

Your Court Street Lawyer's Quick Reference Guide

Hug Of War instead of Tug of War

RPAPL §993: Uniform Partition of Heirs Property Act

By Richard A. Klass, Esq.



“If you don’t believe in ghosts, you’ve never been to a family reunion.”

— Ashleigh Brilliant

Richard A. Klass, Esq. maintains a law firm engaged in civil litigation in Brooklyn, New York. He may be reached by e-mail at richklass@courtstreetlaw.com or by phone at (718) COURT●ST with any questions. Prior results do not guarantee a similar outcome.

This book is designed for general information only. The information presented here should neither be construed to be formal legal advice nor the formation of a lawyer/client relationship.

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Book design and production by Robert Matson
The Innovation Works, Inc.
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BIO

Richard A. Klass is the quintessential “Court Street lawyer,” as defined by *The New York Times*, a “street-smart sharpie with verve, hustle and a striver’s charisma.” Practicing law much like a critical care doctor functions, Klass is the lawyer clients appreciate when the issue is so vital. Practicing primarily in the areas of commercial litigation, debt collection and enforcement of judgments, legal malpractice, and real estate litigation, his firm also represents clients in bankruptcy, civil appeals, and federal court litigation. Mr. Klass lectures and writes extensively for lawyers and industry professionals.

Mr. Klass serves as an Officer of the Brooklyn Bar Association, Member of the Grievance Committee for the Appellate Division, Second Department, Former Chair of the General Practice Section of the New York State Bar Association, Co-Editor of the New York State Bar Association’s General Practice Section *One on One* Publication, and an Arbitrator, Small Claims Part of the Civil Court of the City of New York, County of Kings. He also served as a representative to the Statewide Special Counsel for the Supreme Court’s Commercial Division. Mr. Klass also serves as a Fee Arbitrator in the Part 137 Attorney-Client Fee Dispute Program. He has been selected for the New York Super Lawyers List.

In 1989, Mr. Klass received his Bachelor of Arts at Hofstra University and his Juris Doctorate at New York Law School in 1992. He was the Recipient of the American Jurisprudence Award in Conflict of Laws. Mr. Klass is admitted to the following jurisdictions: State of New York

(1992); State of New Jersey (1993); U.S. District Court for the Eastern District of New York (1992); U.S. District Court for the Southern District of New York (1992); U.S. District Court for the District of New Jersey (1993); U.S. Court of Appeals for the Second Circuit (1999); and the U.S. Supreme Court (1997).

Richard Klass has been a formative voice within New York law circles both for the high standards of his work as well as his extensive writings, lectures, and appearances in the media. He reaches an audience of lawyers and non-lawyers equally through publications which include his quarterly newsletter, *Law Currents* and his blogs *Law Currents* and *The Legal Malpractice Blog, New York*. His books include *A Man’s Home is (Not Always) his Castle: RPAPL 881 Licenses* (2019); *I Got Bloomed: Keeping Client Confidences and Loyalties* (2018), *Killing the “Zombies”: Recent Changes to New York State’s Foreclosure Laws* (2017), *Attorney’s Liens and Legal Fee Enforcement* (2015), *Retention and Withdrawal of Counsel: a guide for attorneys* (2015), and *Successfully Defending Your Credit Card Lawsuit* (2013). The newsletter and blog, *Law Currents*, with tens of thousands of readers combined, is particularly popular. Written in a style that appeals to nearly anyone who likes a good story, this two-page illustrated quarterly features entertaining and informative case studies written in plain English.

Richard A. Klass, Esq.

Litigation for the Legal Profession:

Legal Malpractice

Attorney fee collection

Consultation on and litigation of attorney’s
retaining and charging liens

Expert Witness analysis and testimony on
reasonable attorney’s fees and award

Background of the Uniform Partition of Heirs Property Act:

The background leading to the enactment of the Uniform Partition of Heirs Property Act (UPHPA) in several states, including New York, was the recognition that many landowners in rural and agricultural areas died without leaving either a Last Will and Testament or a Tenants in Common Agreement resolving the disposition of real property. Once the farmer passed away, the farmer's children or grandchildren couldn't agree on what to do with the family farm, resulting in some family members selling their interests while others tried but couldn't come to terms to buy out others. The failure to resolve these intrafamily matters led to outside investors purchasing fractional shares of property and then suing for partition of the whole property to the detriment of the remaining family members.

