

**UNIFORM PARTITION OF HEIRS'  
PROPERTY ACT**

*Written by:*

**TROY M. MOORE**, *Houston*  
Law Office of Troy M. Moore, PLLC

**RICHARD W. KAHLE**, *Houston*  
Newman Law Firm

Inns of Court  
*Harris County Probate Chapter*

November 12, 2025  
Houston, Texas

## ***Managing Attorney***

Troy M. Moore routinely represents executors, administrators, and beneficiaries in complex estate, trust, and contested probate litigation. He represents fiduciaries in all phases of estate, trust, and Will administration. Additionally, Troy's accomplishments representing individuals with personal injuries include jury trials, hundreds of cases and settlements for victims of car crashes and premises liability cases throughout his twenty-four years as an attorney, with litigation always being a focused practice area.

Troy started his own law office, *Law Office of Troy M. Moore, PLLC*, in 2008 and consistently represents beneficiaries, heirs, and injured individuals when they need it most. Consequently, Troy has extensive experience litigating life insurance disputes among beneficiaries of life insurance policies, 401(k)'s, IRA's, and other accounts with financial institutions. Troy has a strong background in litigation involving complex fact patterns dealing with complex areas of the law most attorneys avoid. Most recently, Troy defended a previously probated Will in a Will contest filed in Montgomery County, Texas in a week-long trial that resulted in a jury verdict, followed by a prompt settlement to avoid any appeal. While he strives to advocate strong, aggressive positions for clients, Troy also strives to resolve disputes in an ethical, reasonable, and cost-effective manner.

## **Biography**

Troy was born on January 25, 1975 in Akron, Ohio, but moved to Texas at an early age and grew up in northwest Houston. Troy grew up in the Cypress area, and his father was a CPA and expert witness in securities fraud litigation on a national level, which helped lead him to a career in law. Troy earned his Bachelor of Arts in Biology from Texas A&M in 1998. Upon graduation from Texas A&M, Troy then attended law school full-time and earned his law degree from South Texas College of Law in May 2001, passing the Texas Bar the summer of his graduation. He then worked for six years at a defense law firm, *Ryan & Dawson* (from 2002-2008), working full time honing his deposition skills defending product manufacturers from personal injury lawsuits, as well as many different construction litigation cases and medical malpractice defense as well. As noted above, Troy struck out on his own in 2008 as a solo attorney and has focused on probate, estate planning, and representing injured Plaintiffs. Troy was also a democratic candidate in the primary election for the newly created Harris County Probate Court 5 – he was the first runner-up to the democrat candidate March 2024 primary election. Most recently, Troy was admitted to the State Bar of New Mexico in September 2025.

Troy is lucky to be a father of two wonderful, healthy children – with one in college and the other on the precipice of college himself. Troy is also a pilot and enjoys traveling using his airplane whenever the weather and time permits. Troy is an accomplished runner and completed the Houston Marathon in January 2023. He enjoys spending time with his family, snowboarding, living an active lifestyle and traveling.

## **Representative Experience**

- Tried a Will-contest case to a jury in Montgomery County with Judge Laird in June 2025.
- Successfully represented an heir in Court on a bench trial before Judge James Horwitz in Harris County Statutory Probate Court 4 that involved Temporary Restraining Orders, Temporary Injunctions, followed by a bench trial.

- Obtained judgment for the rightful beneficiaries in bench trial before Judge Newman in Harris County Statutory Probate Court Number Two regarding interpretation of a Will under a contest filed by a separate beneficiary and surviving spouse under a Will.
- Successfully represented a Petitioner in probate Court in Fort Bend County to remove a guardian who was taking advantage of the Ward and not caring for the Ward under the Estates Code.
- Routinely serves as Attorney Ad Litem for Harris County Probate Courts as a public service.
- Has represented and filed over 460 Probate Court cases involving probate of Wills and Intestate Estates in Harris County alone.
- Successfully tried a case to the jury for a food-poisoning victim in Federal Court in the Southern District of Texas.
- Extensive experience in Federal Court, mostly in the Southern District of Texas, for both injury and estate-involved claims regarding life insurance.
- Has resolved countless trust litigation cases and insurance disputes related to interpleaders.
- Represents executors, trustees and administrators in all phases of trust and estate administration.
- Estate planning attorney who regularly advises clients on methods of estate planning to avoid probate court.
- Represents the community in all counties of Texas, including most often in: Harris, Montgomery, Waller, Galveston, Brazoria, Polk, and Matagorda Counties.

