

LITIGATION INFORMATION MEMO

AUGUST 11, 2023

The Practical Effect of the Uniform Partition of Heirs Property Act

Under New York law, when real property has multiple owners who hold the property as tenants in common, any one co-owner can try to force the sale of the property by filing a partition under Article 9 of the Real Property Actions and Proceedings Law (RPAPL). This has resulted in predatory real estate speculators purchasing a stake in a residential real property—usually after a number of family members have inherited the property—and using that stake to file a partition action to dispossess the family of the property through a forced sale at a price far lower than the actual value of the property. This sort of predatory scheme particularly affects lower- and middle-class families who often do not engage in the type of estate planning that could protect them and their inherited real property.

Consequently, on Dec. 6, 2019, former Gov. Andrew Cuomo passed New York State’s version of the Uniform Partition of Heirs Property Act (UPHPA), found in Section 993 of Article 9 of New York’s RPAPL. The UPHPA is designed to protect “heirs property”—defined by the UPHPA as real property held in tenancy in common in which (i) there is no agreement binding all co-tenants that governs the partition of the property; (ii) at least one of the co-tenants acquired title from a relative; (iii) the property is used for residential or agricultural purposes; and (iv) either 25% of the interests derive from a familial relationship, or any co-tenant who acquired title from a relative resides in the property.

Now, if the real property at issue qualifies as “heirs property,” the UPHPA applies, unless the co-tenants agree otherwise. Pursuant to the UPHPA, a co-owner requesting partition must give notice to all of the other co-owners. If, subsequent to the filing of the action, the parties cannot reach a mutually agreeable resolution among themselves, the UPHPA mandates a settlement conference to prevent a party from jumping straight into a partition of sale and to encourage the parties to negotiate in good faith. The settlement conference is overseen by either a referee or a judicial hearing officer, who is required to make a report to the court based on the findings of fact, conclusions of law and recommendations for relief relating to any co-tenant’s failure to negotiate in good faith. If the court determines that at least one of the co-tenants requesting partition negotiated in bad faith, the partition action will be dismissed.

To ensure that the property in question is adequately valued, the court must order an independent appraisal to determine the property’s fair market value, unless either (i) the co-tenants agree as to the value of the property or to another valuation method; or (ii) the value of the appraisal is outweighed by the cost of the appraisal. Once the appraisal is completed, the appraiser will file it with the court, and the court will send notice of the appraisal to all of the parties within 10 days of filing. The court then conducts a hearing to determine the fair market value of the property within 30 days after notice is sent to the parties.

Any co-owner may exercise a right of first refusal to buy out the interest of the co-owner seeking partition for a proportional share of the court-determined fair market share, which must occur within 45 days of notice of the value of the property. If no co-owner elects to buy out the co-owner seeking partition, the court must first consider ordering a partition-in-kind if the property can be physically divided. If it

cannot be, the court would then order a partition-by-sale; however, unlike before, the property must be offered for sale on the open market at a price no lower than the court-determined value for a reasonable amount of time and in a commercially reasonable manner.

The goal of the UHPA is to allow relatives holding fractional interests to acquire full ownership or receive full value of their interest in legacy real property. There is little case law interpreting the UHPA, but we expect that this will change as cases make their way through the litigation process. In the meantime, if you have questions concerning how to protect your legacy interest in real property, please contact [Sabrina Salama](#), any attorney in Bond's [litigation practice](#) or the attorney at the firm with whom you are regularly in contact.