Action for Partition: Generally, when two or more people own real estate together, they hold title to the property as "tenants in common," unless designated as holding title in another form (for instance, as joint tenants or tenants by the entirety). The co-owners of real estate are referred to as "co-tenants." When co-tenants cannot agree on how to deal with or dispose of their property, any co-tenant may seek to bring an action to partition the property (think of this as a 'divorce' for real estate). The end result of a partition action may be the consensual sale of the property by all of the owners; buy-out of co-tenant(s)' interests; sale of the property by a court-appointed referee at auction; or actual partition of the property in kind (division of the property into shares, such as 10 acres to A and 10 acres to B). New York State's law regarding actions for partition is codified in the Real Actions and Proceedings Law (RPAPL) Article 9.

Unfortunately, most partition actions result in the auction sale of the property for less than far market value. Several factors for this result include the inability of co-tenants to agree on either the sale of the property or buy-out of a party's interest; auction sales resulting in a lower purchase price than an open market sale through a real estate broker; the quick timing of a judicial sale and subsequent closing, leaving a small pool of potential bidders with cash instead of mortgage funds; minimal marketing; and no right of inspection or due diligence by potential bidders.

From the Fact Sheet from the Uniform Law Commission: The Uniform Partition of Heirs Property Act (UPHPA) helps preserve family wealth passed to the next generation in the form of real property. If a landowner dies intestate, real estate passes to the landowner's heirs as tenants-in-common under state law. Tenants-in-common are vulnerable because any individual tenant can force a partition. Too often, real estate speculators acquire a share of heirs' property in order to file 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 and deplete a family's inherited wealth in the process. The UPHPA provides a series of simple due process protections: notice, appraisal, right of first refusal, and if the other co-tenants choose not to exercise their right and a sale is required, a commercially reasonable sale supervised by the court to ensure all parties receive their fair share of the proceeds. In 2018, the U.S. Congress passed a law giving preference for certain federal farm loans to states that enact the UPHPA.

Call to Action in New York: While the origins of the UPHPA may have arisen from rural areas, without doubt, the need for legislative action in urban areas became very apparent. In many low-income urban areas, including New York City, neighborhoods have been gentrifying and property values have significantly increased. Real estate speculators have targeted family members to purchase fractional interests in single and multi-family houses. These houses cannot be actually divided/partitioned; rather, these houses are sold at auction. In many instances, those family members occupying the house are "house rich but cash poor."

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With the desire to preserve accumulated family wealth for the benefit of all descendants, not just those who sold out early, New York State legislators in conjunction with the Uniform Law Commission and bar association committees went to work to pass the UHPA.¹ In addition to the preservation of intergenerational wealth for all New York families, there was recognition that legislation would benefit Black and Latino families living in New York's gentrifying neighborhoods.²

¹ *New York State Senate Sponsor Memo (S4865A)*: "Justification: As a general rule under current 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 action in court under Article 9 of the Real Property Actions and Proceedings Law. In recent years, predatory real estate speculators have taken advantage of New York's laws governing partition actions by purchasing a stake in a residential property - usually after a number of family members have inherited the property - and then using that ownership stake to file a partition action to dispossess the family of the property through a forced sale, often for pennies on the dollar relative to the actual value of the property. Lower- and middle-class families are particularly susceptible to these types of schemes, as they often do not engage in the kind of sophisticated estate planning that could prevent predatory partitioning actions.

This legislation would address the issue of predatory partition actions, while preserving a co-owner's right to sell his or her share of the property. The Act would only apply in situations where at least one of the co-owners has inherited their property interest from a relative and there is no written agreement otherwise governing partition among the owners. In such situations, there are a number of protections in place when a co-owner files for a partition order:

- The co-owner requesting the partition must give notice to all of the other co-owners.
- The court must order an independent appraisal to determine the property's fair market value.
- 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 value.
- 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 a partition-in-kind would be inappropriate, and the court orders a partition-by-sale, the property must be offered for sale on the open market at a price no lower than the court-determined value for a reasonable period of time and in a commercially reasonable manner."

² *New York City Bar Report on Legislation*, June 2019. "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, 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. 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. 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. 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. 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. 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. 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."

