

By: Wray

H.B. No. 1358

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the adoption of the Uniform Partition of Heirs'  
3 Property Act.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

7 CHAPTER 23A. UNIFORM PARTITION OF HEIRS' PROPERTY ACT

8 Sec. 23A.001. SHORT TITLE. This chapter may be cited as the  
9 Uniform Partition of Heirs' Property Act.

10 Sec. 23A.002. DEFINITIONS. In this chapter:

11 (1) "Ascendant" means an individual who precedes  
12 another individual in lineage, in the direct line of ascent from the  
13 other individual.

14 (2) "Collateral" means an individual who is related to  
15 another individual under the law of intestate succession of this  
16 state but who is not the other individual's ascendant or  
17 descendant.

18 (3) "Descendant" means an individual who follows  
19 another individual in lineage, in the direct line of descent from  
20 the other individual.

21 (4) "Determination of value" means a court order  
22 determining the fair market value of heirs' property under Section  
23 23A.006 or 23A.010 or adopting the valuation of the property agreed  
24 to by all cotenants.

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

4           (A) there is no agreement in a record binding all  
5 the cotenants that governs the partition of the property;

6           (B) one or more of the cotenants acquired title  
7 from a relative, whether living or deceased; and

8           (C) any of the following applies:

9           (i) 20 percent or more of the interests are  
10 held by cotenants who are relatives;

11           (ii) 20 percent or more of the interests are  
12 held by an individual who acquired title from a relative, whether  
13 living or deceased; or

14           (iii) 20 percent or more of the cotenants  
15 are relatives.

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

19           (7) "Partition in kind" means the division of heirs'  
20 property into physically distinct and separately titled parcels.

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

24           (9) "Relative" means an ascendant, descendant, or  
25 collateral or an individual otherwise related to another individual  
26 by blood, marriage, adoption, or law of this state other than this  
27 chapter.

1       Sec. 23A.003. APPLICABILITY; RELATION TO OTHER LAW. (a) In  
2 an action to partition real property under Chapter 23, the court  
3 shall determine whether the property is heirs' property. If the  
4 court determines that the property is heirs' property, the property  
5 must be partitioned under this chapter unless all of the cotenants  
6 otherwise agree in a record.

7       (b) This chapter supplements Chapter 23 and the Texas Rules  
8 of Civil Procedure governing partition of real property. If an  
9 action is governed by this chapter, this chapter supersedes  
10 provisions of Chapter 23 and the Texas Rules of Civil Procedure  
11 governing partition of real property that are inconsistent with  
12 this chapter.

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

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

26       Sec. 23A.005. COMMISSIONERS. If the court appoints  
27 commissioners under Rule 761, Texas Rules of Civil Procedure, each

1 commissioner, in addition to the requirements and  
2 disqualifications applicable to commissioners under that rule,  
3 must be impartial and may not be a party to or a participant in the  
4 action.

5 Sec. 23A.006. DETERMINATION OF VALUE. (a) Except as  
6 provided by Subsection (b) or (c), if the court determines that the  
7 property that is the subject of a partition action is heirs'  
8 property, the court shall determine the fair market value of the  
9 property by ordering an appraisal under Subsection (d).

10 (b) If all cotenants have agreed to the value of the  
11 property or to another method of valuation, the court shall adopt  
12 that value or the value produced by the agreed method of valuation.

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

17 (d) If the court orders an appraisal, the court shall  
18 appoint a disinterested real estate appraiser to determine the fair  
19 market value of the property assuming sole ownership of the fee  
20 simple estate. On completion of the appraisal, the appraiser shall  
21 file a sworn or verified appraisal with the court.

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

25 (1) the appraised fair market value of the property;

26 (2) that the appraisal is available at the clerk's

27 office; and

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

4           (f) If an appraisal is filed with the court under Subsection  
5 (d), the court shall conduct a hearing to determine the fair market  
6 value of the property not earlier than the 30th day after the date a  
7 copy of the notice of the appraisal is sent to each party under  
8 Subsection (e), whether or not an objection to the appraisal is  
9 filed under Subsection (e)(3). In addition to the court-ordered  
10 appraisal, the court may consider any other evidence of value  
11 offered by a party.

12           (g) After a hearing under Subsection (f), but before  
13 considering the merits of the partition action, the court shall  
14 determine the fair market value of the property and send notice to  
15 the parties of the value.

