Ensuring Rightful Property Ownership, Keeping Land in the Family

2020 Sponsors: Senator Frank Ruff (SB 553) and Delegate Patrick Hope (HB 1605)

The Uniform Law Commission, the Virginia Bar Association, the Black Family Land Trust, and many other nonprofit partners have agreed to consensus legislation. The legislation is substantially similar to the Uniform Partition of Heirs Property Act (UPHPA) and meets Uniform Status thus allowing Heirs Property landowners to access federal Farm Bill benefits. This legislation addresses heirs property and ALL who own tenancy-in-common property in Virginia.

Heirs property refers to land that has been passed down informally from generation-to-generation. In most cases, it involves landowners who died without a will or failed to probate a will within the state’s timeframe and the land is owned “in common” by all of the heirs, regardless of whether they live on the land, pay taxes, or have ever set foot on the land.

Heirs property disproportionately impacts middle and low income families and communities that do not have access to affordable legal services to protect their property rights and the families’ inherited wealth.

This legislation seeks to address partition action abuses that have led many Americans to lose their tenancy-in-common property involuntarily in legal proceedings. This legislation is based on UPHPA which preserves the right of co-tenants to sell their interest in inherited real estate, while ensuring that the other co-tenants will have due process. Nothing in UPHPA prevents co-tenants from voluntarily agreeing to sell their shares, or from executing a partition agreement. The following procedures would be triggered:

1. The court must obtain an independent appraisal of the property with the value based on the full, undivided parcel.
2. Any one or more co-tenants, except the co-tenant who filed for partition, has a right of first refusal to purchase the share of the property owned by the filer for a proportional share of the court-determined value.
3. If no co-tenant exercises the right of first refusal, the court must order partition-in-kind unless the court determines that partition-in-kind will result in great prejudice to the co-tenants as a group.
4. The court must consider a set of statutory factors that includes a co-tenant’s sentimental attachment to the property because of ancestral or other special value.
5. If the court determines partition-by-sale is appropriate, the property must be offered for sale on the open market at the court-determined value for a reasonable period of time. If the property does not sell at the offered price, the court retains its discretion to accept a lower offer or to order a sale by auction or sealed bids.

More than 900,000 black-owned farms comprised 14% of all farms in the United States in 1920. The number of black-owned farms dropped 95% to under 46,000 in 1974. Researchers at Auburn and Tuskegee Universities estimate that there are 150,000 to 175,000 acres of heirs property owned by people of any race or ethnicity in the 36 southside counties in Virginia. This property is conservatively valued at $650 million. The proportion of African-Americans lacking a will is more than double the rate among white Americans. Heirs property continues to be a leading cause of Black involuntary land loss.

UPHPA has been enacted in 14 other states with bipartisan sponsorship and support. States that have adopted the UPHPA have reported no adverse fiscal impact.
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