

1-1 By: West S.B. No. 499
1-2 (In the Senate - Filed January 17, 2017; February 6, 2017,
1-3 read first time and referred to Committee on State Affairs;
1-4 April 3, 2017, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; April 3, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	Huffman	X		
1-9	Hughes	X		
1-10	Birdwell	X		
1-11	Creighton	X		
1-12	Estes	X		
1-13	Lucio	X		
1-14	Nelson	X		
1-15	Schwertner	X		
1-16	Zaffirini	X		

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the adoption of the Uniform Partition of Heirs'
1-20 Property Act.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Title 4, Property Code, is amended by adding
1-23 Chapter 23A to read as follows:

1-24 CHAPTER 23A. UNIFORM PARTITION OF HEIRS' PROPERTY ACT

1-25 Sec. 23A.001. SHORT TITLE. This chapter may be cited as the
1-26 Uniform Partition of Heirs' Property Act.

1-27 Sec. 23A.002. DEFINITIONS. In this chapter:

1-28 (1) "Ascendant" means an individual who precedes
1-29 another individual in lineage, in the direct line of ascent from the
1-30 other individual.

1-31 (2) "Collateral" means an individual who is related to
1-32 another individual under the law of intestate succession of this
1-33 state but who is not the other individual's ascendant or
1-34 descendant.

1-35 (3) "Descendant" means an individual who follows
1-36 another individual in lineage, in the direct line of descent from
1-37 the other individual.

1-38 (4) "Determination of value" means a court order
1-39 determining the fair market value of heirs' property under Section
1-40 23A.006 or 23A.010 or adopting the valuation of the property agreed
1-41 to by all cotenants.

1-42 (5) "Heirs' property" means real property held in
1-43 tenancy in common that satisfies all of the following requirements
1-44 as of the filing of a partition action:

1-45 (A) there is no agreement in a record binding all
1-46 the cotenants that governs the partition of the property;

1-47 (B) one or more of the cotenants acquired title
1-48 from a relative, whether living or deceased; and

1-49 (C) any of the following applies:

1-50 (i) 20 percent or more of the interests are
1-51 held by cotenants who are relatives;

1-52 (ii) 20 percent or more of the interests are
1-53 held by an individual who acquired title from a relative, whether
1-54 living or deceased; or

1-55 (iii) 20 percent or more of the cotenants
1-56 are relatives.

1-57 (6) "Partition by sale" means a court-ordered sale of
1-58 the entire heirs' property, whether by open-market sale, sealed
1-59 bids, or auction conducted under Section 23A.010.

1-60 (7) "Partition in kind" means the division of heirs'
1-61 property into physically distinct and separately titled parcels.

2-1 (8) "Record" means information that is inscribed on a
 2-2 tangible medium or that is stored in an electronic or other medium
 2-3 and is retrievable in perceivable form.

2-4 (9) "Relative" means an ascendant, descendant, or
 2-5 collateral or an individual otherwise related to another individual
 2-6 by blood, marriage, adoption, or law of this state other than this
 2-7 chapter.

2-8 Sec. 23A.003. APPLICABILITY; RELATION TO OTHER LAW.

2-9 (a) In an action to partition real property under Chapter 23, the
 2-10 court shall determine whether the property is heirs' property. If
 2-11 the court determines that the property is heirs' property, the
 2-12 property must be partitioned under this chapter unless all of the
 2-13 cotenants otherwise agree in a record.

2-14 (b) This chapter supplements Chapter 23 and the Texas Rules
 2-15 of Civil Procedure governing partition of real property. If an
 2-16 action is governed by this chapter, this chapter supersedes
 2-17 provisions of Chapter 23 and the Texas Rules of Civil Procedure
 2-18 governing partition of real property that are inconsistent with
 2-19 this chapter.

2-20 Sec. 23A.004. SERVICE; NOTICE BY POSTING. (a) This
 2-21 chapter does not limit or affect the method by which service of a
 2-22 petition in a partition action may be made.