16           Sec. 23A.007. COTENANT BUYOUT. (a) If any cotenant  
17 requested partition by sale, after the determination of value under  
18 Section 23A.006, the court shall send notice to the parties that any  
19 cotenant except a cotenant that requested partition by sale may buy  
20 all the interests of the cotenants that requested partition by  
21 sale.

22           (b) Not later than the 45th day after the date notice is sent  
23 under Subsection (a), any cotenant except a cotenant that requested  
24 partition by sale may give notice to the court that the cotenant  
25 elects to buy all the interests of the cotenants that requested  
26 partition by sale.

27           (c) The purchase price for each of the interests of a

1 cotenant that requested partition by sale is the value of the entire  
2 parcel determined under Section 23A.006 multiplied by the  
3 cotenant's fractional ownership of the entire parcel.

4 (d) After the period provided by Subsection (b) expires:

5 (1) if only one cotenant elects to buy all the  
6 interests of the cotenants that requested partition by sale, the  
7 court shall notify all the parties of that fact;

8 (2) if more than one cotenant elects to buy all the  
9 interests of the cotenants that requested partition by sale, the  
10 court shall:

11 (A) allocate the right to buy those interests  
12 among the electing cotenants based on each electing cotenant's  
13 existing fractional ownership of the entire parcel divided by the  
14 total existing fractional ownership of all cotenants electing to  
15 buy; and

16 (B) send notice to all the parties of that fact  
17 and of the price to be paid by each electing cotenant; or

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

20 (A) send notice to all the parties of that fact;  
21 and

22 (B) resolve the partition action under Section  
23 23A.008(a) or (b).

24 (e) If the court sends notice to the parties under  
25 Subsection (d)(1) or (2), the court shall set a date, not earlier  
26 than the 60th day after the date notice was sent, by which an  
27 electing cotenant must pay the cotenant's apportioned price into

1 the court. After that date:

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

4 (A) issue an order reallocating all the interests  
5 of the cotenants; and

6 (B) disburse the amounts held by the court to the  
7 persons entitled to them;

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

12 (3) if one or more but not all of the electing  
13 cotenants fail to pay their apportioned price on time, the court  
14 shall give notice to the electing cotenants that paid their  
15 apportioned price of the interest remaining and the price for all  
16 that interest.

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

21 (1) if only one cotenant pays the entire price for the  
22 remaining interest, the court shall:

23 (A) issue an order reallocating the remaining  
24 interest to that cotenant;

25 (B) promptly issue an order reallocating the  
26 interests of all of the cotenants; and

27 (C) disburse the amounts held by the court to the

1 persons entitled to the amounts;

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

6 (3) if more than one cotenant pays the entire price for  
7 the remaining interest, the court shall:

8 (A) reapportion the remaining interest among  
9 those paying cotenants, based on each paying cotenant's original  
10 fractional ownership of the entire parcel divided by the total  
11 original fractional ownership of all cotenants that paid the entire  
12 price for the remaining interest;

13 (B) promptly issue an order reallocating all of  
14 the cotenants' interests;

15 (C) disburse the amounts held by the court to the  
16 persons entitled to the amounts; and

17 (D) promptly refund any excess payment held by  
18 the court.

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

25 (h) If the court receives a timely request under Subsection  
26 (g), the court, after hearing, may deny the request or authorize the  
27 requested additional sale on such terms as the court determines are



1 fair and reasonable, subject to the following limitations:

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

7 (2) the purchase price for the interest of a  
8 nonappearing cotenant is based on the court's determination of  
9 value under Section 23A.006.

10 Sec. 23A.008. PARTITION ALTERNATIVES. (a) If all the  
11 interests of all cotenants that requested partition by sale are not  
12 purchased by other cotenants under Section 23A.007, or if after  
13 conclusion of the buyout under Section 23A.007 a cotenant remains  
14 that has requested partition in kind, the court shall order  
15 partition in kind unless the court, after consideration of the  
16 factors listed in Section 23A.009, finds that partition in kind  
17 will result in substantial prejudice to the cotenants as a group.  
18 In considering whether to order partition in kind, the court shall  
19 approve a request by two or more parties to have the requesting  
20 parties' individual interests aggregated.

21 (b) If the court does not order partition in kind under  
22 Subsection (a), the court shall order partition by sale under  
23 Section 23A.010 or, if no cotenant requested partition by sale, the  
24 court shall dismiss the action.