#### Public Speaking & Publications

- Co-Author: Uniform Partition of Heirs' Property Act; Continuing Legal Education Paper for Inns of Court, Houston Chapter – October, 2025.
- Co-Author: The Eggshell Plaintiff Rule: Opposing Perspectives – The Houston Lawyer, Vol. 57 – Number 4, January/February 2020.
- Regular Speaker at Estate Planning Workshops at Community Centers in Harris County, as well as at free estate planning workshops held at his primary office conference center.
- Co-Author/Panelist: Small Business Nuts and Bolts (2013).

#### Community and Bar Association Involvement

- State Bar of Texas; Real Estate, Probate and Trust Law Section, Member
- Houston Bar Association – Probate Section Member
- United States District Court – Southern District (admitted in 2001)
- Texas Trial Lawyers Association, Member
- Houston Trial Lawyers Association, Member
- New Mexico State Bar Association, Member
- Inns of Court – Harris County Probate Section, Member

#### Education

- Texas A&M University, Bachelor of Arts Biology (1998)
- J.D., South Texas College of Law (2001)

**Richard W. Kahle**  
**Newman Law Firm**  
**245 W. 18<sup>th</sup> Street**  
**Houston, Texas 77008**  
**Phone (713) 942-2501**  
**Fax (713) 942-2235**  
**rkahle@newmanlaw-usa.com**

**EXPERIENCE:**

Richard Kahle's practice areas include estate and probate administration, will and trust litigation, and litigation involving commercial, corporate, and real estate disputes. Mr. Kahle has assisted clients with probate and trust matters in small, modest, and large estates. His litigation experience includes handling contested guardianship cases, will contests, removing and defending executors and trustees, and cases alleging breaches of fiduciary duty, mismanagement of estates, trusts, corporations, and partnerships. Mr. Kahle is a native Houstonian.

**ADMISSIONS AND CERTIFICATIONS:**

State Bar of Texas  
United States District Court for the Southern District of Texas  
State Bar of Texas Guardianship ad Litem Certification

**PROFESSIONAL ACTIVITIES:**

*Council Member*, Probate, Trusts and Estates Section of the Houston Bar Association  
*Member*, Texas Probate Law American Inn of Court  
*Member*, Real Estate, Probate, and Trust Law Section, State Bar of Texas  
*Member*, Houston Bar Association  
*Member*, State Bar of Texas

**EDUCATION:**

J.D., South Texas College of Law, 2008  
*Summa Cum Laude*, Order of the Lytae, Dean's Honor List  
*Member*, South Texas Law Review  
B.B.A., Marketing, Management, Texas A&M University, 2004  
*Cum Laude*, University Honors

## TABLE OF CONTENTS

|  |           |
|--|-----------|
| <b>Introduction §23A.001.....</b>  | <b>1</b>  |
| <b>Definitions §23A.002.....</b>   | <b>1</b>  |
| <b>Applicability; Relation to Other Law §23A.003.....</b>                                  | <b>3</b>  |
| <b>Service; Notice by Posting §23A.004.....</b>  | <b>4</b>  |
| <b>Commissioners §23A.005.....</b>   | <b>4</b>  |
| <b>Determination of Value § 23A.006.....</b>   | <b>4</b>  |
| <b>Cotenant Buyout §23A.007.....</b>   | <b>5</b>  |
| <b>Partition Alternatives §23A.008.....</b>  | <b>7</b>  |
| <b>Considerations for Partition in Kind §23A.009.....</b>                                  | <b>8</b>  |
| <b>Open-Market Sale, Sealed Bids, or Auction §23A.010.....</b>                             | <b>10</b> |
| <b>Report of Open-Market Sale §23A.011.....</b>  | <b>11</b> |
| <b>Uniformity of Application and Construction §23A.012.....</b>                            | <b>11</b> |
| <b>Relation to Electronic Signatures in<br/>Global National Commerce Act §23A.013.....</b> | <b>11</b> |
| <b>Litigation and Appellate Considerations.....</b>  | <b>11</b> |

