

PRESENTED AT

21st Annual Estate Planning, Guardianship and Elder Law Conference

August 1-2, 2019
Galveston, TX

**IMPROVING THE UNIFORM PARTITION OF HEIRS
PROPERTY ACT**

Rishi Batra

IMPROVING THE UNIFORM PARTITION OF HEIRS PROPERTY ACT

*Rishi Batra**

INTRODUCTION

Johnny Rivers was born and had lived his whole sixty-nine-year life on the same seventeen-acre tract on Clouter Creek near the Cainhoy Peninsula of Charleston, South Carolina.¹ His father owned the land since 1888, and his family had worked the land and paid taxes, never missing a tax payment.² He thought he and his family would live on the land for the rest of his life.³

However, in 2000 he received a letter telling him he was the subject of a legal action called a “partition.”⁴ A family member who was a part owner of the land and whom Rivers had never met decided he wanted to sell his interest in the land.⁵ The court would later order the Rivers family to sell the land and accept the auction bid of an investor for \$910,000, of which Rivers received less than 4%.⁶ Attorney’s fees were charged to the Rivers family which came out of the sale proceeds.⁷ Rivers and twenty-five members of his family were evicted in one of the largest evictions in the county.⁸ The investor then sold the same property eight months later for three million dollars.⁹ The lot was then subdivided into smaller lots around .3 acres, each of which sold for two million dollars or more.¹⁰ All told, Rivers received around only \$30,000.¹¹

Unfortunately, Rivers, and many other property owners for which this is an all too common occurrence, had no idea that this sort of result is possible. Most assume that because they live on the land, or pay taxes, or because

* Assistant Professor of Law, Texas Tech University School of Law. The author would like to thank Brian Shannon, Alyssa DiRusso, and Thomas Mitchell for their close reading and excellent comments. Thanks also to Radha Pathak, the faculty of Stetson Law School, and the faculty of Texas Tech University School of Law for comments on a presentation of this piece. Thanks to Becky Jaffe for ideas and original inspiration. As always, thanks to Texas Tech University School of Law for its support.

¹ April B. Chandler, Note “*The Loss in My Bones*”: *Protecting African American Heirs’ Property with the Public Use Doctrine*, 14 WM. & MARY BILL RTS. J. 387, 387 (2005).

² *Id.*

³ *Id.*

⁴ *Id.* at 389.

⁵ *Id.* at 388.

⁶ *Id.* at 387–88.

⁷ Chandler, *supra* note 1, at 387–88.

⁸ *Id.* at 387.

⁹ *Id.*

¹⁰ *Id.* at 388.

¹¹ *Id.* at 387–88.

the land ownership is divided among many co-owners, no one can force them to leave.¹²

However, it is exactly because of this last characteristic—the fractionalized ownership of land among many related individuals—a condition known as “heirs property”¹³ that the Rivers’ land, and so many other pieces of property, are vulnerable. Since any co-owner in this situation can seek an order from a court for the land to be divided,¹⁴ and because courts routinely divide the value of the land not by splitting it into parcels (“partition in kind”),¹⁵ but by auctioning it at a forced sale and distributing the proceeds (“partition by sale”),¹⁶ co-owners in this situation can be forced off their own land despite their familial, financial, or historical connection to it.¹⁷

Fortunately, the Uniform Law Commission¹⁸ has recently promulgated the Uniform Partition of Heirs Property Act¹⁹ (hereinafter the “Uniform Act”) which attempts to address some of the issues caused by partition of heirs property. This act encourages a new way of partitioning the land in partition actions, and also preserves land value if partition sales do happen. States are starting to enact legislation based on the Uniform Act, which is a positive development.²⁰

However, the Uniform Act leaves other problems with heirs property partition unaddressed. This paper proposes three additional reforms that will make the act more robust in addressing the ills of partition: a change to how plaintiffs’ legal fees are paid by allowing those that object to the sale to avoid having the value of their land reduced, an improved notice provision to require more diligence in finding missing owners, and a mandatory mediation provision to address the root cause of some partition actions.

This paper proceeds in five parts. Part I discusses the problems with heirs property generally, including how it is formed, how it restricts access

¹² Faith Rivers, *Inequity in Equity: The Tragedy of Tenancy in Common for Heirs’ Property Owners Facing Partition in Equity*, 17 TEMP. POL. & CIV. RTS. L. REV. 1, 6 (2007).

¹³ Anna Stolley Persky, *In the Cross Heirs*, 95 A.B.A. J. 44, 46 (2009).

¹⁴ W.T. Geddings, Jr., *Partition Actions in South Carolina: “Parting is Such Sweet Sorrow”*, 27 S.C. LAW. 18, 20 (2016).

¹⁵ Thomas W. Mitchell et al., *Forced Sale Risk: Class, Race, and the “Double Discount”*, 37 FLA. ST. U. L. REV. 589, 610 (2009).

¹⁶ *Id.* at 611.

¹⁷ See Phyliss Craig-Taylor, *Through a Colored Looking Glass: A View of Judicial Partition, Family Land Loss, and Rule Setting*, 78 WASH U. L.Q. 737, 771–74 (2000).

¹⁸ Also known as The National Conference of Commissioners on Uniform State Laws.

¹⁹ NAT’L CONFERENCE OF COMM’RS ON UNIFORM STATE LAWS, UNIFORM PARTITION OF HEIRS PROPERTY ACT (2010), http://www.uniformlaws.org/shared/docs/partition%20of%20heirs%20property/uphpa_final_10.pdf [hereinafter UNIFORM ACT].

²⁰ The Uniform Act has been enacted in Alabama (ALA. CODE §§ 35-6A-1–14 (2014)), Arkansas (ARK. CODE ANN. §§ 18-60-1001–1014 (2015)), Connecticut (CONN. GEN. STAT. § 52-503f (2015)), Georgia (GA. CODE ANN. §§ 44-6-180–189.1 (2013)), Hawaii (HAW. REV. STAT. §§ 668A-1–14 (2017)), Montana (MONT. CODE ANN. §§ 70-29-401–420 (2013)), New Mexico (H.B. 181, 53rd Leg., 1st Sess. (N.M. 2017)), Nevada (NEV. REV. STAT. §§ 39.600–705 (2011)), South Carolina (S.C. CODE ANN. §§ 15-61-310–420 (2016)), and Texas (S.B. 499, 85th Leg., Reg. Sess. (Tex. 2017)).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Improving the Uniform Partition of Heirs Property Act

Also available as part of the eCourse

[Answer Bar: Dealing with Mineral Rights in Estate Planning and Probate](#)

First appeared as part of the conference materials for the
21st Annual Estate Planning, Guardianship and Elder Law Conference session
"Real Estate Owned with Others"