

Legislative Analysis



UNIFORM PARTITION OF HEIRS PROPERTY ACT

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House Bill 4924 as introduced
Sponsor: Rep. Emily Dievendorf
Committee: Judiciary
Complete to 1-17-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4924 would add Chapter 34 (Partition of Heirs Property) to the Revised Judicature Act. Chapter 34 could also be called the “Uniform Partition of Heirs Property Act.”

The bill would amend Chapter 33 (Partition)¹ of the act to provide that the new Chapter 34 supplements that chapter. If an action is governed by Chapter 34, then the provisions of Chapter 33 that are inconsistent with Chapter 34 would be superseded by Chapter 34. The ability of persons holding lands as tenants in common to have those lands partitioned under Chapter 33 would be subject to Chapter 34. In an action to partition real property under Chapter 33, the court would have to determine whether the property is *heirs property*. Property determined by the court to be heirs property would have to be partitioned under Chapter 34 unless all of the cotenants agree otherwise in a *record*.

Heirs property would mean real property held in tenancy in common that satisfies all of the following requirements when an action is filed to partition real property:

- There is no agreement in a record binding all the cotenants that governs the partition of the property.
- One or more of the cotenants acquired title from a living or deceased *relative*.
- Any of the following apply:
 - Twenty percent or more of the interests are held by cotenants who are relatives.
 - Twenty percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased.
 - Twenty percent or more of the cotenants are relatives.

Record would mean information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Relative would mean an *ascendant*, *descendant*, or *collateral* or an individual otherwise related to another individual by blood, marriage, adoption, or another Michigan law.

Ascendant would mean an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.

Descendant would mean an individual who follows another individual in lineage, in the direct line of descent from the other individual.

¹ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-236-1961-33.pdf>

Collateral would mean an individual who is related to another individual under Michigan's law of intestate succession² but is not the other individual's ascendant or descendant.

Action to partition real property

Chapter 34 would not limit or affect the method by which service of a complaint may be made in an action to partition real property.

If the plaintiff in an action to partition real property seeks notice by publication and the court determines that the property may be heirs property, the plaintiff, no later than 10 days after the court's determination, would have to post a conspicuous sign on the property that is the subject of the action and would have to maintain the sign while the action is pending. The sign would have to 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 also could require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

If the court appoints guardians or guardians ad litem under Chapter 33, each guardian or guardian ad litem would have to be disinterested and impartial and could not be a party to or participant in the action to partition real property.

Determination of value

If the court determines that the property that is the subject of an action to partition real property is heirs property, the court would have to determine the fair market value of the property by ordering an appraisal. However, if all cotenants have agreed to the value of the property or to another method of valuation, the court would have to adopt that value or the value produced by the agreed method of valuation. In addition, if the court determines that the cost of an appraisal outweighs its evidentiary value, the court, after an evidentiary hearing, would have to determine the fair market value of the property and send notice of the value to the parties.

If ordering an appraisal, the court would have to appoint a disinterested real estate appraiser licensed in Michigan to determine the fair market value of the property assuming sole ownership of the fee simple estate. Upon completion of the appraisal, the appraiser would have to file a sworn or verified appraisal with the court. No later than 10 days after the filing, the court would have to send each party with a known address a notice stating all of the following:

- The appraised fair market value of the property.
- That the appraisal is available at the clerk's office.
- That a party may file with the court an objection to the appraisal, stating the grounds for the objection, not later than 30 days after the date the notice was sent.

The court would have to conduct a hearing to determine the fair market value of the property no sooner than 30 days after a copy of the notice of the appraisal is sent as described above, regardless of whether an objection to the appraisal is filed. In addition to the court-ordered appraisal, the court could consider any other evidence of value offered by a party.

² This appears to refer to Part 1 (Intestate Succession) of Article II (Intestacy, Wills, and Donative Transfers) of the Estates and Protected Individuals Code. <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-386-1998-II-1.pdf>

After the hearing, but before considering the merits of the action to partition real property, the court would have to determine the fair market value of the property and send notice of the value to the parties.