Enactment of RPAPL 993:

On December 6, 2019, RPAPL 993 was signed by the Governor into NYS law. The highlights of the newly-enacted law concerning “heirs property” include: setting up a mediation/settlement process which may be used to foster negotiations among heirs; establishing procedures to determine fair market value; allowing sufficient time for co-tenants to purchase other co-tenants’ interests in the property; and exploring the use of means to sell the property other than a judicial auction to maximize value to inure to the benefit of all co-tenants. Section

§ 993. Uniform partition of heirs property act

1. Short title. This section shall be known as the “uniform partition of heirs property act”.

2. Definitions. For purposes of this section, the following terms shall have the following meanings:

(a) “Ascendant” means an individual who precedes another individual in lineage, in the direct line of ascent from such other individual.

(b) “Collateral” means an individual who is related to another individual under the law of intestate succession of this state but who is not such other individual's ascendant or descendant.

(c) “Descendant” means an individual who follows another individual in lineage, in the direct line of descent from such other such individual.

(d) “Determination of value” means a court order determining the fair market value of heirs property under subdivision six or ten of this section or adopting the valuation of the property agreed to by all co-tenants.

(e) “Heirs property” means real property held in tenancy in common which satisfies all of the following requirements as of the filing of a partition action:

(i) there is no agreement in a record binding all of the co-tenants which governs the partition of the property;

(ii) any of the co-tenants acquired title from a relative, whether living or deceased; and

(iii) any of the following applies:

(A) twenty percent or more of the interests are held by co-tenants who are relatives;

(B) twenty percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased;

(C) twenty percent or more of the co-tenants are relatives of each other; or

(D) any co-tenant who acquired title from a relative resides in the property.

(f) “Partition by sale” means a court-ordered sale of the entire heirs property, or the portion thereof in which any co-tenant who acquired title from a relative resides, whether by auction, sealed bids, or open-market sale conducted under subdivision ten of this section.

(g) “Partition in kind” means partition or division of heirs property into physically distinct and separately titled parcels.

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(h) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(i) "Relative" means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this state other than under this section.

3. Applicability; relation to other law. (a) This section applies to partition actions filed on or after the effective date of this section.

(b) In any action to partition real property, the court shall determine, after notice and the right to be heard afforded to each party, whether the property is heirs property. If the court determines that the property is heirs property, the property shall be partitioned in accordance with this section unless all of the co-tenants otherwise agree in a record.

(c) This section shall supplement the general partition statute of this article and, if an action is governed by this section, shall replace the provisions of such general partition statute that are inconsistent with this section.

4. Service; notice by posting. (a) This section shall not limit or affect the method by which service of a complaint in a partition action may be made.

(b) If the plaintiff in a partition action seeks an order of notice by publication and the court determines that the property may be heirs property, the plaintiff, not later than ten days after the court's determination, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action. The sign shall 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 may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

5. Settlement conference. (a) In any partition action of heirs property, plaintiffs shall file proof of service within twenty days of such service, however service is made, and the court shall hold a mandatory conference within sixty days after the date when a request for judicial intervention is filed, or on such adjourned date as has been agreed to by the parties, for the purpose of holding settlement discussions pertaining to the relative rights and obligations of the parties with respect to the subject property including, but not limited to, as set forth in this section.

(b) Upon the filing of a request for judicial intervention, the court shall promptly send a notice to parties advising them of the time and place of the settlement conference, the purpose of the conference and the requirements of this section. The notice shall be in a form prescribed by the office of court administration, or, at the discretion of the office of court administration, the administrative judge of the judicial district in which the action is pending. Plaintiff shall post a copy of the settlement conference notice in a conspicuous place on the property within twenty days of the date of the notice.

(c) The settlement conference may be adjourned or reconvened from time to time as appropriate during the pendency of the partition action. At any conference held pursuant to this section, the plaintiffs and the defendants shall appear in person or by counsel, and each party's representative at the conference shall be fully authorized to dispose of the entirety or any portion of the case. If the defendant is appearing pro se, the court shall advise the defendant of the nature of the action and his or her rights and responsibilities as a defendant.