25 (c) If the court orders partition in kind under Subsection  
26 (a), the court may require that one or more cotenants pay one or  
27 more other cotenants amounts so that the payments, taken together

1 with the value of the in-kind distributions to the cotenants, will  
2 make the partition in kind just and proportionate in value to the  
3 fractional interests held.

4 (d) If the court orders partition in kind, the court shall  
5 allocate to the cotenants that are unknown, unlocatable, or the  
6 subject of a default judgment, if those cotenants' interests were  
7 not bought out under Section 23A.007, a part of the property  
8 representing the combined interests of those cotenants as  
9 determined by the court, and that part of the property shall remain  
10 undivided.

11 Sec. 23A.009. CONSIDERATIONS FOR PARTITION IN KIND. (a) In  
12 determining under Section 23A.008(a) whether partition in kind  
13 would result in substantial prejudice to the cotenants as a group,  
14 the court shall consider the following:

15 (1) whether the heirs' property practicably can be  
16 divided among the cotenants;

17 (2) whether partition in kind would apportion the  
18 property in such a way that the aggregate fair market value of the  
19 parcels resulting from the division would be materially less than  
20 the value of the property if the property were sold as a whole,  
21 taking into account the condition under which a court-ordered sale  
22 likely would occur;

23 (3) evidence of the collective duration of ownership  
24 or possession of the property by a cotenant and one or more  
25 predecessors in title or predecessors in possession to the cotenant  
26 who are or were relatives of the cotenant or each other;

27 (4) a cotenant's sentimental attachment to the

1 property, including any attachment arising because the property has  
2 ancestral or other unique or special value to the cotenant;

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

6 (6) the degree to which the cotenants have contributed  
7 the cotenants' pro rata share of the property taxes, insurance, and  
8 other expenses associated with maintaining ownership of the  
9 property or have contributed to the physical improvement,  
10 maintenance, or upkeep of the property; and

11 (7) any other relevant factor.

12 (b) The court may not consider any one factor under  
13 Subsection (a) to be dispositive without weighing the totality of  
14 all relevant factors and circumstances.

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

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

20 (b) If the court orders an open-market sale and the parties,  
21 not later than the 10th day after the date the order is entered,  
22 agree on a real estate broker to offer the property for sale, the  
23 court shall appoint the broker and establish a reasonable  
24 commission. If the parties do not agree on a broker, the court  
25 shall appoint a disinterested real estate broker to offer the  
26 property for sale and shall establish a reasonable commission. The  
27 broker shall offer the property for sale in a commercially

1 reasonable manner at a price no lower than the determination of  
2 value and on the terms and conditions established by the court.

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

6 (1) the broker shall comply with the reporting  
7 requirements of Section 23A.011; and

8 (2) the sale may be completed in accordance with state  
9 law other than this chapter.

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

14 (1) approve the highest outstanding offer, if any;

15 (2) redetermine the value of the property and order  
16 that the property continue to be offered for an additional time; or

17 (3) order that the property be sold by sealed bids or  
18 at an auction.

19 (e) If the court orders a sale by sealed bids or at an  
20 auction, the court shall set terms and conditions of the sale. If  
21 the court orders an auction, the auction must be conducted in the  
22 manner provided by law for a sale made under execution.

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

26 Sec. 23A.011. REPORT OF OPEN-MARKET SALE. (a) Unless  
27 required to do so earlier by other law governing the partition of

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

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

8 (1) a description of the property to be sold to each  
9 buyer;

10 (2) the name of each buyer;

11 (3) the proposed purchase price;

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

14 (5) the amounts to be paid to lienholders;

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

17 (7) other material facts relevant to the sale.

18 Sec. 23A.012. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

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

23 Sec. 23A.013. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL  
24 AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and  
25 supersedes the Electronic Signatures in Global and National  
26 Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify,  
27 limit, or supersede Section 101(c) of that act (15 U.S.C. Section

1 7001(c)) or authorize electronic delivery of any of the notices  
2 described in Section 103(b) of that act (15 U.S.C. Section  
3 7003(b)).

4 SECTION 2. Chapter 23A, Property Code, as added by this Act,  
5 applies only to a partition action commenced on or after the  
6 effective date of this Act. A partition action commenced before the  
7 effective date of this Act is governed by the law as it existed  
8 immediately before the effective date of this Act, and that law is  
9 continued in effect for that purpose.

10 SECTION 3. This Act takes effect September 1, 2017.