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August 22, 2019

Hon. Andrew M. Cuomo  
State Capitol  
Executive Chamber  
Albany, New York 12224

**Re: S.4865-A (Sen. Hoylman) / A.7058-A (AM Dinowitz) – establishes the uniform partition of heirs property act; SUPPORT**

Dear Governor Cuomo:

On behalf of the Commercial Law and Uniform State Laws Committee, the Housing and Urban Development Committee and the Pro Bono and Legal Services Committee of the New York City Bar Association, I am writing to urge you to sign into law the New York modified version of the Uniform Partition of Heirs Property Act (the “UPHPA”, and as modified, the “NY UPHPA”) originally promulgated by the Uniform Law Commissioners (“ULC”). This bill (S.4865-A/A.7058-A) is sponsored by Assembly Member Dinowitz and Senator Hoylman; it passed the Senate unanimously and the Assembly by a vote of 103-38.

Many low- and middle-income New York families are vulnerable to the loss of their historic family homes and farmland as their neighborhoods gentrify and lands increase in value. Such families often do not have the means to obtain estate planning services to protect their accumulated family wealth nor defend themselves if their property is targeted by speculators. If a property owner dies without a will or other estate plans and there are multiple heirs, the real estate passes to the heirs as tenants in common by operation of law. Heirs are vulnerable because any individual owner of a tenancy-in-common interest can force a partition. Too often, real estate speculators acquire a fractional tenancy-in-common interest to bring a partition action and force a sale. Using this tactic, an investor can acquire the entire parcel for a price well below its fair market value resulting in the displacement of the family and stripping all of the heirs of their inherited wealth. The NY UPHPA addresses deficiencies in existing partition law to protect these heirs from predatory practices by codifying such property as “heirs property,” balancing the process by which such property is partitioned, and ensuring the true value of the property is realized if a sale is inevitable.

The City Bar supports the NY UPHPA because it will protect the owners of “heirs property” not only in rural, but also in urban areas, where partition problems have recently gained attention. The NY modifications include (1) the addition of a mediation/settlement process that can be used to foster negotiations among the tenants in common and ameliorate disputes; (2)

clarifying the right of co-tenants to purchase the interest of any other co-tenant who petitions for partition by sale; and (3) expanding protections to all heirs who reside in the home. These protections are often included in tenancy-in-common contracts to which wealthier or more legally sophisticated tenants in common routinely agree.

The NY UHPA has been approved by the Uniform Law Commission and is supported by the Brooklyn Bar Association Volunteer Lawyers Project, Inc., Grow Brooklyn, Inc., and Mobilization for Justice, Inc. Enclosed please find copies of the City Bar's report in support of the legislation, a list of supporting organizations, and a NY1 article published in May highlighting the impact of partition actions in New York.

As of July 2019, 12 states have enacted the UHPA into law: Alabama, Arkansas, Connecticut, Georgia, Hawaii, Iowa, Missouri, Montana, Nevada, New Mexico, South Carolina, and Texas as well as the United States Virgin Islands. The Illinois legislature passed the UHPA this year, and it will automatically become law if the Illinois Governor does not sign or veto it by August 27, 2019. The UHPA is supported by a wide variety of groups, including the ABA (and its Real Property, Trust & Estate Law Section as well as its State and Local Government Section), American College of Real Estate Lawyers, Lawyers' Committee for Civil Rights, Southern Poverty Law Center, National Bar Association, and National Black Caucus of State Legislators.

The Homeowner Stability Project of our pro bono legal service affiliate, the City Bar Justice Center, has seen a significant uptick in predatory real estate activity that divests low-income and unsophisticated heirs property owners from their accumulated generational wealth using existing partition law. This act has an immediate effective date and will protect some of New York's most vulnerable families from displacement and potential homelessness. For these reasons and as further discussed in the enclosed materials, we urge you to sign the NY UHPA into law and to act swiftly.

Further, under the federal Farm Bill, enactment of the NY UHPA has the added benefit of entitling many farmers and ranchers in New York to priority access to various programs administered by the US Department of Agriculture, including important loan programs.

Thank you for your consideration.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Roger Juan Maldonado', with a long horizontal flourish extending to the right.

Roger Juan Maldonado

Cc: Hon. Jeffrey Dinowitz  
Hon. Brad Hoylman

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POLICY DEPARTMENT

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**REPORT ON LEGISLATION  
BY THE COMMERCIAL LAW AND UNIFORM STATE LAWS COMMITTEE,  
THE HOUSING AND URBAN DEVELOPMENT COMMITTEE  
AND THE PRO BONO AND LEGAL SERVICES COMMITTEE**

**A.7058-A****S.4865-A****M. of A. Dinowitz****Sen. Hoylman**

AN ACT to amend the real property actions and proceedings law, in relation to establishing the uniform partition of heirs property act

**The Uniform Partition of Heirs Property Act**

**THIS BILL IS APPROVED**

The Bill would enact a modified version of the Uniform Partition of Heirs Property Act (the “UPHPA”, and as modified, the “NY UPHPA”) promulgated by the Uniform Law Commissioners (“ULC”) in 2010 by adding it as section 993 of Article 9 of the Real Property Actions and Proceedings Law, which addresses actions to partition real property. The New York City Bar Association (“City Bar”) recommends the adoption of the Bill, which modifies the UPHPA, to make it work more effectively in New York City and other urban areas while retaining its important protections applicable to rural areas. The City Bar has reviewed the Bill, including its modifications to the UPHPA, with the ULC and the modifications are approved by the ULC.