(d) At the first settlement conference held pursuant to this section, if the defendant has not filed an answer or made a pre-answer motion to dismiss, the court shall (i) advise the defendant of the requirement to answer the complaint, (ii) explain what is required to answer a complaint in court, (iii) advise that the ability to contest the partition action and assert defenses may be lost if an answer is not interposed, (iv) set a deadline for any co-tenants requesting partition by sale, and (v) provide information about available resources for legal assistance. A defendant who appears at the settlement conference but who failed to file a timely answer, pursuant to rule three hundred twenty of the civil practice law and rules,

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shall be presumed to have a reasonable excuse for the default and shall be permitted to serve and file an answer, without any substantive defenses deemed to have been waived, within thirty days of initial appearance at the settlement conference. The default shall be deemed vacated upon service and filing of an answer.

(e) Both the plaintiffs and defendants shall negotiate in good faith to reach a mutually agreeable resolution including, but not limited to, a tenancy in common agreement, a co-tenant buyout and the allocation, mechanics and financing thereof as provided in subdivision seven of this section, a partition in kind as provided in subdivisions eight and nine of this section, an open market sale as provided in subdivision ten of this section, or any other agreement or loss mitigation that is fair and reasonable considering the totality of factors listed in paragraph (a) of subdivision nine of this section.

(f) If the parties do not reach a mutually agreeable resolution, the referee, judicial hearing officer, or other staff designated by the court to oversee the settlement conference process shall make a report of findings of fact, conclusions of law and recommendations for relief to the court concerning any party's failure to negotiate in good faith pursuant to paragraph (e) of this subdivision. If the court determines a plaintiff has failed to negotiate in good faith, the partition action shall be dismissed.

(g) Any motions submitted by any party to the action may be held in abeyance while the settlement conference process is ongoing, except for motions concerning (i) a determination of the percentage interests, if any, owned by any alleged co-tenant if such interests are in dispute and (ii) compliance with this rule and its implementing rules including applications to extend in the interests of justice any deadlines fixed herein.

(h) In addition to any other qualifications otherwise required, each commissioner appointed under section nine hundred fifteen of this article and any officer appointed to conduct a sale shall be disinterested, impartial and not related to a party to or participant in the action.

6. Determination of value. (a) If the court determines that the property that is the subject of a partition action is heirs property, the court shall determine the fair market value of the heirs property for purposes of subdivision seven of this section as follows, utilizing paragraph (d) of this subdivision, unless it has determined that paragraph (b) or (c) of this subdivision apply.

(b) If all co-tenants have agreed to the value of the property or to another method of valuation, the court shall adopt such value or the value produced by the agreed method of valuation.

(c) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice of the value to the parties.

(d) If paragraph (b) or (c) of this subdivision do not apply, the court shall order an appraisal by a disinterested real estate appraiser licensed in this state to determine the fair market value of the property. Any determination of value under paragraph (c), (d), (f) or (g) of this subdivision shall assume sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(e) Not later than ten days after an appraisal is filed under paragraph (d) of this subdivision, the court shall send notice to each party with a known address, stating:

(i) the appraised fair market value of the property plus the allowed cost of the appraisal;

(ii) that the appraisal is available at the clerk's office; and

(iii) that a party may file with the court an objection to the appraisal not later than thirty days after the notice is sent, stating the grounds for the objection.

(f) If an appraisal is filed with the court pursuant to paragraph (d) of this subdivision, the court shall conduct a hearing to determine the fair market value of the property not sooner than thirty days after a copy of the notice of the appraisal is sent to each party under paragraph (e) of this subdivision, whether or not an objection to the appraisal is filed under subparagraph (iii) of paragraph (e) of this subdivision. In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

(g) After a hearing under paragraph (f) of this subdivision, but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

7. Co-tenant buyout. (a) Every co-tenant who requests or joins a request for partition of heirs property by sale has thereby agreed that his or her interest may be acquired in accordance herewith at the value determined under subdivision six of this section by the co-tenants who have not sought or joined in the request for partition by sale. Upon determination that the property is heirs property and prior to the determination of value under subdivision six of this section, the court shall send notice to all parties identifying the owners of interests that have sought partition by sale, the percentage interests such owners allege to hold and of the right of the remaining co-tenants to avert partition by sale by exercising the right to purchase all of the interests of the co-tenants who requested partition by sale.