Partition by sale

If a cotenant requests *partition by sale*, the court, after determining the value of the property, would have to send notice to the parties that any cotenant (except one that requested partition by sale) may buy all the interests of the cotenants that requested partition by sale.

Partition by sale would mean a court-ordered sale of the entire heirs property, whether by auction, sealed bids, or open-market sale conducted as described below.

No later than 45 days after the notice is sent, a cotenant (except one that requested partition by sale) could give notice to the court that they elect to buy all the interests of the cotenants that requested partition by sale. The purchase price for each of the interests of a cotenant that requested partition by sale would be the value of the entire parcel multiplied by the cotenant's fractional ownership of the entire parcel. After the expiration of the 45-day period, the following would apply:

- If **only one cotenant** elects to buy all the interests of the cotenants that requested partition by sale, the court would have to notify all the parties of that fact.
- If **more than one cotenant** elects to buy all the interests of the cotenants that requested partition by sale, the court would have to 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.
- If **no cotenant** elects to buy all the interests of the cotenants that requested partition by sale, the court would have to send notice to all the parties of that fact and resolve the action to partition real property as described below under "Partition in kind."

If one or more than one cotenant elects to buy the interests of cotenants requesting partition by sale, the court would have to set a date by which electing cotenants must pay their apportioned price to the court. The date could not be sooner than 60 days after the date the applicable notice of the election to buy was sent. After this date, all of the following would apply:

- If **all electing cotenants** pay their apportioned price on time, the court would have to issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them.
- If **at least one but not all of the electing cotenants** pay their apportioned price on time, the court, on motion, would have to give notice to the electing cotenants that paid the apportioned price of the interest remaining and the price for all the interest.
- If **no electing cotenant** pays their apportioned price on time, the court would have to resolve the action to partition real property as described below under "Partition in kind" as if the interests of the cotenants that requested partition by sale were not purchased.

No later than 20 days after the court sends notice that at least one electing cotenant has paid their apportioned price on time, but not all of the electing cotenants have done so, any cotenant that paid their apportioned price could purchase all of the remaining interest by paying to the

court the entire price for the remaining interest. After this 20-day period, the following would apply:

- If **only one cotenant** pays the entire price for the remaining interest, the court would have to issue an order reallocating the remaining interest to that cotenant. The court would have to promptly issue an order reallocating the interests of all of the cotenants and disburse the amounts held by the court to the persons entitled to them.
- If **more than one cotenant** pays the entire price for the remaining interest, the court would have to reapportion the remaining interest among the paying cotenants (based on each paying the 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 would have to promptly issue an order reallocating all of the cotenants' interests, disburse the amounts held by the court to the persons entitled to them, and promptly refund any excess payment held by the court.
- If **no cotenant** pays the entire price for the remaining interest, the court would have to resolve the action to partition real property as described below under "Partition in kind" as if the interests of the cotenants that requested partition by sale were not purchased.

Not later than 45 days after the court sends initial notice as described above (of the ability to buy the interests of the cotenants that requested partition by sale), a cotenant entitled to buy an interest could request that the court authorize, as part of the pending action, the sale of the interests of cotenants that were named as defendants and served with the complaint but that did not appear in the action. The court, after a hearing, could deny such a request or authorize the requested additional sale on terms the court determines are fair and reasonable, subject to the following limitations:

- A sale authorized under these provisions could occur only after the purchase prices for all interests subject to sale as described under "Partition by sale" have been paid to the court and those interests have been reallocated among the cotenants as described above.
- The purchase price for the interest of a cotenant that did not appear would have to be based on the court's *determination of value* as described above under "Determination of value."

Determination of value would mean a court order determining the fair market value of heirs property as described under either "Determination of value" or "Sale of heirs property" or adopting the valuation of the property agreed to by all cotenants.

Partition in kind

If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants as described above, or if after conclusion of the buyout a cotenant remains that has requested *partition in kind*, the court would have to order partition in kind unless, after consideration of factors described below, the court finds that partition in kind will result in great prejudice to the cotenants as a group. In considering whether to order partition in kind, the court would have to approve a request by two or more parties to have the requesting parties' individual interests aggregated.