The UPHPA was promulgated by the ULC to address deficiencies in how partition law is applied with respect to real estate owned by tenants in common, a significant percentage of whom are relatives.<sup>1</sup> Such property is frequently referred to as “heirs property.” These tenants-in-common are often lower income individuals or members of minority communities who have inherited their interests but have not had the benefit of legal counsel in structuring their real estate holdings. It had become a serious problem in some parts of the country for speculators to induce one co-tenant to sell a small minority interest, thereby enabling the speculator to commence a partition action. Frequently, such actions would result in partition by sale, rather than physical division of a property (despite the fact that physical partition would have been practical), resulting in a fire-sale price for the entire property at a judicial auction held on short

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<sup>1</sup> NAT’L CONFERENCE OF COMM’RS ON UNIFORM STATE LAWS, UNIFORM PARTITION OF HEIRS PROPERTY ACT 1 (2010),

<https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=a71c418b-c240-a2d6-631a-c4de1d60ec13&forceDialog=0> (hereinafter UNIFORM ACT OR UPHPA). (All websites cited in this report were last visited on May 15, 2019.)

notice and with insufficient effort to obtain fair market value. Because the co-tenant owner families were often land-rich but cash-poor and unable to use their co-tenancy interests to secure a loan to make a competitive bid, the speculator who commenced the partition action was often the only bidder, acquiring the entire property for a fraction of its value. The heir co-tenants who resided on or farmed the property would then find themselves dispossessed, and all the co-tenants would be deprived of the fair market value of their inheritance for the benefit of the purchaser. These practices and the resulting injustices are described in detail in the Prefatory Note to the UHPA with Official Comment.<sup>2</sup>

The problems addressed by the UHPA were generally perceived to be prevalent in rural or agricultural areas, and the drafters of the UHPA were primarily focused on the problems of (i) partition of larger tracts of farmland or undeveloped property and (ii) perceived disregard by the courts of the factors favoring partition in kind over a partition by sale.<sup>3</sup> As of September 2018, eleven states have enacted the UHPA into law: Alabama, Arkansas, Connecticut, Georgia, Hawaii, Iowa, Montana, Nevada, New Mexico, South Carolina, and Texas as well as the United States Virgin Islands.<sup>4</sup> In addition, the legislatures of the District of Columbia, Indiana, Kansas, Mississippi, Nebraska, New York, Oklahoma, Virginia and West Virginia have introduced the UHPA for passage.<sup>5</sup> The Illinois and Missouri legislatures each passed the UHPA this year, with the bills awaiting action by their respective Governors.<sup>6</sup>

More recently, it has become clear that the deficiencies of partition of heirs property is also a significant urban problem. However, unlike rural property for which partition in kind is feasible, partition in kind is not feasible for most urban residential properties because they consist of homes on small lots that cannot be divided. This requires greater focus on improving the procedures for partition by sale to make them fairer for co-tenants of urban heirs property. The NY UHPA does this. Recent news reports in New York City have highlighted the use of current partition law by speculators to target homes owned in tenancy in common and occupied by low-income residents in gentrifying minority neighborhoods.<sup>7</sup> The City Bar Justice Center

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<sup>2</sup> *Id.* at 1-8; see also Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Ownership, Political Independence, and Community Through Partition Sales of Tenancy in Common Property*, 95 NW. U. L. REV. 505 (2001).

<sup>3</sup> Partition is a legal proceeding among tenants in common or tenants by the entirety who own a property. It may result in actual partition or division of the property into separate parcels, each titled in the name of an individual co-tenant according to the co-tenants' respective interests ("partition in kind"), or, alternatively where actual partition would be prejudicial to the co-tenants, by judicial sale of the entire property and division of the net proceeds among the co-tenants according to their respective interests ("partition by sale"). See 24 N.Y. Jur. 2d Cotenancy and Partition §§ 116, 117, 210, 216 and 217.

<sup>4</sup> *Partition of Heirs Property Act*, NAT'L CONFERENCE OF COMM'RS ON UNIFORM STATE LAWS, <https://www.uniformlaws.org/committees/community-home?communitykey=50724584-e808-4255-bc5d-8ea4e588371d&tab=groupdetails>.

<sup>5</sup> *Id.*

<sup>6</sup> Illinois HB3677/SB1780 (2019), <http://www.ilga.gov/legislation/BillStatus.asp?DocTypeID=HB&DocNum=3677&GAID=15&SessionID=108&LegID=120396>; Missouri SB83 (2019), [https://www.senate.mo.gov/19info/BTS\\_Web/Bill.aspx?SessionType=R&BillID=6](https://www.senate.mo.gov/19info/BTS_Web/Bill.aspx?SessionType=R&BillID=6).

<sup>7</sup> Lydia Hu, *Going, Going, Gone: New Tactic by Real Estate Investors Forcing Some New Yorkers from Their Homes*, SPECTRUM NEWS NY1 (Mar. 19, 2019), <https://www.ny1.com/nyc/all-boroughs/news/2019/03/19/going--going--gone--new-tactic-by-real-estate-investors-forcing-some-new-yorkers-from-their-homes-ny1-investigation>.

has represented a number of individuals who have been victims of attempts to partition their residential property by forced sale. The modifications made to the UHPA by the NY UHPA will be particularly helpful in correcting the problems of partition law as applied to urban property that is heirs property. Enactment of the Bill will make New York a leader and model for other states with urban heir property problems caused by gentrification.