2-23 (b) If the plaintiff in a partition action seeks citation by
 2-24 publication and the court determines that the property may be
 2-25 heirs' property, the plaintiff, not later than the 10th day after
 2-26 the date the determination is made, shall post, and maintain while
 2-27 the action is pending, a conspicuous sign on the property that is
 2-28 the subject of the action. The sign must state that the action has
 2-29 commenced and identify the name and address of the court and the
 2-30 common designation by which the property is known. The court may
 2-31 require the plaintiff to publish on the sign the name of the
 2-32 plaintiff and the known defendants.

2-33 Sec. 23A.005. COMMISSIONERS. If the court appoints
 2-34 commissioners under Rule 761, Texas Rules of Civil Procedure, each
 2-35 commissioner, in addition to the requirements and
 2-36 disqualifications applicable to commissioners under that rule,
 2-37 must be impartial and may not be a party to or a participant in the
 2-38 action.

2-39 Sec. 23A.006. DETERMINATION OF VALUE. (a) Except as
 2-40 provided by Subsection (b) or (c), if the court determines that the
 2-41 property that is the subject of a partition action is heirs'
 2-42 property, the court shall determine the fair market value of the
 2-43 property by ordering an appraisal under Subsection (d).

2-44 (b) If all cotenants have agreed to the value of the
 2-45 property or to another method of valuation, the court shall adopt
 2-46 that value or the value produced by the agreed method of valuation.

2-47 (c) If the court determines that the evidentiary value of an
 2-48 appraisal is outweighed by the cost of the appraisal, the court,
 2-49 after an evidentiary hearing, shall determine the fair market value
 2-50 of the property and send notice to the parties of the value.

2-51 (d) If the court orders an appraisal, the court shall
 2-52 appoint a disinterested real estate appraiser to determine the fair
 2-53 market value of the property assuming sole ownership of the fee
 2-54 simple estate. On completion of the appraisal, the appraiser shall
 2-55 file a sworn or verified appraisal with the court.

2-56 (e) If an appraisal is conducted under Subsection (d), not
 2-57 later than the 10th day after the date the appraisal is filed, the
 2-58 court shall send notice to each party with a known address, stating:

2-59 (1) the appraised fair market value of the property;
 2-60 (2) that the appraisal is available at the clerk's
 2-61 office; and

2-62 (3) that a party may file with the court an objection
 2-63 to the appraisal not later than the 30th day after the date notice
 2-64 is sent, stating the grounds for the objection.

2-65 (f) If an appraisal is filed with the court under Subsection
 2-66 (d), the court shall conduct a hearing to determine the fair market
 2-67 value of the property not earlier than the 30th day after the date a
 2-68 copy of the notice of the appraisal is sent to each party under
 2-69 Subsection (e), whether or not an objection to the appraisal is

3-1 filed under Subsection (e)(3). In addition to the court-ordered
 3-2 appraisal, the court may consider any other evidence of value
 3-3 offered by a party.

3-4 (g) After a hearing under Subsection (f), but before
 3-5 considering the merits of the partition action, the court shall
 3-6 determine the fair market value of the property and send notice to
 3-7 the parties of the value.

3-8 Sec. 23A.007. COTENANT BUYOUT. (a) If any cotenant
 3-9 requested partition by sale, after the determination of value under
 3-10 Section 23A.006, the court shall send notice to the parties that any
 3-11 cotenant except a cotenant that requested partition by sale may buy
 3-12 all the interests of the cotenants that requested partition by
 3-13 sale.

3-14 (b) Not later than the 45th day after the date notice is sent
 3-15 under Subsection (a), any cotenant except a cotenant that requested
 3-16 partition by sale may give notice to the court that the cotenant
 3-17 elects to buy all the interests of the cotenants that requested
 3-18 partition by sale.

3-19 (c) The purchase price for each of the interests of a
 3-20 cotenant that requested partition by sale is the value of the entire
 3-21 parcel determined under Section 23A.006 multiplied by the
 3-22 cotenant's fractional ownership of the entire parcel.