Partition in kind would mean the division of heirs property into physically distinct and separately titled parcels.

If the court does not order partition in kind, it would have to order partition by sale as described under “Sale of heirs property” or, if no cotenant requested partition by sale, dismiss the action.

If the court orders partition in kind, the court could require that one or more cotenants pay one or more other cotenants 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.

If the court orders partition in kind, the court would have to allocate to the cotenants who are unknown, cannot be located, or are the subject of a default judgment, if the cotenant’s interests were not represented as described under “Partition by sale,” a part of the property representing the combined interests of these cotenants as determined by the court, and this part of the property would have to remain undivided.

In determining whether partition in kind would result in great prejudice to the cotenants as a group, the court would have to consider all of the following factors and circumstances:

- Whether it is practicable to divide the heirs property among the cotenants.
- Whether partition in kind would apportion the property in 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 would likely occur.
- 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.
- 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.
- The lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if they could not continue the same use of the property.
- 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.
- Any other relevant factor.

The court could not consider any one factor above to be dispositive without weighing the totality of all relevant factors and circumstances.

Sale of heirs property

If the court orders a sale of heirs property, the sale would have to 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.

If the court orders an open-market sale and the parties agree, not later than 10 days after the entry of the order, on a real estate broker licensed in Michigan to offer the property for sale, the court would have to appoint the real estate broker and establish a reasonable commission. If the parties do not agree on a real estate broker, the court would have to appoint a disinterested real estate broker licensed in Michigan to offer the property for sale and establish a reasonable commission.

The real estate broker would have to offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

If the appointed real estate broker obtains, within a reasonable time, an offer to purchase the property for not less than the determination of value, the real estate broker would have to comply with the reporting requirements describe below and the sale could be completed in accordance with the requirements of other Michigan law.

If the appointed real estate broker does not obtain, within a reasonable time, an offer to purchase the property for not less than the determination of value, the court, after a hearing, could do any of the following:

- Approve the highest outstanding offer, if any.
- Redetermine the value of the property and order that the property continue to be offered for an additional time.
- Order that the property be sold by sealed bids or at an auction.

If the court orders a sale by sealed bids or an auction, the court would have to set the terms and conditions of the sale. If the court orders an auction, the auction would have to be conducted under Chapter 33.

A purchaser that is entitled to a share of the proceeds of the sale would be entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

Report of open-market sale

Unless required to do so within a shorter time under Chapter 33, a real estate broker appointed to offer heirs property for open-market sale would have to 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 as described under either "Determination of value" or "Sale of heirs property". The report would have to contain all of the following information:

- A description of the property to be sold to each buyer.
- The name of each buyer.
- The proposed purchase price.
- The terms and conditions of the proposed sale, including the terms of any owner financing.
- The amounts to be paid to lienholders.
- A statement of contractual or other arrangements or conditions of the broker's commission.
- Other material facts relevant to the sale.

Construction, application, effectiveness

Finally, the bill would require that consideration be given, in applying and construing Chapter 34, to the need to promote uniformity of the law with respect to its subject matter among states that enact a uniform partition of heirs property act.

Chapter 34 would apply to an action to partition real property filed after its effective date.

MCL 600.3304 and proposed MCL 3401 et seq.

BACKGROUND:

The Uniform Partition of Heirs Property Act was developed and adopted in 2010 by the National Conference of Commissioners on Uniform State Laws (also called the Uniform Law Commission). As of January 2024, the act has been enacted by 23 states.³

FISCAL IMPACT:

House Bill 4924 would have an indeterminate fiscal impact on local court systems. The impact would depend on how provisions of the bill affected court caseloads and related administrative costs. Because there is no practical way to determine the number of actions to partition real property that will occur under provisions of the bill, an estimate of the amount of additional work and subsequent costs for the courts cannot be made.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

³ <https://www.uniformlaws.org/committees/community-home>