For these reasons, the City Bar supports the NY UHPA endorsing the modifications to the UHPA incorporated in the Bill.

Because the NY UHPA is also ULC approved, when enacted it will have the additional benefit of entitling New York State to gain priority in the availability of certain federal programs administered by the United States Department of Agriculture, including loan programs, disaster relief programs and a program providing low-interest loans to owners of heirs property to enable them to restructure their legal ownership to make it more stable and to facilitate proper estate planning.<sup>8</sup>

## **I. BACKGROUND: A NEED FOR CHANGE**

The foreclosure crisis, which hit its peak in 2010 when banks seized more than one million homes and the number of foreclosure filings was 2.9 million<sup>9</sup>, has had a lasting impact on low-income Americans. While wealthy Americans were able to recover from the Great Recession by 2013, many poor families have still not been able to economically recover from the crisis that began a decade ago.<sup>10</sup> Recovery has been particularly difficult for Black and Latinx families, who were disproportionately targeted by subprime mortgage lenders during the crisis and who saw their wealth continue to decline as the wealth of white families stabilized in the years following the crisis.<sup>11</sup> While Black and Latinx families have made some economic gains in recent years, research shows that the racial wealth gap is growing, rather than shrinking.<sup>12</sup>

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<sup>8</sup> Enactment Kit: Agriculture Improvement Act of 2019, S. 2, 115th Cong. (2018), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=2530e96c-d425-890e-29cd-939b6598cd8b&forceDialog=0>; *Why Your State Should Adopt The Uniform Partition Of Heirs Property Act*, NAT'L CONFERENCE OF COMM'RS ON UNIFORM STATE LAWS, <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=9238e44d-8442-8f05-690c-2e0e6f0a32c2&forceDialog=0>.

<sup>9</sup> Corbett B. Daly, *Home Foreclosures in 2010 Top 1 Million for First Time*, REUTERS (Jan. 13, 2011), <https://www.reuters.com/article/us-usa-housing-foreclosures/home-foreclosures-in-2010-top-1-million-for-first-time-idUSTRE70C0YD20110113>.

<sup>10</sup> “The average household income of the bottom 20 percent of Americans fell \$571 between 2006 and 2016, according to Census data, while for the top 20 percent of Americans it grew by \$13,749.” Alana Semuels, *The Never-Ending Foreclosure*, THE ATLANTIC (Dec. 1, 2017), <https://www.theatlantic.com/business/archive/2017/12/the-never-ending-foreclosure/547181/>.

<sup>11</sup> Andrew Haughwout et al., *Subprime Mortgage Pricing: The Impact of Race, Ethnicity, and Gender on the Cost of Borrowing*, in BROOKINGS-WHARTON PAPERS ON PUBLIC AFFAIRS 33, 33-36 (Gary Burtless & Janet Rothenberg Pack eds. 2009).

<sup>12</sup> Tracy Jan, *White Families Have Nearly 10 Times The Net Worth Of Black Families. And The Gap Is Growing*, THE WASHINGTON POST (Sept. 28, 2017), [https://www.washingtonpost.com/news/wonk/wp/2017/09/28/black-and-hispanic-families-are-making-more-money-but-they-still-lag-far-behind-whites/?noredirect=on&utm\\_term=.af4f7b8cf5df](https://www.washingtonpost.com/news/wonk/wp/2017/09/28/black-and-hispanic-families-are-making-more-money-but-they-still-lag-far-behind-whites/?noredirect=on&utm_term=.af4f7b8cf5df).

Meanwhile, property values in rapidly gentrifying urban areas such as New York City have grown exponentially leaving many homeowners in these communities asset rich but income poor.<sup>13</sup> Low to moderate income homeowners find themselves in a precarious position because housing expenses, such as property taxes and insurance rates, have outpaced income growth.<sup>14</sup>

As a result of these factors, tenants in common who own urban heirs property are particularly vulnerable to opportunistic, or even predatory, practices by real estate developers or speculators.<sup>15</sup> The investor targets a vulnerable, uninformed or ill-advised non-resident tenant in common and purchases his or her share of the property, often for just a fraction of the value of the acquired interest. The investor then threatens or commences a partition action. The remaining tenants in common often-times cannot afford to hire counsel. However, even when they are represented, under the current partition law it can be difficult or impossible for them to prevent a court-ordered auction sale of the property. The tenants in common who reside on the property are then faced with both eviction and the potential sale of their inheritance at a below-fair-value, fire-sale auction price.

The net result is that the resident co-tenants are forced out of their homes and communities, and all of the co-tenants lose much of the appreciated value of their inherited real estate.