(b) Not later than forty-five days after the notice of the determination of value under subdivision six of this section is sent and by the date specified in such notice, any co-tenant, except a co-tenant that requested partition by sale, may give notice to the court of the total amount of percentage interests subject to purchase that he or she elects to buy; provided, however, the court shall make a determination of each co-tenant's percentage ownership interest in the property prior to sending notice of the determination of value if such interest is in dispute and shall consider all facts as determined by the court and presented by the parties, and all laws and rules that govern the transfer, succession and acquisition of title through probate, intestacy or otherwise.

(c) The purchase price for percentage interests shall be the value of the entire parcel determined under subdivision six of this section multiplied by the aggregate amount of the percentage interests subject to purchase.

(d) After expiration of the period in paragraph (b) of this subdivision, the following rules apply:

(i) If one or more co-tenants have elected in the aggregate to buy at least the total amount of percentage interests subject to purchase, the court shall notify all the parties of such fact.

(ii) If the electing co-tenants' offers equal or exceed the amount of percentage interests subject to purchase, the court shall allocate the right to buy those interests among the electing co-tenants based on each electing co-tenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all co-tenants electing to buy, reserving priority, first, to electing co-tenants who acquired the interest from a relative and reside in the property and, second, to all other electing co-tenants who acquired their interest from a relative, and send notice to all the parties of the foregoing and of the price to be paid by each electing co-tenant.

(iii) If co-tenants with the right to elect fail to elect to purchase the entirety of the interests of the co-tenants whose interests are subject to purchase, the court shall send notice to all the parties of such fact and resolve the partition action under paragraphs (a) and (b) of subdivision eight of this section.

(e) If the court sends notice to the parties under subparagraph (i) or (ii) of paragraph (d) of this subdivision, the court shall set a date, not sooner than sixty days after the date the notice was sent, by which electing co-tenants must pay their apportioned price into the court. After this date, the following rules apply:

(i) If all electing co-tenants timely pay his or her apportioned price to the court, the court shall issue an order reallocating all the interests of the co-tenants and disburse the amounts held by the court to the persons entitled to them.

(ii) If no electing co-tenant timely pays his or her apportioned price, the court shall resolve the partition action under paragraphs (a) and (b) of subdivision eight of this section as if the interests of the co-tenants that requested partition by sale were not purchased.

(iii) If one or more, but not all, of the electing co-tenants fail to pay their apportioned price on time, the court, on motion, shall give notice to the electing co-tenants that paid their apportioned price of percentage of the unpurchased interests remaining and the price for all such interests.

(f) Not later than twenty days after the court gives notice pursuant to subparagraph (iii) of paragraph (e) of this subdivision, any co-tenant that paid his or her apportioned price may elect to purchase all of the remaining interest by paying the entire price to the court. After the twenty day period, the following rules shall apply:

(i) If only one co-tenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to such co-tenant. The court shall issue promptly an order reallocating the interests of all of the co-tenants and disburse the amounts held by the court to the persons entitled to such amounts.

(ii) If no co-tenant pays the entire price for the remaining interest, the court shall resolve the partition action under paragraphs (a) and (b) of subdivision eight of this section as if the interests of the co-tenants that requested partition by sale were not purchased.

(iii) If more than one co-tenant pays the entire price for the remaining interest, the court shall reapportion those remaining interests among those paying co-tenants, based on each paying co-tenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all co-tenants that paid the entire price for the remaining interest. The court shall issue promptly an order reallocating all of the co-tenants' interests, disburse the amounts held by the court to the persons entitled to such amounts, and promptly refund any excess payment held by the court.

(g) Not later than forty-five days after the court sends notice to the parties pursuant to paragraph (a) of this subdivision, any co-tenant entitled to buy an interest under this subdivision may request the court to authorize the sale as part of the pending action of the interests of co-tenants named as defendants and served with the complaint but that did not appear in the action.

(h) If the court receives a timely request under paragraph (g) of this subdivision, the court, after a hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to the following limitations:

(i) a sale authorized under this subdivision may occur only after the purchase prices for all interests subject to sale under paragraphs (a), (b), (c), (d), (e) and (f) of this subdivision have been paid to the court and such interests have been reallocated among the co-tenants as provided in such paragraphs; and

(ii) the purchase price for the interest of a non-appearing co-tenant is based on the court's determination of value under subdivision six of this section.

