



VIA EMAIL

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STREET ADDRESS:

401 N Mangum Street
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Senator Chuck Edwards and Representative Ted Davis, Jr., Legislative Members of
the General Statutes Commission
Mr. David Unwin, Staff Attorney, General Statutes Commission

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Dear Senator Edwards, Representative Davis, and Mr. Unwin,

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Thank you for inviting comment from the Land Loss Prevention Project on the N.C. General Statutes Commission's recommendations for modernizing the state's partition laws. In keeping with the aim of modernization, we recommend including the provisions of the Uniform Partition of Heirs Property Act¹ (UPHPA) within the substance of the revisions as you have explored.

North Carolina's farmers would benefit from this inclusion through the 2018 Farm Bill. The Agricultural Improvement Act of 2018² contains a provision, at Section 12615, allowing farm operators on heir property land to obtain a Farm Service Agency (FSA) farm number. Having a farm number is needed to access the full array of programs and loans available through FSA. Through this provision, in states that enact the UPHPA, a state court determination that the property is delineated as heir property under the UPHPA allows for automatic qualification for a farm number. Accessing various commodity programs, microloans, the Environmental Quality Incentives Program, the Noninsured Crop Disaster Assistance Program, and other risk management and disaster assistance programs could become a reality for N.C. farmers with heir property within a defined, streamlined process.

In addition to its role in facilitating access through newly opened federal opportunity, the UPHPA has been recognized as providing clear benefits to farmers through its own provisions in other states such as Iowa³ and Missouri. Missouri's legislation is cogently titled the "Save the Family Farm Act".⁴

¹ See Uniform Partition of Heirs Property Act (Unif. Law Comm'n, 2010). <https://www.uniformlaws.org/viewdocument/final-act-no-comments-51?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d&tab=librarydocuments>

² Available at: <https://www.congress.gov/115/plaws/publ334/PLAW-115publ334.pdf>.

³ IA ST § 651.27 et seq.

⁴ MO ST § 528.700 et seq.

The UPHPA is designed to foster both family and community stability and is in keeping with sustainable and equitable community economic development in rural as well as urban areas. The hallmark of the UPHPA is the provision requiring an appraisal at the beginning of the partition process followed by an option for cotenants to buy out the petitioner at the appraised market value. These provisions ensure that if ownership consolidation of heir property is desired by any of the owners, it is able to occur. Addressing heir property can assist in removing barriers to Federal Emergency Management Agency disaster assistance and county repair programs. Additionally, if there must be a sale, the default method is an open market sale by a broker, assisting in commanding fair market value. The appraisal, which happens at the beginning of the process, serves as the benchmark for a sale and reduces uncertainty for the parties involved.⁵

The UPHPA is carefully crafted to preserve economic freedom. Only property titled as a tenancy-in-common with at least one cotenant who acquired title from a relative, with at least 20% of the ownership interests being traceable to a family member, and with no written agreement controlling partition is addressed by the UPHPA. Significantly, not only can cotenants make their own agreement governing partition, buyers and sellers who wish to contract voluntarily can do so.⁶

The UPHPA can be further tailored to fit the needs of efficiency and equity as defined by a state. Timelines have been adjusted, for example, in Alabama and South Carolina, which have enacted the UPHPA. Alabama gives cotenants 30 days, instead of 45, to indicate that they would like to buy out the cotenants who requested a partition by sale.⁷ Similarly, instead of cotenants having 45 days under the UPHPA to request that the court sell interests of those cotenants who are served but do not appear, South Carolina gives cotenants 40 days.⁸ In New York, where the UPHPA has been introduced, the proposed legislation includes a mandatory mediation provision.⁹

When land division is contemplated, the UPHPA's Section 9, "Considerations for Partition in Kind", dovetails with North Carolina's agriculturally-driven economy. The UPHPA gives weight to a cotenant's sentimental attachment to the property, the degree to which a cotenant who is using the property will be harmed by discontinued use, and evidence of the duration of ownership. This delineation respects farmers' significant connection to their land, their often multi-generational commitment to and investment in their farm businesses, and their agricultural and family heritage.

Adoption of the UPHPA offers a notable opportunity to do good while doing well. We appreciate your receiving our comments and uplift the benefits of the UPHPA for your further consideration.

Respectfully submitted,

Land Loss Prevention Project



Savonala Horne
Executive Director

cc: Mr. Floyd Lewis, Ms. Bly Hall, Ms. Veronica Scott (Bill Drafting); Mr. Andrew Bowers, Ms. Sarah Glad (Legislative Assistants)

⁵ See Sections 6 and 7 of UPHPA.

⁶ See Sections 2 and 3 of UPHPA.

⁷ AL ST § 35-6a-1 et seq.

⁸ SC Code § 15-61-310 et seq.

⁹ SB 4865-A. The New York proposal also highlights the UPHPA's applicability to urban landowners.