## **II. UNIFORM PARTITION OF HEIRS PROPERTY ACT (UPHPA)**

In 2010, the Uniform Law Commission drafted the UHPA as a response to the instability of ownership of property by tenancy in common and the hardships imposed by forced, below-market partition sales on the families that own heirs property. The UHPA sought to address shortcomings in partition law as applied to heirs property (but only heirs property) in multiple ways. First it defined certain property as “heirs property” based on its ownership meeting certain criteria, focused mainly on title to the property being held by tenants in common (“TICs”) without a tenancy-in-common agreement (“TIC agreement”) where a significant number of the TICs are relatives, indicating family ownership of the property. Once a property is identified as “heirs property,” a procedure is established for valuation of the property by appraisal. This appraisal serves two purposes. One is to set a floor price in the event partition by sale were ordered. The second is to specify the price at which non-petitioning co-tenants may buy the interests of any co-tenants who sought partition by sale. Such a right to purchase at fair market value the interests of a co-tenant seeking partition is a standard provision in many if not

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<sup>13</sup> *Asset Rich and Cash Poor in Bed-Stuy*, CENTER FOR NEW YORK CITY NEIGHBORHOODS (Apr. 13, 2015), <https://cnycn.org/asset-rich-and-cash-poor-in-bed-stuy/>.

<sup>14</sup> In fact, low-income households face the greatest burden in the gap between property tax growth and income growth. From 2005-2016, New York residential property tax has grown at an average rate of 6.4% annually while incomes have grown only by about 2% annually. For households making less than \$50,000 annually, property tax rates have grown by 98% during this time period, while median incomes have declined. These numbers take into account tax credits and other programs designed to reduce property tax burdens on seniors and low-income households. OFFICE OF THE NEW YORK CITY COMPTROLLER SCOTT M. STRINGER, *GROWING UNFAIRNESS: THE RISING BURDEN OF PROPERTY TAXES ON LOW-INCOME HOUSEHOLDS* 1-2 (2018), [https://comptroller.nyc.gov/wp-content/uploads/documents/Property\\_Taxes\\_in\\_New\\_York\\_City.pdf](https://comptroller.nyc.gov/wp-content/uploads/documents/Property_Taxes_in_New_York_City.pdf).

<sup>15</sup> Thomas W. Mitchell, Stephen Malpezzi & Richard K. Green, *Forced Sale Risk: Class, Race, and the “Double Discount”*, 37 FLA. ST. U. L. REV. 589, 607-08 (2010).



most TIC agreements, a feature long considered protective of the interests of all co-tenants. That buy-out right also makes perfect sense given that a co-tenant who seeks partition by sale has already evidenced his or her consent to being bought out.

Secondly, it revamps partition sale procedures by placing property on the open market with a real estate broker instead of selling it through a judicial auction with minimal notice, no right of inspection, and no marketing.<sup>16</sup> This open market practice builds on the extensive experience in bankruptcy cases of conducting asset sales professionally to maximize value, by extensive advertising, opportunities for due diligence and inspection rights.

Third, the UHPA bolsters the stated statutory preference for partition in kind (physically dividing up the land into parcels) as opposed to partition by sale (selling the land and dividing the proceeds), by not permitting partition by sale unless a co-tenant has expressly requested a sale, thereby triggering the right of the other co-tenants to buy-out the petitioning co-tenant at fair market value. The pre-existing partition law of many states, including New York,<sup>17</sup> contains an express stated preference for partition in kind, but in practice partition by sale is readily granted even when not requested by a party or when it is only in the interest of a co-tenant who desires to freeze out the interests of his other co-tenants through a bargain auction purchase.

The present stated statutory preference for partition in kind is weakly enforced in most states, including New York, by court decisions that make partition by sale the *de facto* preference. New York courts faced with a partition petition (like the courts in the vast majority of states<sup>18</sup>) primarily limit their consideration of prejudice from partition in kind to economic factors in deciding to order partition by sale.<sup>19</sup> Under this judge-made economics-only test, New York courts consider “whether the aggregate value of the several parts when held by different individuals in severalty would be materially less than the whole value of the property if owned by one person.”<sup>20</sup>

This economics-only test for determining whether to order a partition in kind or by sale often leads to a partition by sale of a home, because there usually is no way to divide an urban residential property in kind without causing some diminution in the value of the property. This problem with an economics-only test of prejudice is exacerbated because New York courts, in applying the test, understate the prejudice that will result from partition by sale by both ignoring the effect of taxes on reducing the net amounts co-tenants may receive and ignoring the fact that the proceeds of a forced auction sale will be substantially below fair market value.<sup>21</sup> Instead, they focus on theoretical gross appraised values in deciding that prejudice may result from a partition in kind.<sup>22</sup> New York’s economics-focused test creates a situation wherein partition by

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<sup>16</sup> *Id.*

<sup>17</sup> N.Y. Real Prop. Acts. Law § 901.

<sup>18</sup> *Tri-State Concrete Co. v. Stephens*, 406 So. 2d 205, 208 (La. 1981) (If partition in kind would result in an “inconvenience to the owner,” the property must be partitioned by sale).

<sup>19</sup> See *Snyder Fulton St., L.L.C. v. Fulton Interest, L.L.C.*, 868 N.Y.S.2d 715, 717 (3rd Dep’t 2008); *Partrick v. Preiser*, 341 N.Y.S.2d 806, 808 (Sup. Ct. Sullivan Cty. 1972).

<sup>20</sup> *Snyder Fulton St., L.L.C.*, 868 N.Y.S.2d at 717; *Partrick*, 341 N.Y.S.2d at 808.

<sup>21</sup> *Loughran v. Cruickshank*, 778 N.Y.S.2d 225, 228 (3rd Dep’t 2004).

<sup>22</sup> *Snyder Fulton St., L.L.C.*, 868 N.Y.S.2d at 717.

sale will almost always end up being the default option for urban residential heirs property, despite the statutory language that suggests otherwise.

