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HEIRS' PROPERTY

Retention Coalition

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TO: Kansas Senate Judiciary Committee
RE: SB 329, the Uniform Partition of Heirs Property Act

To the members of the Committee:

On behalf of the Heirs Property Retention Coalition (HPRC), I am pleased to submit testimony in support of SB 329, which would enact the Uniform Partition of Heirs Property Act (UPHPA).

HPRC is an unincorporated association comprised of individuals and organizations working to protect the interests of heirs property landowners across the country. Because of the way that heirs' property land ownership is typically created (i.e., without a will), it most often exists in low-income communities, and particularly communities of color. Much of this heirs' property has been owned and passed down by families for many decades, and sometimes even centuries. Unfortunately, heirs' property is very vulnerable to inequitable legal processes, such as forced partition sales that dispossess all owners, even if the majority want to retain the property. Such processes are utilized by land speculators or developers who want a piece of property but who cannot convince all of the owners to sell. This is not theoretical: the USDA has suggested that partition sales are one of the largest causes of African-American land and farm loss, and HPRC member organizations have spoken to many affected property owners in both rural and urban areas. While our experience has primarily been in the Southeast, heirs property in all states shares the same vulnerabilities, and prior to the UPHPA no state had a law that fully protected the needs of these low-income landowners.

In order to protect such owners, HPRC wrote the first draft of what later became the UPHPA, worked with the American Bar Association to submit the draft to the Uniform Law Commission (ULC), participated in the ULC's UPHPA drafting sessions from 2008-2010, and has worked with the ULC on state enactment since 2011. As a result, the UPHPA is now the law in ten states (Alabama, Arkansas, Connecticut, Georgia, Hawaii, Montana, Nevada, New Mexico,

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South Carolina, and Texas), and is also pending this year in the District of Columbia, Iowa, Mississippi, Tennessee, and West Virginia.

The UHPA is a critical piece of legislation that will help to restore equity to the partition sales process without preventing legitimate partition sales actions from proceeding. Here are its major components:

- First, as a threshold matter, the UHPA specifies that owners of business property who have a “tenancy in common” agreement among all the owners as to how their property should be sold are not subject to this new law.
- Second, the UHPA requires that those seeking to force a sale must first offer their interests to the owners who do not wish to sell, and should all of those interests be purchased by the other owners, the partition action ceases. This is a commonsense measure that allows owners no longer desiring to be part of the common ownership structure to exit without harming the remaining owners.
- Third, should such a buyout of interests not occur, a court weighing whether to divide versus sell the property must weigh whether the landowners’ noneconomic interests (such as using the property for family reunions, recreation, or residence) will be harmed by a sale, as well as the length of ownership and any ancestral value it has to the owners.
- Finally, should the court deem a sale appropriate, it must use an open-market sale rather than an auction, which will ensure that any forcibly dispossessed owners at least have a better chance of receiving fair value for their ownership interests.

Again, these reforms will not halt partition sales altogether or interfere with business interests, but rather will restore fairness to the proceedings and protect the interests of vulnerable landowners. We hope that Kansas can join the ranks of the numerous other states that have adopted the UHPA.

Sincerely,



John Pollock

Coordinator

Heirs Property Retention Coalition

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