

Modernizing Partition Law: UPHPA & its Impact on AL Landowners

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What Is Partition?

- ▶ Legal process that allows co-owners (cotenants) of real property to legally separate their shared interests
- ▶ Used when one or more owners no longer wish to jointly hold property
- ▶ Court evaluates whether property can be **physically divided** (partition-in-kind) or must be **sold** (partition by sale)
- ▶ Ensures each owner receives the **fair value** of their interest
- ▶ Commonly arises in **heirs' property** where title is held by multiple family members

What Is Heirs' Property?

- ▶ Real property that passes **intestate** or through a **poorly drafted Will** to multiple family members
- ▶ Ownership becomes **fractured** into undivided interests held by numerous heirs
- ▶ Often spans **multiple generations**, increasing the number of co-owners
- ▶ Creates obstacles for **financing, improvements, sale, or clear title**
- ▶ Vulnerable to **forced sales & loss of family land** without legal protections
- ▶ Disproportionately affects **Black, rural, & low-wealth communities**

Alabama Partition Statutes

- ▶ Alabama recognizes two statutory regimes:

- ▶ **UPHPA (Ala. Code § 35-6A-1 et seq.)**

Applies if:

- ▶ The case is filed after Jan. 1, 2015;
- ▶ The property is held as tenancy-in-common;
- ▶ No written agreement governing partition among owners;
- ▶ One or more cotenants acquired title from a relative (living or deceased);
- ▶ At least 20% of the interests are held by relatives or those deriving from relatives.
- ▶ If these conditions are met, UPHPA governs.

- ▶ **Non-UPHPA Partition Statute**
Remains available in Alabama but does not apply if the property qualifies as heirs' property under UPHPA.

Fees (35-6A-3 – UPHPA Application)

“(d) This chapter does not supplant or otherwise change the provisions for fees as a part of the cost under Section 34-3-60.”

- ▶ Attorney Fees are often awarded at 10% of sale price
- ▶ Courts have awarded splits b/t attorneys for Plaintiff & Defendant



Uniform Partition Heirs' Property Act

- ▶ Provides the following protections in partition actions:
 1. Enhances Notice (Ala. Code § 35-6A-4)
 2. Independent Appraisal (Ala. Code § 35-6A-6)
 3. Right of First Refusal (Buy-out Rounds) (Ala. Code § 35-6A-7)
 4. Preference for Partition-in-Kind (Ala. Code § 35-6A-8, -9)
 5. Open-Market Sale (Ala. Code § 35-6A-10)

Enhances Notice

- ▶ Plaintiff must:
 - ▶ Provide notice of the partition action to all co-tenants; and
 - ▶ Post a conspicuous sign (11x17 in.) on property
 - ▶ Must state that action has commenced; identify name/address of court; & common designation by which the property is known.
 - ▶ Can ask Court to require Plaintiff to publish the name of the Plaintiff & known Defendants.



Independent Appraisal

Unless all cotenants agree on value, court must determine property's fair market value.

Court-appointed disinterested appraiser unless value too small to justify cost.

Cotenants have opportunity to object to appraisal.



The Buy-Out Rounds

(Ala. Code § 35-6A-7)

- ▶ **First Buy-Out Round:** Non-petitioning cotenants may buy out petitioning cotenants.
- ▶ Failure to respond = **deemed to have objected to the sale**
- ▶ 30 days to file election; 60 days to pay
- ▶ If more than one co-tenant wants to purchase the property, the court will divide the seller's interest between the buyers according to their existing ownership shares.



The Buy-Out Rounds

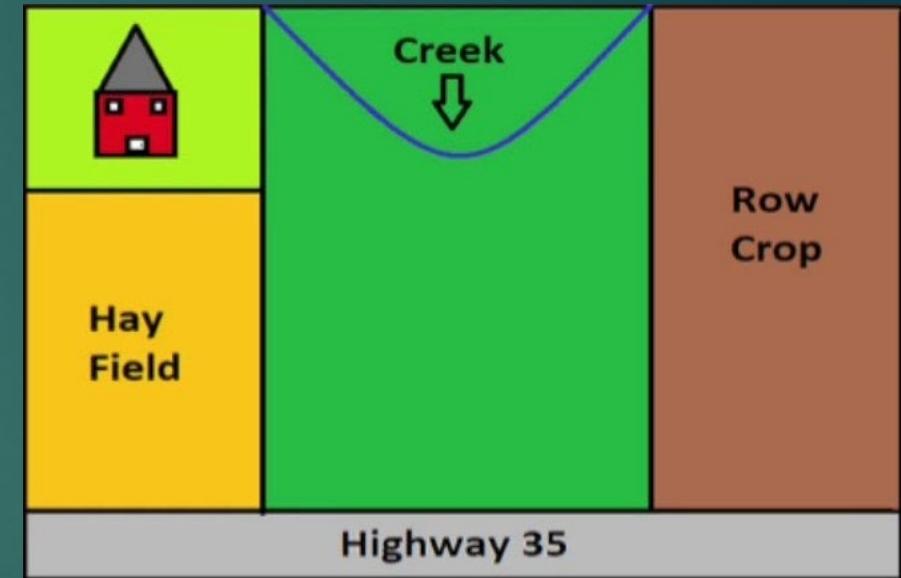
(Ala. Code § 35-6A-7)

- ▶ **Second Buy-Out Round**: Cotenants seeking sale may purchase interests of others requesting sale.
- ▶ If no cotenant files an election, court sets final hearing, at which court considers whether property can be partitioned-in-kind.