### III. NEW YORK'S IMPROVEMENTS TO THE UHPA

While the UHPA is an excellent step toward ensuring more just outcomes for families subjected to forced partitions, the experience in other States and suggestions of experts have identified a number of ways to improve its functioning, which have been incorporated into the NY UHPA.

#### a. Mediation Settlement Conference

The first modification, incorporated from the general partition laws of at least two states and endorsed by a number of experts<sup>23</sup>, is the addition of a mediation/settlement process that can be used to foster negotiations among the tenants in common, often to ameliorate family disputes that are causing pressure for partition and to encourage a higher offer from a petitioning co-tenant interested in developing the property. Mediation provisions are part of the general partition laws of North Carolina and Indiana.<sup>24</sup>

Mediation allows parties to “participate in the process, to tell their side of the story and to contribute in determining the outcome of the dispute.”<sup>25</sup> Many attorneys find that mediation improves their communication with their clients.<sup>26</sup> Additionally, litigants in cases with earlier mediation referrals “filed fewer motions and had conducted less discovery,” suggesting that mediation can have an effect on “reducing costs.”<sup>27</sup> Indeed, to the extent that mediation encourages and creates more opportunities and incentives for litigants to settle, it likely will reduce costs.<sup>28</sup>

These aspects of mediation could benefit many individuals involved in a dispute over property partition. Enabling litigants to participate in the process and help determine the outcome of the dispute may encourage creative decision-making that could highlight non-economic factors and lead to a greater frequency of partitions-in-kind. Additionally, reducing the costs of litigation, encouraging settlement, and reducing the time the cases take before resolution will particularly benefit low-income clients.

Statutorily-mandated mediation does not exist in New York for partition actions. New York, however, already has a framework to allow for settlement negotiations in the residential

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<sup>23</sup> Rishi Batra, “Improving the Uniform Partition of Heirs Property Act,” *George Mason Law Review* 24 (2017), 763-765; *see also*, Heller, Michael A. and Dagan, Hanoch, “The Liberal Commons,” *The Yale Law Journal* 110 (2001), 595.

<sup>24</sup> N.C. Gen. Stat. § 46-22.1; Ind. Code § 32-17-4-2.5.

<sup>25</sup> Dorcas Quek, *Mandatory Mediation: An Oxymoron? Examining the Feasibility of Implementing A Court-Mandated Mediation Program*, 11 *CARDOZO J. OF CONFLICT RESOLUTION* 479, 482 (2010).

<sup>26</sup> Roselle L. Wissler, *Court-Connected Mediation in General Civil Cases: What We Know from Empirical Research*, 17 *OHIO ST. J. ON DISP. RESOL.* 641, 691 (2002).

<sup>27</sup> *Id.* at 695.

<sup>28</sup> *Id.* at 672-73.



foreclosure context under N.Y. C.P.L.R. 3408. The NY UHPA incorporates a similar mediation provision in subdivision 5 under the title “Settlement Conference.” The foreclosure settlement conference is essentially a court-monitored mediation that requires the parties to sit down and negotiate in good faith in an attempt to avoid the unnecessary foreclosure of the home.<sup>29</sup> Residential foreclosure actions are similar to partition actions in that the end result is a judicial sale of the real property.<sup>30</sup> The topics for such settlement conferences may include negotiation among interested parties with the goals of avoiding unnecessary litigation of issues, the unnecessary loss of the home and displacement of heir occupants; methods of sale or partition in kind; means of obtaining financing for the heir co-tenants; and consideration of equities beyond the established economic ones that often benefit the investor seeking partition by sale.

As in the foreclosure process, a mandatory partition settlement conference will give unrepresented heirs an opportunity for meaningful participation. The typical co-tenant defendants in a partition or foreclosure action may not realize the need to file a formal answer within 20 days of service of a summons and complaint, but it has been shown that if they are given notice by mail they will appear in person at a court-monitored conference.<sup>31</sup> Thus, the settlement conference prevents default judgments, and the co-tenants will also learn how to obtain legal services and will be informed of the procedural rules governing the partition action.

#### **b. Right of Heirs to Acquire Interests of Petitioning Co-Tenants**

The UHPA provides co-tenants with the right to purchase the interest of any co-tenant who petitions for partition by sale. The NY UHPA clarifies this right. First, it makes clear that partition by sale includes not only a sale of the entire property but also a sale of the portion of the property on which an heir resides. This protects against an outcome in which a small portion of land is partitioned in kind but provision is nonetheless made for a co-tenant buyout of the residence where partition in kind is not feasible. Second, the NY UHPA clarifies the requirement that co-tenants declare their intention to seek partition by sale by a deadline set by the court. The NY UHPA expressly states that such co-tenants, by requesting sale, have consented to the purchase of their interests at the court-determined fair market value. Finally, the NY UHPA provides that in the event the right to purchase is fully or oversubscribed by the co-tenants, it will be allocated, first, among co-tenant heirs resident on the property and, second, to the remaining co-tenant heirs.

### **IV. PROTECTION OF THE RIGHT TO PARTITION**

The NY UHPA is not intended to change the basic New York law applying to partition of tenancies in common. The Bill applies only to situations in which there is no TIC agreement

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<sup>29</sup> The 2008 legislation that created the conference is set to expire on February 20, 2020 but there is proposed legislation to extend the conferences.