3-23 (d) After the period provided by Subsection (b) expires:

3-24 (1) if only one cotenant elects to buy all the
 3-25 interests of the cotenants that requested partition by sale, the
 3-26 court shall notify all the parties of that fact;

3-27 (2) if more than one cotenant elects to buy all the
 3-28 interests of the cotenants that requested partition by sale, the
 3-29 court shall:

3-30 (A) allocate the right to buy those interests
 3-31 among the electing cotenants based on each electing cotenant's
 3-32 existing fractional ownership of the entire parcel divided by the
 3-33 total existing fractional ownership of all cotenants electing to
 3-34 buy; and

3-35 (B) send notice to all the parties of that fact
 3-36 and of the price to be paid by each electing cotenant; or

3-37 (3) if no cotenant elects to buy all the interests of
 3-38 the cotenants that requested partition by sale, the court shall:

3-39 (A) send notice to all the parties of that fact;
 3-40 and

3-41 (B) resolve the partition action under Section
 3-42 23A.008(a) or (b).

3-43 (e) If the court sends notice to the parties under
 3-44 Subsection (d)(1) or (2), the court shall set a date, not earlier
 3-45 than the 60th day after the date notice was sent, by which an
 3-46 electing cotenant must pay the cotenant's apportioned price into
 3-47 the court. After that date:

3-48 (1) if all electing cotenants timely pay their
 3-49 apportioned price into court, the court shall:

3-50 (A) issue an order reallocating all the interests
 3-51 of the cotenants; and

3-52 (B) disburse the amounts held by the court to the
 3-53 persons entitled to them;

3-54 (2) if no electing cotenant timely pays its
 3-55 apportioned price, the court shall resolve the partition action
 3-56 under Section 23A.008(a) or (b) as if the interests of the cotenants
 3-57 that requested partition by sale were not purchased; or

3-58 (3) if one or more but not all of the electing
 3-59 cotenants fail to pay their apportioned price on time, the court
 3-60 shall give notice to the electing cotenants that paid their
 3-61 apportioned price of the interest remaining and the price for all
 3-62 that interest.

3-63 (f) Not later than the 20th day after the date the court
 3-64 gives notice under Subsection (e)(3), any cotenant that paid may
 3-65 elect to purchase all of the remaining interest by paying the entire
 3-66 price into the court. After that period expires:

3-67 (1) if only one cotenant pays the entire price for the
 3-68 remaining interest, the court shall:

3-69 (A) issue an order reallocating the remaining

4-1 interest to that cotenant;
 4-2 (B) promptly issue an order reallocating the
 4-3 interests of all of the cotenants; and

4-4 (C) disburse the amounts held by the court to the
 4-5 persons entitled to the amounts;

4-6 (2) if no cotenant pays the entire price for the
 4-7 remaining interest, the court shall resolve the partition action
 4-8 under Section 23A.008(a) or (b) as if the interests of the cotenants
 4-9 that requested partition by sale were not purchased; or

4-10 (3) if more than one cotenant pays the entire price for
 4-11 the remaining interest, the court shall:

4-12 (A) reapportion the remaining interest among
 4-13 those paying cotenants, based on each paying cotenant's original
 4-14 fractional ownership of the entire parcel divided by the total
 4-15 original fractional ownership of all cotenants that paid the entire
 4-16 price for the remaining interest;

4-17 (B) promptly issue an order reallocating all of
 4-18 the cotenants' interests;

4-19 (C) disburse the amounts held by the court to the
 4-20 persons entitled to the amounts; and

4-21 (D) promptly refund any excess payment held by
 4-22 the court.

4-23 (g) Not later than the 45th day after the date the court
 4-24 sends notice to the parties under Subsection (a), any cotenant
 4-25 entitled to buy an interest under this section may request the court
 4-26 to authorize the sale as part of the pending action of the interests
 4-27 of cotenants named as defendants and served with the complaint but
 4-28 that did not appear in the action.