Preference for Partition-in-Kind (PIK)

Presumption in favor of PIK unless it results in “great prejudice.” Court considers:

- ▶ Practical divisibility;
- ▶ Economic impact (FMV comparison);
- ▶ Duration of ownership and ancestral value;
- ▶ Lawful use of land;
- ▶ Contributions to taxes, maintenance, and improvements.



Likelihood of Partition-in-Kind

- ▶ Not an option for urban heirs' property
- ▶ Judges very reluctant to physically divide
 - ▶ Who gets the house?
 - ▶ Who gets the road frontage?
 - ▶ Who gets the creek? The rocky side?
- ▶ Easier to Divide Proceeds from a Sale

Tips

- ▶ Engage a surveyor
- ▶ Consider partial PIK
- ▶ Negotiate



Final Dispositions

- ▶ **Dismissal without prejudice** if no sale sought and PIK not possible (§ 35-6A-7(d)).
- ▶ **Dismissal without prejudice** upon successful buy-outs (§ 35-6A-7(e)(4)(a)).
- ▶ **Open-market/private sale** if buyouts and PIK fail.



Open-Market or Private Sale

- ▶ If the property is sold, it must be listed with a licensed real estate broker for sale at a price no lower than the court-determined value for a reasonable period of time.
- ▶ The court may order a sale by another method if the open market sale is unsuccessful.



Equitable Adjustments & Contributions

- ▶ Courts may adjust equities under Ala. Code § 35-6-23(a).
- ▶ Claims include:
 - ▶ Taxes, insurance, fire dues;
 - ▶ Timber harvests, rents, or profits;
 - ▶ Improvements or necessary expenses.



Pre-Litigation & Early Litigation Strategy

Before litigation, determine ownership interests. This requires:

- ▶ Title Examination (order abstracts and title opinions)
- ▶ Investigate unrecorded deeds, intestacy transfers, and boundary disputes
- ▶ Evidence of family trees
- ▶ Execute & record Affidavits of Heirship
- ▶ Anticipate discovery of new heirs during litigation.

Physical Inspection

- ▶ Inspect the property for:
 - ▶ Occupants and potential adverse possessors;
 - ▶ Evidence of ouster;
 - ▶ Landlocked parcels, easements, encroachments.

Quiet Title

- ▶ Quiet Title is built into UPHPA
- ▶ You have to know **who** owns **what** before the buyout rounds begin.
 - ▶ “In an action to partition real property under Chapter 6 of this title, **the court shall determine whether the property is heirs' property**. If the court determines that the property is heirs' property, the property shall be partitioned under this chapter unless all of the cotenants otherwise agree in a record.”
- ▶ Use of hearsay exceptions in Ala. R. Evid. 803 (family records, ancient documents, reputation evidence).
- ▶ Discovery: Interrogatories & Requests for Production

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- ▶ **Service**: Rule 4 ARCP requires affidavit of due diligence before publication. Failure to join necessary parties may result in dismissal.
 - ▶ “an affidavit of a party or the party’s counsel must be filed with the court averring that service of summons or other process cannot be made because either the residence is unknown to the affiant and **cannot with reasonable diligence be ascertained**. . .”

Practice Tips

- ▶ Gather title documents, family tree, and fractional interests **before filing**.
- ▶ Track service and statutory deadlines meticulously.
- ▶ Do not file a sale-for-division action unless client is prepared to sell.
- ▶ Be aware that plaintiffs have limited rights to buy out defendants in Alabama until late stages.
- ▶ Read uniform and state-specific commentary carefully to prepare for arguments.



Common Pitfalls & Flaws

- ▶ Non-responding cotenants are deemed to object to sale, but their interests may still be sold.
- ▶ Access to capital is a practical barrier. Heirs may want to buy out but lack financing.
- ▶ Limited attorney familiarity with UPHPA leads to mistakes and missed opportunities.



Conclusion

For litigators, success requires early diligence, mastery of statutory deadlines, and sensitivity to family dynamics.

By leveraging UPHPA's protections, attorneys can help prevent unnecessary loss of generational wealth while effectively representing their clients' goals.



Questions?



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