

1 Jack Evans
2 Councilmember Jack Evans
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Charles Allen
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5 David Grosso
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9 A BILL
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14 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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19 To enact the Uniform Partition of Heirs' Property Act, to require in the event that a co-tenant
20 requests a partition, that the co-tenant give notice to other cotenants, that the property's
21 fair market value be determined by a court-ordered appraisal, that the other co-tenants be
22 given a right of first refusal, that, if no other co-tenant elects to purchase, the court order
23 a partition-in-kind, unless the court determines that partition-in-kind will result in great
24 prejudice to the cotenants as a group, and, if the court determines that a partition-in-kind
25 is inappropriate and orders a partition-by-sale, that the property must be offered for sale
26 on the open market at a price no lower than the court-determined value for a reasonable
27 period of time and in a commercially reasonable manner.
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29 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
30 act may be cited as the "Uniform Partition of Heirs' Property Act of 2019".

31 Sec. 2. Chapter 29 of Title 16 of the District of Columbia Official Code is amended as
32 follows:

33 (a) The table of contents is amended by inserting a new subchapter III to read as follows:

34 "Subchapter III. Partition of Heirs' Property; Uniform Act.

35 "Section.

36 "16-2931. Short title.

37 "16-2932. Definitions.

38 “16-2933. Applicability; relation to other law.

39 “16-2934. Service; notice by posting.

40 “16-2935. Determination of value.

41 “16-2936. Cotenant buyout.

42 “16-2937. Partition alternatives.

43 “16-2938. Considerations for partition in kind.

44 “16-2939. Open-market sale, sealed bids, or auction.

45 “16-2940. Report of open-market sale.

46 “16-2941. Uniformity of application and construction.

47 “16-2942. Relation to Electronic Signatures in Global and National Commerce Act.”.

48 “§ 16-2931. Short title.

49 “This subchapter may be cited as the “Uniform Partition of Heirs’ Property Act of 2017”.

50 “§ 16-2932. Definitions.

51 “For the purposes of this subchapter:

52 “(1) “Ascendant” means an individual who precedes another individual in lineage, in the

53 direct line of ascent from the other individual.

54 “(2) “Collateral” means an individual who is related to another individual under the law

55 of intestate succession of the District of Columbia but who is not the other individual’s ascendant

56 or descendant.

57 “(3) “Descendant” means an individual who follows another individual in lineage, in the

58 direct line of descent from the other individual.

59 “(4) “Determination of value” means a court order determining the fair market value of
60 heirs’ property under § 16-2935 or 16-2939 or adopting the valuation of the property agreed to
61 by all cotenants.

62 “(5) “Heirs’ property” means real property held in tenancy in common which satisfies the
63 following requirements as of the filing of a partition action:

64 “(A) There is no agreement in a record binding all the cotenants which governs
65 the partition of the property;

66 “(B) One or more of the cotenants acquired title from a relative, whether living or
67 deceased; and

68 “(C) Any of the following applies:

69 “(i) 20 percent or more of the interests are held by cotenants who are
70 relatives;

71 “(ii) 20 percent or more of the interests are held by an individual who
72 acquired title from a relative, whether living or deceased; or

73 “(iii) 20 percent or more of the cotenants are relatives.

74 “(6) “Partition by sale” means a court-ordered sale of the entire heirs’ property, whether
75 by auction, sealed bids, or open-market sale conducted under § 16-2939.

76 “(7) “Partition in kind” means the division of heirs’ property into physically distinct and
77 separately titled parcels.

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

80 “(9) “Relative” means an ascendant, descendant, or collateral, or an individual otherwise
81 related to another individual by blood, marriage, adoption, or laws of the District of Columbia
82 other than this subchapter.

83 “(10) “Superior Court” means the Superior Court of the District of Columbia.

84 “§ 16-2933. Applicability; relation to other law.

85 “(a) This subchapter applies to partition actions filed on or after the effective date of this
86 subchapter.

87 “(b) In an action to partition real property under § 16-2901, the Superior Court shall
88 determine whether the property is heirs’ property. If the court determines that the property is
89 heirs’ property, the property must be partitioned under this subchapter unless all of the cotenants
90 otherwise agree in a record.

91 “(c) This subchapter supplements § 16-2901 and, if an action is governed by this
92 subchapter, replaces provisions of § 16-2901 that are inconsistent with this subchapter.

93 “§ 16-2934. Service; notice by posting.