<sup>30</sup> In fact, owner-occupied homes that are above water and reach a final judgment of foreclosure and sale could also benefit from the home being placed on the open market to maximize the sale price of the home to the benefit of all parties. The existing judicial foreclosure process results in a potential deficiency judgment and loss of equity to the homeowner and a windfall to purchasers at auction.

<sup>31</sup> Armentrout, Lynn, “Foreclosed Homeowners Foreclosed From Telling Their Stories,” NY Law Journal (Mar. 16, 2016) <https://bit.ly/2WKLtKT>.

among the co-tenants and the tenancy in common involves heirs property, i.e., property substantially owned or occupied by heirs of an original owner who did not have the foresight or the means to provide for a TIC agreement or some similar arrangement among his or her heirs addressing the issue of partition. Furthermore, it continues to protect the right of partition by sale even as to heirs properties. Consistent with New York's ostensible statutory preference for partition in kind, the Bill strengthens the preference for partition in kind when that is feasible, but still makes partition by sale available for those who demand it, even when partition in kind would result in great manifest prejudice. It protects the right of each co-tenant to demand and receive its share of the court-determined fair market value of the property. It does so in the manner in which a well-drafted TIC agreement would ordinarily do so if proper planning had occurred. If the heir co-tenants are unable to raise the funds required to exercise their fair-market buy-out rights and partition by sale is then ordered, then that sale will be a brokered sale designed to maximize the sale proceeds to benefit all of the co-tenants proportionately in their capacity as co-tenants.

The intent of the law is not to make partition proceedings unduly difficult or expensive but to provide reasonable, basic procedural protections for the legitimate expectations and economic rights of the co-tenants against practices of speculators or developers who buy a fractional interest in a co-tenancy cheaply (not as an investment but to acquire the ability to demand partition) and then seek to take advantage of both deficiencies in current law and the socio-economic and legal circumstances of their other co-tenants in order to acquire the entirety of a desirable and appreciated property for a fraction of its value. Existing New York State partition law in practice leaves co-tenant heirs subject to such opportunistic or predatory behavior and results in occupant heirs being particularly vulnerable to displacement.<sup>32</sup>

## **V. RECOMMENDATION**

The New York City Bar Association recommends that the New York State Legislature enact the NY UHPA.

Commercial Law and Uniform State Laws Committee  
Alan Kolod, Chair

Housing and Urban Development Committee  
Daniel M. Bernstein, Co-Chair

Pro Bono and Legal Services Committee  
Amy P. Barasch, Co-Chair  
Jennifer K. Brown, Co-Chair

Updated and Reissued June 2019

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<sup>32</sup> See Hu, *supra* note 6; Mitchell, Malpezzi & Green, *supra* note 14, at 607-08.

**NEW YORK UNIFORM PARTITION OF HEIRS PROPERTY ACT  
A.7058-A (AM Dinowitz) / S.4865-A (Sen. Hoylman)**

**SUPPORTING ORGANIZATIONS**

- New York City Bar Association
- Brooklyn Bar Association Volunteer Lawyers Project, Inc.
- Grow Brooklyn, Inc.
- Mobilization for Justice, Inc.
- Uniform Law Commissioners

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## This New Tactic by Real Estate Investors Is Forcing Some from Their Homes

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Ahmasi Lloyd never thought he would have to trade his home in Corona, Queens for a small rental in Woodside. The house had been in his family since 1952. Through inheritances, Lloyd and his siblings came to own it. But they owed \$30,000 in property taxes and were struggling to pay their late sister's medical debts.

"And that's when the knock at the door came," Lloyd says. "He came with an offer for the house."

It was a man from a company called the Jai Group, Lloyd says. The man told Lloyd his two brothers agreed to sell their two-thirds interest in the house. Now the Jai Group was coming after Lloyd's stake, too.

"He was ready to close the deal and I was the monkey wrench," Lloyd says.

Turns out, the law was on the Jai Group's side.

When a property has multiple owners, generally any owner can force its sale by filing what's known as a "partition action" in court. The concept dates to English common law. But NY1 discovered, a growing number of investors are using partition actions to reap windfalls today.

"There is nothing to stop this sort of behavior," says Scott Kohanowski, director of the Homeowner Stability Project with the City Bar Justice Center.

Kohanowski says Lloyd's case fits a pattern he has been seeing in the city recently: Investors swooping in, forcing the sale of houses that, through inheritances, are owned by many members of one family.

"Investors will acquire these individual interests from these heirs one by one or as a group," he says, "and then they will approach the holdout."

### IS THIS HAPPENING TO ANYONE ELSE?

Yes: it's happening to Gail Oakes. She lives in a two-family house her grandmother and aunts purchased in 1945. It's about a mile away from Lloyd's family home.

"I grew up in this house," says Oakes.



*(Gail Oates pictured inside her home in Corona, Queens.)*

She inherited eight percent of the property; 15 relatives inherited the rest. About two years ago, Oakes recalls, a man from the Jai Group appeared at the door, urging her to sell. His business card, according to Oakes, identified him as a "property investor." Oakes says she refused his offer, but her relatives sold their 92 percent stake for \$445,000.

"I was floored. I could not believe this," Oakes says. "I was floored. I could not believe this," Oakes says.

The Jai Group, which has offices in Uniondale, Long Island, declined to comment.

Oakes thought as long as she held out, she could stay in her home. But in December, the buyer of her relatives' shares filed a partition action in Queens County Supreme Court.

