On appointment of the appraiser, the court shall order the appraiser to file with the court a sworn or verified appraisal upon its completion and the court shall send to the party that filed the partition action a notice of the appraisal filing stating:

- (1) the appraised fair market value of the property;
- (2) that the appraisal is available at the clerk's office; and

it would involve "unnecessary expense". A court can order a partition sale if a partition in kind or a partition by allotment "cannot be fairly and equally made[.]" The second half of § 15-61-350 is substantively similar to Section 5 (Commissioners).

South Carolina law provides that the court shall send notice of its order to the petitioner only; the petitioner then shall send notice to the other cotenants within one week. South Carolina law extends this two-step procedure to all of the notice requirements of Section 6 (Determination of Value).

(3) that a party may file with the court an objection to the appraisal no later than thirty days after the notice is sent, stating the grounds for the objection.

(E) If an appraisal is filed pursuant to subsection (D), within one week from the date the notice was sent, the party that filed the partition action shall send notice to all other cotenants with a known address, stating:

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

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

(3) that a party may file with the court an objection to the appraisal no later than thirty days after the notice is sent stating the grounds for the objection.

(F) If an appraisal is filed with the court pursuant to subsection (D), the court shall conduct a hearing to determine the fair market value of the property not sooner than sixty days after a copy of the notice of the appraisal is sent to each party under subsections (D) and (E), whether or not an objection to the appraisal is filed. In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

(G) After a hearing under subsection (F), but before considering the merits of the partition action, the court, by order, shall determine the fair market value of the property. The court shall send notice of the order to the party that filed the partition action and, within one week from the date notice was sent, the party filing the partition action shall send copies of the fair market value order to all other cotenants with a known address.

(H) The court, in its discretion, shall determine allocation of payment from the parties to cover the costs of the appraisal.

**§ 15-61-370. Cotenant requesting partition by sale.**

(A) If any cotenant requests partition by sale, after the determination of value pursuant to Section 15-61-360, the party filing the partition action, after receipt of the value information from the clerk's office, shall send notice to the parties that any cotenant, except a cotenant that requested partition by sale, may buy all of the interests of the cotenants that requested partition by sale.

South Carolina law provides that the valuation hearing shall occur 60 days, instead of 30 days, after the cotenants receive notice of the appraisal.

South Carolina law adds the provision that the court shall determine how the cotenants shall pay the costs of the appraisal.

South Carolina law provides that the court shall send the notices discussed in Section 7 (Cotenant Buyout) to the petitioner or movant only; the petitioner or movant then shall send notice to the other cotenants.

(B) A cotenant, except a cotenant that requested partition by sale, who is interested in purchasing the interests of the cotenants that requested partition by sale, shall notify the court of that interest no later than ten days prior to the date set for the partition trial. A cotenant that did not request partition by sale must be allowed to purchase the interests of any cotenant who requested a partition by sale, as provided in this article, whether default has been entered against the cotenant or not.

(C) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined pursuant to Section 15-61-360 multiplied by the cotenant's fractional ownership of the entire parcel.

(D) After the expiration of the period in subsection (B), the following requirements apply:

(1) If only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify the party filing the partition action of that fact. After receiving notice from the court, the party filing the partition action shall notify all the parties of that same fact.

(2) If more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court, by order, 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. The court shall send notice of the order to the party that filed the partition action and, within one week from the date notice was sent, the party filing the partition action shall send a copy of the order showing the price to be paid by each electing cotenant to all other cotenants with a known address.

(3) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify the party filing the partition action to send notice to all the parties of that fact and the court shall resolve the partition action, by order, pursuant to Section 15-61-380.

(E) If notices are sent to the parties under subsection (D)(1) or (2), the court shall set a date, not sooner than sixty 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 requirements apply:

(1) 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

South Carolina law provides that a cotenant who is interested in a buyout shall give notice to the court no later than ten days before the partition trial. South Carolina law adds the second sentence that a cotenant has the right to buyout whether or not default has been entered against the cotenant.

by the court to the persons entitled to them.

(2) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action pursuant to Section 15-61-380(A) and (B), as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court, on motion, shall order the party so moving to give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all the interests.

(F) Not later than twenty days after notice is sent pursuant to subsection (E)(3), any cotenant who paid may elect to purchase all of the remaining interest by paying the entire price into the court. After an additional twenty-day period, the following requirements apply:

(1) If only one cotenant pays the entire price for the remaining interests, the court shall issue an order reallocating the remaining interests to that cotenant and disburse the amounts held by it to the persons entitled to them.

(2) If no cotenant pays the entire price for the remaining interests, the court shall resolve the partition action pursuant to Section 15-61-380, as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If more than one cotenant pays the entire price for the remaining interests, the court shall reapportion the remaining interests 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 interests. 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.

(G) Not later than forty days after the party filing the partition action sends notice to the parties pursuant to subsection (A), any cotenant entitled to buy an interest under this section may request the court to authorize a 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.

(H) If the court receives a timely request under subsection (G), the court, after a hearing, may deny the request or authorize the requested additional sale on such terms as the court

South Carolina law provides that a respondent may request to buy out non-appearing respondents' interests no later than 40 days after the petitioner gives the initial notice of the buyout procedure.

determines are fair and reasonable, subject to the following limitations:

(1) A sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under subsections (A) through (F) have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections.

(2) The purchase price for the interest of a nonappearing cotenant is based on the court's determination of value pursuant to Section 15-61-360.

