

GEORGIA APPLESEED CENTER FOR LAW & JUSTICE

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FACT SHEET: UNIFORM PARTITION OF HEIRS PROPERTY ACT

Georgia is poised to be the first state in the South to pass the **Uniform Partition of Heirs Property Act**. Georgia Appleseed has worked with Representative Edward Lindsey to introduce HB 744 in the General Assembly. The legislation is expected to pass in 2012.

WHAT IS HEIRS PROPERTY?

Heirs property involves the passing of a home or other real property across multiple generations outside of the official probate process. As title to a home becomes less clear and more fractioned across heirs, the risk of being forced out of the home by legal action becomes greater.

WHAT ARE PARTITION LAWS?

Holders of heirs property are vulnerable to property loss due to partition actions. Partition laws allow any co-owner of a property to force the sale of the property in order to secure his or her share of the sale – even if that sale would render another co-owner homeless.

BILL SUMMARY & HIGHLIGHTS

The Uniform Partition of Heirs Property Act will establish a number of important protections for owners of heirs property. The legislation does not limit or prohibit the filing of a partition action, and does not replace in any comprehensive way existing partition laws with respect to non-heirs property; rather, the Act will provide a set of narrowly focused statutory procedures and a hierarchy of remedies for use in partition actions involving heirs property. Key highlights of the legislation include:

- ✓ Improved notification practices before forced sales;
- ✓ Broadened judicial considerations before forcing low-wealth families out of their homes;
- ✓ Extended legal alternatives to forced sales.

KEY LEGISLATIVE PROVISIONS

- ✓ When an action for partition of real property is filed, the court must determine whether the property is heirs property. The Act's provisions will govern if the property is heirs property unless all of the co-owners have agreed otherwise.
- ✓ For partition actions involving heirs property, the legislation requires the posting of a conspicuous sign on the property in question, which identifies the court where the action is pending and any common designation by which the property is known. A court may also require the name of the plaintiff and any known defendants to be published on the sign.

- ✓ The legislation would require that the court appoint a disinterested real estate appraiser to assess the fair market value of the property in most cases. The Act also provides a timeline for determining the fair market value.
- ✓ After the court determines the value of the property, the legislation modifies the current buy out provision by providing co-owners an extra 15 days to gather funds.
- ✓ Upon motion of a co-owner entitled to buyout another co-owner that petitioned for sale, the Act would give the court discretion under certain circumstances to conduct a second buyout in the interests of the co-owner. This second buyout process can help to make partition of the property more feasible and to consolidate ownership of the property to facilitate its long-term management.
- ✓ The legislation provides a list of economic and noneconomic factors that a court shall consider in determining whether great or manifest prejudice would occur if partition in kind were ordered. If the court does not order partition in kind, and none of the co-owners have requested partition by sale, the court shall dismiss the action.
- ✓ The Act that would require that a partition by sale, if ordered, must be an open-market sale unless a sale by sealed bid or an auction would be economically more advantageous and of greater benefit to the co-owners as a group.

LEARN MORE

Visit www.GaAppleseed.org/heir to find out more about Georgia Appleseed's Heir Property Project, or contact Crystal Chastain Baker, Georgia Appleseed's Heir Property Project Manager, at ccbaker@gaappleseed.org.