This paper is provided for general educational purposes only and does not constitute legal advice or establish an attorney-client relationship. The UHPHA is a new statute and an area of developing case law. Many of the cases cited in the paper are recent and could be superseded, withdrawn, or overruled.

# UNIFORM PARTITION OF HEIRS' PROPERTY ACT

## I) INTRODUCTION. 23A.001

- 1) This act can be found in Title 4. Actions and Remedies, Chapter 23A of the Texas Property Code.
- 2) We will refer to this Act as the UPHPA throughout the paper for convenience.
- 3) The UPHPA is a useful tool when dealing with family real property where the co-owners/cotenants do not agree on how to manage or keep the property.
- 4) The UPHPA is a useful procedure for partitioning land which is, or was, family property. Its procedures still comply with the common law doctrine in favor of partition. Indeed, "[t]he right to partition is absolute." *Carter v. Charles*, 853 S.W.2d 667, 671 (Tex. App.—Houston [14th Dist.] 1993, no writ). However, the UPHPA also allows co-owners of this "heirs' property" the statutory right to buyout other co-owners who seek partition before the property is actually partitioned.
- 5) In addition to being useful in many potential situations both shortly after an owner of land has died or years down the road, the UPHPA was drafted with the specific purpose of protecting co-owners of inherited land from the predatory use of partition procedure. In recent years, a trend arose of investors purchasing a small fractional ownership interest in real property and then leveraging that interest to force a partition and buy the full property at the partition sale at a distressed price. Unless other family members/co-owners could raise the necessary funds to purchase the full value of the property, they could lose the

property which may have been in the family for generations.

- 6) The UPHPA provides the other family members/co-owners a solution. When a partition of heirs' property is requested, the non-moving parties have the opportunity to purchase the movant's interest at a fair, judicially determined value.

## II) DEFINITIONS. §23A.002

- 1) Most definitions would already be familiar to attorneys, but some are noteworthy.
- 2) **"Collateral"** means an individual who is related to another individual under the law of intestate succession of this state but who is NOT the other individual's ascendant or descendant.
- 3) **"Determination of Value"** means a court order determining the fair market value of heirs' property under §23A.006 or 23A.010 or adopting the valuation of the property agreed to by all cotenants.
  - a) Thus, an agreement by the cotenants to the property valuation can speed up the proceeding.
- 4) **"Heirs' Property"** means real property held in tenancy in common that satisfies ALL of the following requirements as of the filing of a partition action:
  - a) There is no agreement in a record binding all the cotenants that governs the partition of the property;
  - b) One or more of the cotenants acquired title from a relative, whether living or deceased; and ANY of the following applies:

- (1) 20 percent or more of the interests are held by cotenants who are relatives;
  - (2) 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or
  - (3) 20 percent or more of the cotenants are relatives.
- 5) **“Partition by Sale”** means a court-ordered sale of the entire heirs’ property, whether by open market sale, sealed bids, or auction conducted under §23A.010.
- 6) **“Partition in Kind”** means the division of heirs’ property into physically distinct and separately titled parcels.
- 7) **“Relative”** means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this state other than this Chapter.
- 8) **Comments and Analysis**
- a) For property to be “heirs” property and subject to chapter 23A, it is not necessary that the cotenants own equal interests in the property. *Atkinson v. Land Endeavors, LLC*, No. 06-24-00024-CV, 2025 WL 1773247, at \*3 (Tex. App.—Texarkana June 27, 2025, pet. filed) (Mem. Op.) (rejecting appellant’s argument that because the two other co-owners of the property owned undivided fractional interests unequal to her own that the UHPA did not apply).
  - b) A partition must be of the property as it is owned at the time of the partition, not when it qualified as heirs’ property or at some other time. See *Rogers v. Coslett*, 646 S.W.3d 1, 8 (Tex. App.—Texarkana