**§ 15-61-380. Partition in kind or by allotment.**

(A) If all the interests of the cotenants that requested partition by sale are not purchased by other cotenants pursuant to Section 15-61-370 or if, after conclusion of the buyout pursuant to Section 15-61-370, a cotenant remains that has requested a partition in kind or a **partition by allotment**, the court shall order a partition in kind or a **partition by allotment**, unless the court, after consideration of the factors listed in Section 15-61-390, finds that partition in kind or **partition by allotment may** result in manifest prejudice or manifest injury to the cotenants as a group. In considering whether to order partition in kind or **partition by allotment**, the court shall approve a request by two or more parties to have their individual interests aggregated.

(B) If the court does not order partition in kind or **partition by allotment** under subsection (A), the court shall order partition by sale pursuant to Section 15-61-400 or, if no cotenant requested partition by sale, the court shall dismiss the action.

(C) If the court orders partition in kind or **partition by allotment** pursuant to subsection (A), the court may require that one or more cotenants pay one or more of the 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 or the **partition by allotment** just and proportionate in value to the fractional interests held.

**§ 15-61-390. Determination of manifest prejudice or injury to cotenants as a group.**

(A) In determining pursuant to Section 15-61-380(A) whether partition in kind or **partition by allotment** would result in manifest prejudice or manifest injury to the cotenants as a group, the court shall consider the following:

(1) whether the heirs' property practicably can be divided among the cotenants;

South Carolina law adds the partition by allotment procedure as a third partition option and treats it like a partition in kind for purposes of Section 8 (Partition Alternatives).

South Carolina law substitutes "may" for "will" in providing that the court shall order a partition in kind or a partition by allotment unless it finds that doing so *may* result in manifest prejudice or manifest injury to the cotenants as a group.

South Carolina law does not include Section 8(d), which provides that in a partition in kind, a court shall allocate a parcel to unknown or unlocatable cotenants.

South Carolina law's only deviation from Section 9 (Considerations for Partition in Kind) is the inclusion of the partition by allotment procedure as a third partition option.

(2) whether partition in kind or **partition by allotment** 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;

(3) 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;

(4) 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;

(5) 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;

(6) 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

(7) any other relevant factor.

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

**§ 15-61-400. Sale of heirs' property; open-market sale; sale by sealed bids.**

(A) 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.

(B) If the court orders an open-market sale and the parties, not later than **thirty days** after the entry of the order, agree on a real estate broker licensed in this State to offer the property for sale, the court, **upon consultation with the parties**, 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 in this State 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

South Carolina law allows the parties 30 days after the entry of the order for an open-market sale to agree on a real estate broker, and provides that if the parties do not agree, the court shall consult with the parties in appointing the broker.





- (1) a description of the property to be sold to each buyer;
- (2) the name of each buyer;
- (3) the proposed purchase price;
- (4) the terms and conditions of the proposed sale, including the terms of any owner financing;
- (5) the amounts to be paid to lienholders;
- (6) a statement of contractual or other arrangements or conditions of the broker's commission; and
- (7) other material facts relevant to the sale.

**§ 15-61-420. Construction of article.**

This article modifies, limits, and supersedes the federal 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 that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b), except to the extent that South Carolina law, rules, and regulations so authorize.

**\*\*[But see** other sections of enacting statute:

**Court shall determine if property is heirs' property**

**SECTION 3.** Section 15-61-10 of the 1976 Code is amended to read:

<< SC ST § 15-61-10 >>

**Section 15-61-10.**

(A) All joint tenants and tenants in common who hold, jointly or in common, for a term of life or years or of whom one has an estate for a term of life or years with the other that has an estate of inheritance or freehold in any lands, tenements or hereditaments shall be compellable to make severance and partition of all such lands, tenements and hereditaments.

(B) In an action to partition real property, upon motion of a party or from statements contained

South Carolina law does not include Section 12 (Uniformity of Application and Construction).

South Carolina law adds the last phrase to Section 13 (Relation to Electronic Signatures in Global and National Commerce Act).

South Carolina law provides that a court shall conduct a preliminary hearing in a partition action to determine if the property is heirs property.

	<p>in the pleadings, a court shall determine, in a preliminary hearing held after the filing of the action, whether the property is heirs' property. If the court determines that the property is heirs' property, the property must be partitioned under Article 3, Chapter 61, Title 15, unless all of the cotenants otherwise agree in a record.</p> <p><b>Rule 71, South Carolina Rules of Civil Procedure shall not affect the power of a court to hear a partition action</b></p> <p><b>SECTION 4.</b> Section 15-61-100 of the 1976 Code is amended to read:</p> <p>&lt;&lt; SC ST § 15-61-100 &gt;&gt;</p> <p><b>Section 15-61-100.</b></p> <p>Nothing in Rule 71, South Carolina Rules of Civil Procedure, concerning partition actions, shall be construed to affect the power of a court hearing a partition action to dispense with the issuing of a writ of partition when, in the judgment of the court, it would involve unnecessary expense to issue such writ. And the court may in all proceedings in partition, without recourse to such writ, determine by means of testimony taken before the proper officer and reported to the court whether a partition in kind among the parties be practicable or expedient and, when such partition cannot be fairly and equally made, may order a sale of the property and a division of the proceeds according to the rights of the parties.]**</p>	<p>This amendment to § 15-61-100 appears to be a conforming change to § 15-61-350. Please see discussion above.</p>
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