94 “(a) This subchapter does not limit or affect the method by which service of a complaint
95 in a partition action may be made.

96 “(b) If the plaintiff in a partition action seeks an order of notice by publication and the
97 Superior Court determines that the property may be heirs’ property, the plaintiff, not later than
98 10 days after the court’s determination, shall post and maintain while the action is pending a
99 conspicuous sign on the property that is the subject of the action. The sign must state that the
100 action has commenced and identify the name and address of the court and the common
101 designation by which the property is known. The court may require the plaintiff to publish on the
102 sign the name of the plaintiff and the known defendants.

103 “§ 16-2935. Determination of value.

104 “(a) Except as otherwise provided in subsections (b) and (c), if the Superior Court
105 determines that the property that is the subject of a partition action is heirs’ property, the court
106 shall determine the fair market value of the property by ordering an appraisal pursuant to
107 subsection (d).

108 “(b) If all cotenants have agreed to the value of the property or to another method of
109 valuation, the Superior Court shall adopt that value or the value produced by the agreed method
110 of valuation.

111 “(c) If the Superior Court determines that the evidentiary value of an appraisal is
112 outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine
113 the fair market value of the property and send notice to the parties of the value.

114 “(d) If the Superior Court orders an appraisal, the court shall appoint a disinterested real
115 estate appraiser licensed in the District of Columbia to determine the fair market value of the
116 property assuming sole ownership of the fee simple estate. On completion of the appraisal, the
117 appraiser shall file a sworn or verified appraisal with the court.

118 “(e) If an appraisal is conducted pursuant to subsection (d), not later than 10 days after
119 the appraisal is filed, the Superior Court shall send notice to each party with a known address,
120 stating:

121 “(1) The appraised fair market value of the property;

122 “(2) That the appraisal is available at the clerk’s office; and

123 “(3) That a party may file with the court an objection to the appraisal not later
124 than 30 days after the notice is sent, stating the grounds for the objection.

125 “(f) If an appraisal is filed with the Superior Court pursuant to subsection (d), the court
126 shall conduct a hearing to determine the fair market value of the property not sooner than 30
127 days after a copy of the notice of the appraisal is sent to each party under subsection (e), whether
128 or not an objection to the appraisal is filed under subsection (e)(3). In addition to the court-
129 ordered appraisal, the court may consider any other evidence of value offered by a party.

130 “(g) After a hearing under subsection (f), but before considering the merits of the
131 partition action, the Superior Court shall determine the fair market value of the property and send
132 notice to the parties of the value.

133 “§ 16-2936. Cotenant buyout.

134 “(a) If any cotenant requested partition by sale, after the determination of value under §
135 16-2935, the Superior Court shall send notice to the parties that any cotenant except a cotenant
136 that requested partition by sale may buy all the interests of the cotenants that requested partition
137 by sale.

138 “(b) Not later than 45 days after the notice is sent under subsection (a), any cotenant
139 except a cotenant that requested partition by sale may give notice to the Superior Court that it
140 elects to buy all the interests of the cotenants that requested partition by sale.

141 “(c) The purchase price for each of the interests of a cotenant that requested partition by
142 sale is the value of the entire parcel determined under § 16-2935 multiplied by the cotenant’s
143 fractional ownership of the entire parcel.

144 “(d) After expiration of the period in subsection (b), the following rules apply:

145 “(1) If only one cotenant elects to buy all the interests of the cotenants that
146 requested partition by sale, the Superior Court shall notify all the parties of that fact.

147 “(2) If more than one cotenant elects to buy all the interests of the cotenants that
148 requested partition by sale, the court shall allocate the right to buy those interests among the
149 electing cotenants based on each electing cotenant’s existing fractional ownership of the entire
150 parcel divided by the total existing fractional ownership of all cotenants electing to buy and send
151 notice to all the parties of that fact and of the price to be paid by each electing cotenant.

152 “(3) If no cotenant elects to buy all the interests of the cotenants that requested
153 partition by sale, the court shall send notice to all the parties of that fact and resolve the partition
154 action under § 16-2937(a) and (b).

155 “(e) If the Superior Court sends notice to the parties under subsection (d)(1) or (2), the
156 court shall set a date, not sooner than 60 days after the date the notice was sent, by which
157 electing cotenants must pay their apportioned price into the court. After this date, the following
158 rules apply:

159 “(1) If all electing cotenants timely pay their apportioned price into court, the
160 court shall issue an order reallocating all the interests of the cotenants and disburse the amounts
161 held by the court to the persons entitled to them.

