

NEW DEVELOPMENTS IN PARTITION LAW
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Supplemental Resources

I. Uniform Act

Uniform Law Commission, <https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d>

Uniform Partition of Heirs Property Act, Prefatory Notes and Comments, October 19, 2010, available at <https://www.uniformlaws.org/viewdocument/final-act-97?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d&tab=librarydocuments>

Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community Through Partition Sales of Tenancies in Common* (2001) 95 Nw. U. L. Rev. 505

Presser, *Their Family Bought Land One Generation After Slavery. The Reels Brothers Spent Eight Years in Jail for Refusing to Leave It*, ProPublica (Jul. 15, 2019), available at <https://features.propublica.org/black-land-loss/heirs-property-rights-why-black-families-lose-land-south/#:~:text=Their%20Family%20Bought%20Land%20One,for%20Refusing%20to%20Leave%20It.>

II. Case Law

Orien v. Lutz (2017) 16 Cal.App.5th 957, 962

De Roulet v. Mitchel (1945) 70 Cal.App.2d 120, 123 (a joint tenant or a tenant in common possesses the absolute right to have his interests severed...”).

Lazzarevich v. Lassarevich (1952) 39 Cal. 2d 48, 50

- “[I]n the absence of a waiver a joint tenant is entitled as a matter of right to have his interest severed from that of his cotenant.”
- “[A] partition proceeding is equitable in nature, and...partition should not be decreed without making a suitable allowance for [one party’s] expenditures.”

Butte Creek Island Ranch (1982) 136 Cal.App.3d 360, 367 (Court will not order a division (partition in kind) where it “would result in a cotenant receiving a portion of the land which would be worth materially less than the share of the money which could be obtained through the sale of the land as a whole.”)

Best v. Best, 2023 WL 2621227, at *1 (Cal.Super.) (Property held in trust does not qualify as Heirs Property).

Faison v. Faison (Ga. Ct. App. 2018) 344 Ga.App. 600 (court erred by accepting the settlement of the entire action entered into by some, but not all, of the cotenants. Defaulting cotenants were entitled to the protections of UHPHA, which require unanimous agreement).

Morton v. Pitts (Ga. Ct. App. 2020) 357 Ga.App. 513 (court erred by not ordering an appraisal, and by determining fair market value by accepting a previously-prepared appraisal objected to by one of the parties).

Langford v. Broussard (Ala. 2021) 339 So.3d 854 (cotenant elected to purchase sister's shares, but was unable to obtain financing).

Wallace v. Daley (1990) 220 Cal.App.3d 1028 (discussing credits for improvements and offsets for use and occupancy).

Schnell v. Schnell (N.D. 1984) 346 N.W.2d 713, 718 (“[L]ogic tells us that the smaller and more compact the area or property and the greater the number of persons having an interest in the property the more difficult partitioning in kind will be. Conversely, the greater and more expansive the area or property and the smaller the number of persons having an interest in the property, the easier partitioning in kind will be.”).

Stephens v. Claridy (Ala. 2021) 346 So.3d 519 (ordering partition by sale under UHPHA after finding that property could not be equitably divided).

Walker v. Waggoner (Conn. Super. Ct., Oct. 20, 2021, No. TTDCV196017163S) 2021 WL 5277568 (ordering partition by sale under UHPHA after finding that property could not be equitably divided).

Ark Land Co. v. Harper (2004) 215 W.Va. 331 (before UHPHA, court evaluated totality of circumstances and ordered 75 acres partitioned in kind after coal company purchased 67% interest and attempted to force sale of land used as family home for over 100 years)

Eli v. Eli (S.D. 1997) 557 N.W.2d 405 (before UHPHA, court ordered partition in kind after finding that increase in value from sale of entire undeveloped 112 acre tract of farmland did not overcome prejudice to party seeking to retain ownership of family land)

Delfino v. Vealencis (1980) 181 Conn. 533 (ordering partition in kind before UHPHA, where cotenant resisting sale lived on the property and relied on it for her livelihood).