8. Partition alternatives. (a) If all the interests of all co-tenants that requested partition by sale are not purchased by other co-tenants pursuant to subdivision seven of this section, or if after conclusion of the buyout under subdivision seven of this section, a co-tenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in subdivision nine of this section, finds that partition in kind will result in great manifest prejudice to the co-

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tenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have their individual interests aggregated.

(b) If the court does not order partition in kind under paragraph (a) of this subdivision, the court shall order partition by sale pursuant to subdivision ten of this section provided that, if no co-tenant timely requested partition by sale, the court shall dismiss the action.

(c) If the court orders partition in kind pursuant to paragraph (a) of this subdivision, the court may require that one or more co-tenants pay one or more other co-tenants amounts so that the payments, taken together with the value of the in kind distributions to the co-tenants, will make the partition in kind just and proportionate in value to the fractional interests held.

(d) If the court orders partition in kind, the court shall allocate to the co-tenants that are unknown, cannot be located, or the subject of a default judgment, if the co-tenants interests were not bought out pursuant to subdivision seven of this section, a part of the property representing the combined interests of such co-tenants as determined by the court and such part of the property shall remain undivided.

9. Considerations for partition in kind. (a) In determining under subdivision eight of this section whether partition in kind would result in great manifest prejudice to the co-tenants as a group, the court shall consider the following:

(i) whether the heirs property practicably can be divided among the co-tenants;

(ii) whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the amount reasonably expected to be realized if the property were sold as a whole, taking into account the conditions under which a court-ordered sale likely would occur;

(iii) evidence of the collective duration of ownership or possession of the property by a co-tenant and one or more predecessors in title or predecessors in possession to the co-tenant who are or were relatives of the co-tenant or each other;

(iv) a co-tenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the co-tenant;

(v) the lawful use being made of the property by a resident or other co-tenant and the degree to which any such co-tenant would be harmed if the co-tenant could not continue the same use of the property;

(vi) the degree to which the co-tenants 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;

(vii) the price, terms and conditions of the acquisition of the co-tenant's interest in the property if such co-tenant is not a relative of the person from whom it acquired his or her interest; and

(viii) any other relevant factor.

(b) The court shall not consider any one factor in paragraph (a) of this subdivision to be dispositive without weighing the totality of all relevant factors and circumstances.

10. Open-market sale, sealed bids, or auction. (a) If the court orders a sale of heirs property, notwithstanding section two hundred thirty-one of this chapter, such sale shall be an open-market sale under this subdivision 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 co-tenants as a group.

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(b) If the court orders an open-market sale and the parties, not later than ten days after the entry of the order, agree on a real estate broker licensed in this state to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this state to offer the property for sale and shall establish a reasonable commission. The broker shall 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.

(c) If the broker appointed under paragraph (b) of this subdivision obtains within a reasonable time an offer to purchase the property for at least the determination of value:

(i) the broker shall comply with the reporting requirements in subdivision eleven of this section; and

(ii) the sale may be completed in accordance with the laws of this state other than this section.

(d) If the broker appointed under paragraph (b) of this subdivision does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after a hearing, may:

(i) order that the property continue to be offered for an additional time, by the same or a substitute broker, in accordance with paragraph (b) of this subdivision; or

(ii) if it determines that doing so would not be in the best interests of the parties, approve the highest outstanding offer.

(e) If after the court has appointed a substitute broker and there are no reasonable offers for the property, the court may order the property be sold by sealed bids or an auction and, the court shall set terms and conditions of the sale. If the court orders an auction, the auction shall be conducted in accordance with section two hundred thirty-one of this chapter.

(f) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the net proceeds.

11. Report of open-market sale. (a) Unless required to do so within a shorter time by this article, a broker appointed under paragraph (b) of subdivision ten of this section to offer heirs property for open-market sale shall 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 under subdivision six or ten of this section.

(b) The report required by paragraph (a) of this subdivision shall contain the following information:

(i) a description of the property to be sold to each buyer;

(ii) the name of each buyer;

(iii) the proposed purchase price;

(iv) the terms and conditions of the proposed sale, including the terms of any owner financing;

(v) the amounts to be paid to lienholders;

(vi) a statement of contractual or other arrangements or conditions of the broker's commission; and

(vii) other material facts relevant to the sale.

Please feel free to contact me with any questions. — *Richard A. Klass* 