162 “(2) If no electing cotenant timely pays its apportioned price, the court shall
163 resolve the partition action under § 16-2937(a) and (b) as if the interests of the cotenants that
164 requested partition by sale were not purchased.

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

168 “(f) Not later than 20 days after the Superior Court gives notice pursuant to subsection
169 (e)(3), any cotenant that paid may elect to purchase all of the remaining interest by paying the
170 entire price into the court. After the 20-day period, the following rules apply:

171 “(1) If only one cotenant pays the entire price for the remaining interest, the court
172 shall issue an order reallocating the remaining interest to that cotenant. The court shall issue
173 promptly an order reallocating the interests of all of the cotenants and disburse the amounts held
174 by it to the persons entitled to them.

175 “(2) If no cotenant pays the entire price for the remaining interest, the court shall
176 resolve the partition action under§ 16-2937(a) and (b) as if the interests of the cotenants that
177 requested partition by sale were not purchased.

178 “(3) If more than one cotenant pays the entire price for the remaining interest, the
179 court shall reapportion the remaining interest among those paying cotenants, based on each
180 paying cotenant’s original fractional ownership of the entire parcel divided by the total original
181 fractional ownership of all cotenants that paid the entire price for the remaining interest. The
182 court shall issue promptly an order reallocating all of the cotenants’ interests, disburse the
183 amounts held by it to the persons entitled to them, and promptly refund any excess payment held
184 by the court.

185 “(g) Not later than 45 days after the Superior Court sends notice to the parties pursuant to
186 subsection (a), any cotenant entitled to buy an interest under this section may request the court to
187 authorize the sale as part of the pending action of the interests of cotenants named as defendants
188 and served with the complaint but that did not appear in the action.

189 “(h) If the Superior Court receives a timely request under subsection (g), the court, after
190 hearing, may deny the request or authorize the requested additional sale on such terms as the
191 court determines are fair and reasonable, subject to the following limitations:

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

196 “(2) The purchase price for the interest of a nonappearing cotenant is based on the
197 court’s determination of value under § 16-2935.

198 “(g) Not later than 45 days after the Superior Court sends notice to the parties pursuant to
199 subsection (a), any cotenant entitled to buy an interest under this section may request the court to
200 authorize the sale as part of the pending action of the interests of cotenants named as defendants
201 and served with the complaint but that did not appear in the action.

202 “(h) If the Superior Court receives a timely request under subsection (g), the court, after
203 hearing, may deny the request or authorize the requested additional sale on such terms as the
204 court determines are fair and reasonable, subject to the following limitations:

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

209 “(2) The purchase price for the interest of a nonappearing cotenant is based on the
210 court’s determination of value under § 16-2935.

211 “§ 16-2937. Partition alternatives.

212 “(a) If all the interests of all cotenants that requested partition by sale are not purchased
213 by other cotenants pursuant to § 16-2936, or if after conclusion of the buyout under § 16-2936, a
214 cotenant remains that has requested partition in kind, the Superior Court shall order partition in
215 kind unless the court, after consideration of the factors listed in 16-2938, finds that partition in
216 kind will result in great prejudice to the cotenants as a group. In considering whether to order
217 partition in kind, the court shall approve a request by two or more parties to have their individual
218 interests aggregated.

219 “(b) If the Superior Court does not order partition in kind under subsection (a), the court
220 shall order partition by sale pursuant to § 16-2939 or, if no cotenant requested partition by sale,
221 the court shall dismiss the action.

222 “(c) If the Superior Court orders partition in kind pursuant to subsection (a), the court
223 may require that one or more cotenants pay one or more other cotenants amounts so that the
224 payments, taken together with the value of the in-kind distributions to the cotenants, will make
225 the partition in kind just and proportionate in value to the fractional interests held.

226 “(d) If the Superior Court orders partition in kind, the court shall allocate to the cotenants
227 that are unknown, unlocatable, or the subject of a default judgment, if their interests were not
228 bought out pursuant to § 16-2936, a part of the property representing the combined interests of
229 these cotenants as determined by the court and this part of the property shall remain undivided.

230 “§ 16-2938. Considerations for partition in kind.