4-29 (h) If the court receives a timely request under Subsection
 4-30 (g), the court, after hearing, may deny the request or authorize the
 4-31 requested additional sale on such terms as the court determines are
 4-32 fair and reasonable, subject to the following limitations:

4-33 (1) a sale authorized under this subsection may occur
 4-34 only after the purchase prices for all interests subject to sale
 4-35 under Subsections (a) through (f) have been paid into court and
 4-36 those interests have been reallocated among the cotenants as
 4-37 provided in those subsections; and

4-38 (2) the purchase price for the interest of a
 4-39 nonappearing cotenant is based on the court's determination of
 4-40 value under Section 23A.006.

4-41 Sec. 23A.008. PARTITION ALTERNATIVES. (a) If all the
 4-42 interests of all cotenants that requested partition by sale are not
 4-43 purchased by other cotenants under Section 23A.007, or if after
 4-44 conclusion of the buyout under Section 23A.007 a cotenant remains
 4-45 that has requested partition in kind, the court shall order
 4-46 partition in kind unless the court, after consideration of the
 4-47 factors listed in Section 23A.009, finds that partition in kind
 4-48 will result in substantial prejudice to the cotenants as a group.
 4-49 In considering whether to order partition in kind, the court shall
 4-50 approve a request by two or more parties to have the requesting
 4-51 parties' individual interests aggregated.

4-52 (b) If the court does not order partition in kind under
 4-53 Subsection (a), the court shall order partition by sale under
 4-54 Section 23A.010 or, if no cotenant requested partition by sale, the
 4-55 court shall dismiss the action.

4-56 (c) If the court orders partition in kind under Subsection
 4-57 (a), the court may require that one or more cotenants pay one or
 4-58 more other cotenants amounts so that the payments, taken together
 4-59 with the value of the in-kind distributions to the cotenants, will
 4-60 make the partition in kind just and proportionate in value to the
 4-61 fractional interests held.

4-62 (d) If the court orders partition in kind, the court shall
 4-63 allocate to the cotenants that are unknown, unlocatable, or the
 4-64 subject of a default judgment, if those cotenants' interests were
 4-65 not bought out under Section 23A.007, a part of the property
 4-66 representing the combined interests of those cotenants as
 4-67 determined by the court, and that part of the property shall remain
 4-68 undivided.

4-69 Sec. 23A.009. CONSIDERATIONS FOR PARTITION IN KIND.

5-1 (a) In determining under Section 23A.008(a) whether partition in
 5-2 kind would result in substantial prejudice to the cotenants as a
 5-3 group, the court shall consider the following:

5-4 (1) whether the heirs' property practicably can be
 5-5 divided among the cotenants;

5-6 (2) whether partition in kind would apportion the
 5-7 property in such a way that the aggregate fair market value of the
 5-8 parcels resulting from the division would be materially less than
 5-9 the value of the property if the property were sold as a whole,
 5-10 taking into account the condition under which a court-ordered sale
 5-11 likely would occur;

5-12 (3) evidence of the collective duration of ownership
 5-13 or possession of the property by a cotenant and one or more
 5-14 predecessors in title or predecessors in possession to the cotenant
 5-15 who are or were relatives of the cotenant or each other;

5-16 (4) a cotenant's sentimental attachment to the
 5-17 property, including any attachment arising because the property has
 5-18 ancestral or other unique or special value to the cotenant;

5-19 (5) the lawful use being made of the property by a
 5-20 cotenant and the degree to which the cotenant would be harmed if the
 5-21 cotenant could not continue the same use of the property;

5-22 (6) the degree to which the cotenants have contributed
 5-23 the cotenants' pro rata share of the property taxes, insurance, and
 5-24 other expenses associated with maintaining ownership of the
 5-25 property or have contributed to the physical improvement,
 5-26 maintenance, or upkeep of the property; and

5-27 (7) any other relevant factor.

5-28 (b) The court may not consider any one factor under
 5-29 Subsection (a) to be dispositive without weighing the totality of
 5-30 all relevant factors and circumstances.

5-31 Sec. 23A.010. OPEN-MARKET SALE, SEALED BIDS, OR AUCTION.

