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INSIGHT · REAL PROPERTY

The Uniform Partition of Heirs Property Act: A Quiet Revolution in California Partition Practice

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The Uniform Partition of Heirs Property Act (UPHPA) establishes statutory buyout rights and open-market sale protections for inherited California real property.

I. What Counts as Heirs Property Under CCP § 874.311

The Uniform Partition of Heirs Property Act (UPHPA), codified at California Code of Civil Procedure §§ 874.311–874.323, applies when real property is held by co-tenants and at least one of them acquired their interest from a relative — whether by intestate succession, testamentary disposition, or transfer from a family member — without paying full fair market value. The statute does not require that all co-tenants be family members; it is enough that one interest traces to a family transfer.

The practical effect is enormous: heirs property is disproportionately concentrated among families that historically lacked access to estate planning, and the old forced-sale partition regime stripped generational wealth from precisely those families.

II. The Buyout Right: CCP § 874.316

Under the UPHPA, when a co-tenant petitions for partition, the court must first notify all co-tenants of their right to buy out the petitioner's interest at fair market value. The buying co-tenants have a statutory window — typically 60 days after the court-ordered appraisal — to elect to purchase.

If the buyout is exercised, the partition action terminates. The petitioner receives cash; the remaining co-tenants retain the property. This buyout right is the UPHPA's most significant innovation: it gives family members a first-refusal mechanism that the pre-UPHPA partition statute entirely lacked.

The appraisal is conducted by a court-appointed appraiser whose determination of fair market value is subject to review but carries significant evidentiary weight. Courts have rejected attempts to discount the value for co-tenancy or for the property's current condition where the condition reflects the family's use pattern.

III. Partition in Kind as the Default

Before the UPHPA, California courts routinely ordered partition by sale when the property could not be divided without material injury to the parties. In practice, "material injury" was interpreted so broadly that sales were almost automatic for single-family homes and modest parcels.

The UPHPA reverses this presumption. Under CCP § 874.317, partition in kind is now the preferred remedy, and the court may not order a sale unless it finds that partition in kind would result in "great prejudice to the co-tenants as a group." The statute lists nine factors the court must weigh, including the property's sentimental value to the family, the feasibility of physical division, and the availability of the buyout alternative.

This shift matters because partition sales — especially court-supervised sales — historically produced prices well below fair market value, with the shortfall borne disproportionately by the co-tenants who wanted to keep the property.

IV. The Open-Market Sale Framework

When partition by sale is ordered despite the UPHPA's preference for partition in kind, the statute requires that the sale occur on the open market unless the court finds that a sale by sealed bids or at public auction would produce a higher price. CCP § 874.318.

The open-market requirement is designed to close the valuation gap that made forced partition sales so destructive. Under the pre-UPHPA regime, judicial auctions and referee sales routinely produced outcomes 20–40% below appraised value. The open-market framework subjects the property to arms-length marketing, competitive bidding, and broker-assisted sale processes that approximate fair market conditions.

The court retains discretion to approve or reject an offer, and any co-tenant may bid at the sale price. This preserves a last-look opportunity for family members even when the buyout right was not exercised earlier.

V. Practical Implications for Practitioners

The UPHPA has fundamentally altered the litigation calculus in California partition cases. Petitioners who previously expected a quick forced sale now face a multi-step process with buyout rights, appraisal proceedings, and a statutory presumption against sale. Defense counsel repre-

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senting family co-tenants now have statutory tools to preserve the property.

Key practice points include: (1) early identification of whether the UPHPA applies, which turns on the provenance of at least one co-tenant's interest; (2) strategic use of the buyout right, including identifying financing options for the buying co-tenants; (3) the importance of the appraisal — the court-ordered valuation drives both the buyout price and the sale-or-retain analysis; and (4) the nine-factor test for partition in kind, which requires counsel to develop a factual record on each factor.

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