The buyer, 3333 Group Corp., is based in Syosset, Long Island. It filed incorporation papers with the state in June 2018, shortly before it bought out Oakes' relatives. The company did not respond to a request by NY1 for comment. Its precise relationship with the Jai Group could not be determined.



*(Pictured above: Gail Oates's home in Corona, Queens.)*

Oakes turned to Scott Kohanowski and the Homeowner Stability Project for help. Kohanowski says in two years, he's helped six homeowners like Oakes and Lloyd.

"And you have to think, for every person that contacts us for help, there must be a dozen or more people out there that don't," Kohanowski adds.

NY1 found eight partition actions filed in Queens and Brooklyn last year against holdout homeowners. NY1 found eight partition actions filed in Queens and Brooklyn last year against holdout homeowners.

Legal experts say in such cases, the holdouts often agree to sell because it's cheaper than fighting in court. And if there is no settlement, the court usually orders an auction. Either way, the home almost always sells for less than market value. Kohanowski fears that could happen to Oakes.

"If she doesn't have sufficient money to find a new home, then she's going to have to leave New York City entirely. And that just furthers this gentrification process that we're experiencing," Kohanowski says.

After his brothers sold their shares for \$265,000, Ahamsi Lloyd decided to sell, too, for \$135,000. The buyer also agreed to pay off the property taxes and the family's medical debts, acquiring the house for a total of \$525,000.

"It seems logical to think that if we had done it on our own, we probably could have made a little bit more change," says Lloyd.



Indeed, five months after buying the home for \$525,000 in 2017, the new owner flipped it - for \$900,000.

"You're kidding. Wow," Lloyd said as he learned the about the sale for the first time. "That's disconcerting."



*(Ahmasi Lloyd pictured holding a photograph of his childhood home in Corona, Queens.)*

NY1 was unable to determine how much, if any, work was put into the house before it was flipped, but public records show no permits were issued for any improvements.

"[It's] very upsetting because he had all these options he was deprived of," Kohanowski explains. He was exploring options to help Lloyd afford to keep the home, he says, before Lloyd's brothers sold their interest in the property.

"He could have worked with his brothers," Kohanowski says. "They could have put aside these disagreements that they had and come to an easy resolution and instead these investors stripped hundreds of thousands of dollars of accumulated wealth from him."

#### **WHAT CAN BE DONE TO PROTECT ONESELF FROM PARTITION ACTION?**

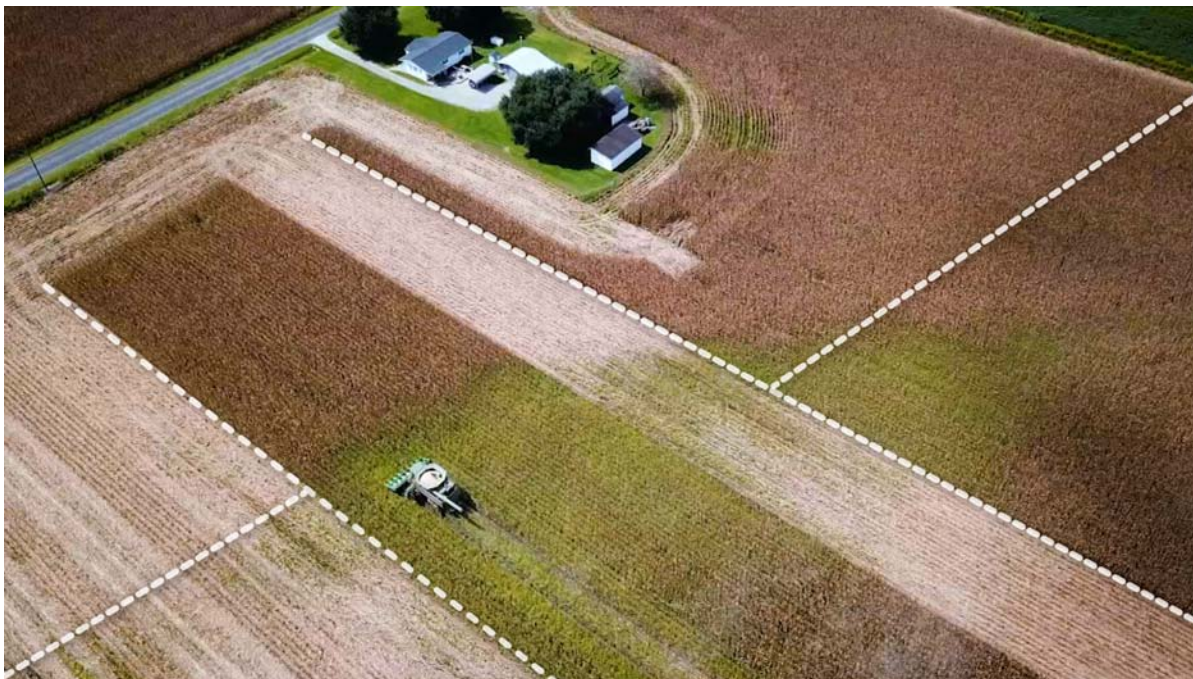
- According to experts, someone with an interest in an heirs property who wishes to secure ownership should proactively identify all other owners in the property to discuss each owner's plans for their respective interest in the property. Legal counsel during this process is suggested.