231 “(a) In determining under § 16-2937(a) whether partition in kind would result in great
232 prejudice to the cotenants as a group, the Superior Court shall consider the following:

233 “(1) Whether the heirs’ property practicably can be divided among the cotenants;

234 “(2) Whether partition in kind would apportion the property in such a way that the
235 aggregate fair market value of the parcels resulting from the division would be materially less
236 than the value of the property if it were sold as a whole, taking into account the condition under
237 which a court-ordered sale likely would occur;

238 “(3) Evidence of the collective duration of ownership or possession of the
239 property by a cotenant and one or more predecessors in title or predecessors in possession to the
240 cotenant who are or were relatives of the cotenant or each other;

241 “(4) A cotenant’s sentimental attachment to the property, including any
242 attachment arising because the property has ancestral or other unique or special value to the
243 cotenant;

244 “(5) The lawful use being made of the property by a cotenant and the degree to
245 which the cotenant would be harmed if the cotenant could not continue the same use of the
246 property;

247 “(6) The degree to which the cotenants have contributed their pro rata share of the
248 property taxes, insurance, and other expenses associated with maintaining ownership of the
249 property or have contributed to the physical improvement, maintenance, or upkeep of the
250 property; and

251 (7) Any other relevant factor.

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

254 “§ 16-2939. Open-market sale, sealed bids, or auction.

255 “(a) If the Superior Court orders a sale of heirs’ property, the sale must be an open-
256 market sale unless the court finds that a sale by sealed bids or an auction would be more
257 economically advantageous and in the best interest of the cotenants as a group.

258 “(b) If the Superior Court orders an open-market sale and the parties, not later than 10
259 days after the entry of the order, agree on a real estate broker licensed in the District of Columbia
260 to offer the property for sale, the court shall appoint the broker and establish a reasonable
261 commission. If the parties do not agree on a broker, the court shall appoint a disinterested real
262 estate broker licensed in the District of Columbia to offer the property for sale and shall establish
263 a reasonable commission. The broker shall offer the property for sale in a commercially
264 reasonable manner at a price no lower than the determination of value and on the terms and
265 conditions established by the court.

266 “(c) If the broker appointed under subsection (b) obtains within a reasonable time an offer
267 to purchase the property for at least the determination of value:

- 268 “(1) The broker shall comply with the reporting requirements in § 16-2940, and
269 “(2) The sale may be completed in accordance with state law other than this
270 subchapter.

271 “(d) If the broker appointed under subsection (b) does not obtain within a reasonable time
272 an offer to purchase the property for at least the determination of value, the Superior Court, after
273 hearing, may:

- 274 “(1) Approve the highest outstanding offer, if any;
275 “(2) Redetermine the value of the property and order that the property continue to
276 be offered for an additional time; or
277 “(3) Order that the property be sold by sealed bids or at an auction.

278 “(e) If the Superior Court orders a sale by sealed bids or an auction, the court shall set
279 terms and conditions of the sale. If the court orders an auction, the auction must be conducted in
280 a commercially reasonable manner that is fair to all concerned.

281 “(f) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is
282 entitled to a credit against the price in an amount equal to the purchaser’s share of the proceeds.

283 “§ 16-2940. Report of open-market sale.

284 “(a) A broker appointed under § 16-2939(b) to offer heirs’ property for open-market sale
285 shall file a report with the Superior Court not later than seven days after receiving an offer to
286 purchase the property for at least the value determined under § 16-2935 or 16-2939.

287 “(b) The report required by subsection (a) must contain the following information:

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

289 “(2) The name of each buyer;

290 “(3) The proposed purchase price;

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

293 “(5) The amounts to be paid to lienholders;

294 “(6) A statement of contractual or other arrangements or conditions of the
295 broker’s commission; and

296 “(7) Other material facts relevant to the sale.

297 “§ 16-2941. Uniformity of application and construction.

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

300 “§ 16-2942. Relation to Electronic Signatures in Global and National Commerce Act.

301 “This subchapter modifies, limits, and supersedes the Electronic Signatures in Global and
302 National Commerce Act, 15 U.S.C. § 7001 *et seq.*, but does not modify, limit, or supersede
303 section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the
304 notices described in section 103(b) of that act, 15 U.S.C. § 7003(b).”

305 Sec. 3. Fiscal impact statement.

306 The Council adopts the fiscal impact statement in the committee report as the fiscal
307 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
308 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

309 Sec. 4. Effective date.

310 This act shall take effect following approval by the Mayor (or in the event of veto by the
311 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
312 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
313 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
314 Columbia Register.