5-32 (a) If the court orders a sale of heirs' property, the sale must be
 5-33 an open-market sale unless the court finds that a sale by sealed
 5-34 bids or at an auction would be more economically advantageous and in
 5-35 the best interest of the cotenants as a group.

5-36 (b) If the court orders an open-market sale and the parties,
 5-37 not later than the 10th day after the date the order is entered,
 5-38 agree on a real estate broker to offer the property for sale, the
 5-39 court shall appoint the broker and establish a reasonable
 5-40 commission. If the parties do not agree on a broker, the court
 5-41 shall appoint a disinterested real estate broker to offer the
 5-42 property for sale and shall establish a reasonable commission. The
 5-43 broker shall offer the property for sale in a commercially
 5-44 reasonable manner at a price no lower than the determination of
 5-45 value and on the terms and conditions established by the court.

5-46 (c) If the broker appointed under Subsection (b) obtains
 5-47 within a reasonable time an offer to purchase the property for at
 5-48 least the determination of value:

5-49 (1) the broker shall comply with the reporting
 5-50 requirements of Section 23A.011; and

5-51 (2) the sale may be completed in accordance with state
 5-52 law other than this chapter.

5-53 (d) If the broker appointed under Subsection (b) does not
 5-54 obtain within a reasonable time an offer to purchase the property
 5-55 for at least the determination of value, the court, after hearing,
 5-56 may:

5-57 (1) approve the highest outstanding offer, if any;

5-58 (2) redetermine the value of the property and order
 5-59 that the property continue to be offered for an additional time; or

5-60 (3) order that the property be sold by sealed bids or
 5-61 at an auction.

5-62 (e) If the court orders a sale by sealed bids or at an
 5-63 auction, the court shall set terms and conditions of the sale. If
 5-64 the court orders an auction, the auction must be conducted in the
 5-65 manner provided by law for a sale made under execution.

5-66 (f) If a purchaser is entitled to a share of the proceeds of
 5-67 the sale, the purchaser is entitled to a credit against the price in
 5-68 an amount equal to the purchaser's share of the proceeds.

5-69 Sec. 23A.011. REPORT OF OPEN-MARKET SALE. (a) Unless

6-1 required to do so earlier by other law governing the partition of
6-2 real property, a broker appointed under Section 23A.010(b) to offer
6-3 heirs' property for open-market sale shall file a report with the
6-4 court not later than the seventh day after the date an offer is
6-5 received to purchase the property for at least the value determined
6-6 under Section 23A.006 or 23A.010.

6-7 (b) The report required by Subsection (a) must contain the
6-8 following information:

6-9 (1) a description of the property to be sold to each
6-10 buyer;

6-11 (2) the name of each buyer;

6-12 (3) the proposed purchase price;

6-13 (4) the terms and conditions of the proposed sale,
6-14 including the terms of any owner financing;

6-15 (5) the amounts to be paid to lienholders;

6-16 (6) a statement of contractual or other arrangements
6-17 or conditions of the broker's commission; and

6-18 (7) other material facts relevant to the sale.

6-19 Sec. 23A.012. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

6-20 In applying and construing this chapter, consideration must be
6-21 given to the need to promote uniformity of the law with respect to
6-22 the subject matter of this chapter among states that enact a law
6-23 based on the uniform act on which this chapter is based.

6-24 Sec. 23A.013. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
6-25 AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and
6-26 supersedes the Electronic Signatures in Global and National
6-27 Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify,
6-28 limit, or supersede Section 101(c) of that act (15 U.S.C. Section
6-29 7001(c)) or authorize electronic delivery of any of the notices
6-30 described in Section 103(b) of that act (15 U.S.C. Section
6-31 7003(b)).

6-32 SECTION 2. Chapter 23A, Property Code, as added by this Act,
6-33 applies only to a partition action commenced on or after the
6-34 effective date of this Act. A partition action commenced before the
6-35 effective date of this Act is governed by the law as it existed
6-36 immediately before the effective date of this Act, and that law is
6-37 continued in effect for that purpose.

6-38 SECTION 3. This Act takes effect September 1, 2017.

6-39 * * * * *