JH 3748 LLC, a limited liability corporation based in Manhasset, Long Island, is the entity that bought the property from Lloyd and his brothers, and then resold it. Records show it was created in May 2017,



at about the same time Lloyd's brothers sold their shares. The company was dissolved a year later. The company did not respond to a request by NY1 for comment.

For years, investors considered by some as predatory, have used partition actions to force sales of family farms at steep discounts. It's been a particular problem in the south, forcing the sale of farms owned for generations by African-American families. Experts say the relatively new focus on houses in New York is a result of gentrification, sending home values soaring in once-beaten-down areas.



“What we discovered was that in states throughout the country, especially in areas where the property value is rapidly appreciating, sometimes in gentrifying areas, sometimes in areas that for the first time really had gotten into the path of development, was that you had certain real estate investors or developers who then took advantage of partition law,” says Thomas Mitchell, professor at Texas A&M University School of Law, who has studied partition law for more than 20 years.

The problem, Mitchell says, is that holdout owners rarely get market value in court-ordered auctions. Instead, the auctions often end with the so-called predatory investor scooping up the property at a discount.

“The notice to the public that there will be a sale is scant, prospective bidders have no opportunity to inspect the property, so often times they have to assume it’s a lemon,” Mitchell says. “The notice to the public that there will be a sale is scant, prospective bidders have no opportunity to inspect the property, so often times they have to assume it’s a lemon,” Mitchell says.

Mitchell leads an effort to help families facing the threat of partition actions. “We wanted to limit the abuse of these real estate investors, speculators,” he says.

“Often times, people who are living in these communities that we’re talking about are people who do not have asset portfolios that are very well diversified. Any wealth that they had as wealth is associated with their real property ownership,” he explained.

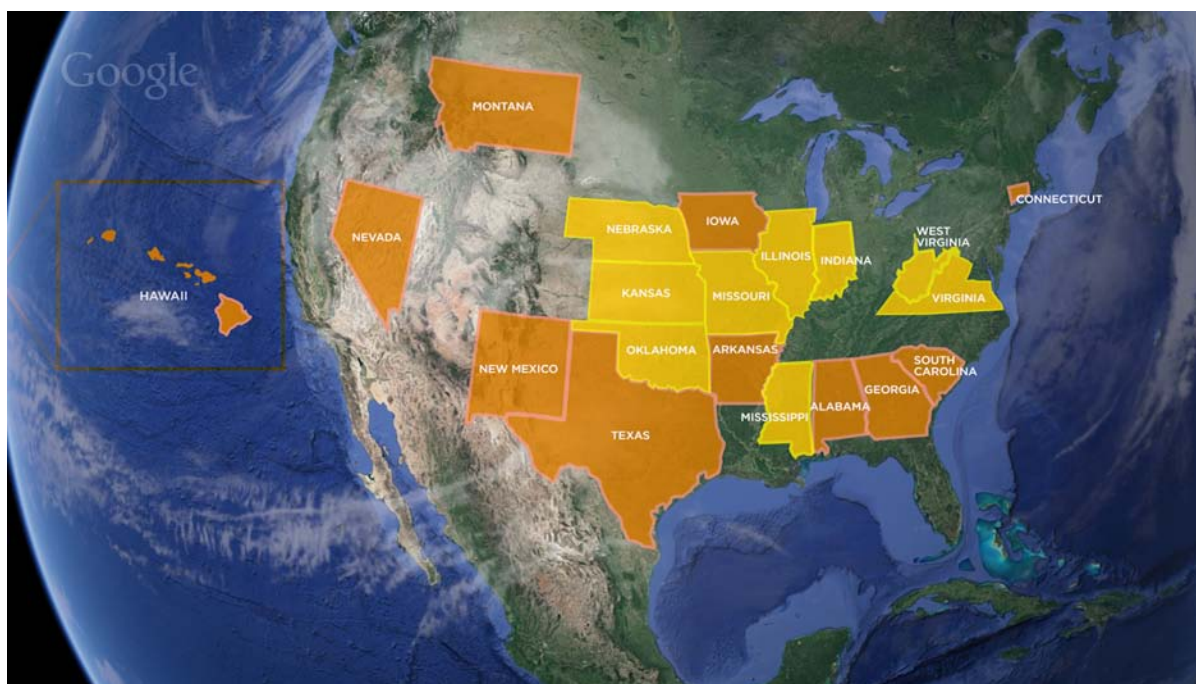
He was the principal drafter of the Uniform Partition of Heirs Property Act. It requires that judges favor dividing a property over selling it and consider who lives on the property and whether that person would become homeless in a forced sale.

“If one person has lived on the property for a long time, and has relied on it, we ought to be reluctant to have a sale that would dispossess that person from the property if there is a way of partitioning in kind and letting that person stay,” says Stewart Sterk, a professor Cardozo Law School.

But here in New York, a home like Oakes’ cannot be physically divided like a farm can, making a sale necessary. In states that have adopted the Uniform Partition of Heirs Property Act, forced sales must take place through brokers, on the open market, not at auction.

“It might deter speculation because they know they won’t end up with the property at a bargain price,” says Sterk.

The uniform act has been adopted by 11 states and introduced in nine others, but not New York.



*(Orange states: places where the Uniform Partition of Heirs Property Act has been adopted. Yellow states: places where the law has been introduced.)*

Oakes and her legal team hope a legislator in Albany will take up the cause. If it is too late to help her, they say, perhaps a new law could save others from being stripped of equity that took generations to create.