2022, no pet.) (In a case concerning inherited intestate property which was the subject of a prior ownership agreement, the court of appeals reversed the trial court’s order which failed to take into account deeds conveying ownership interests which were executed after the agreement.)

- c) When is a Will an Agreement that prevents application of the UHPA? In *Hernandez v. Hernandez*, the Thirteenth Court of Appeals found that, “Here, the will directly governs the manner in which Lot 390 is partitioned. Accordingly, because there is an ‘agreement in a record binding all the cotenants that governs the partition of the property,’ the Act does not apply. *Hernandez v. Hernandez*, No. 13-23-00527-CV, 2025 WL 2726534, at \*4 (Tex. App.—Corpus Christi–Edinburg Sept. 25, 2025, pet. filed) (Mem. Op.) (quoting §23A.002(5)(a). In *Hernandez*, the will gave real property to three beneficiaries with the condition that “if this property is ever partitioned by the heirs, the portion going to Rene Angel Hernandez shall be the section that borders along Lot 389 Kelly Pharr Tract.” *Id.* at \*1. Thus, a will bequest’s specific language could potentially result in the UHPA not being applicable to the bequeathed tract.
- d) It should also be noted that in *Hernandez* the Thirteenth Court of Appeals stated that the UHPA, “was devised for property in intestate succession.” *Id.* at \*4. However, the UHPA has been applied when the relatives acquired their interests through a will. See *Atkinson v. Land Endeavors, LLC*, No. 06-24-00057-CV, 2025 WL 1773250, at \*3 (Tex. App.—Texarkana June 27, 2025, no pet. h.)

(Mem. Op.) (applying the UHPHA to property originally bequeathed to three beneficiaries in a will.). Also, a limitation of the UHPHA to property acquired only through intestacy is not reflected in the definition of heirs' property in §23A.002(5), and it is inconsistent with the Comment 4 to Section 2 of the Uniform Act, "If tenants in common acquire their interests through a deed or a will that does not govern the manner in which the tenancy-in-common may be partitioned, the deed or will alone shall not be construed to be an agreement in a record among all the tenants in common which govern the partition of the property within the meaning of Section 2(5)(A)." Uniform Partition of Heirs Property Act; National Conference of Commissioners of Uniform State Laws, p. 11, <https://www.uniformlaws.org/viewdocument/final-act-97?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d&tab=librarydocuments>.

- e) At least two cases have held that a UHPHA partition is not available relief while the property is subject to an independent administration. See *Estate of Phillips*, No. 06-23-00017-CV, 2025 WL 1006386, at \*4 (Tex. App.—Texarkana Apr. 4, 2025, no pet.) (Mem. Op.) (See J. Rambin, Concurring at \*10, "I do *not* view Chapter 23A as upsetting the independent administration apple cart. Consequently, I *join* both of my colleagues in holding that Chapter 23A and the statute that it supplements, Chapter 23, are not available during the pendency of an independent administration.); *Matter of Estate of Stewart*, No. 04-20-00103-CV, 2021

WL 1987541, at \*9 (Tex. App.—San Antonio May 19, 2021, pet. denied) (Mem. Op.).

### III) APPLICABILITY; RELATION TO OTHER LAW. §23A.003

#### 1) Section Overview

- a) In an action to partition real property under Chapter 23 (i.e. standard Partition), the court shall determine whether the property is heirs' property.
- b) If the court determines the property is heirs' property, the property must be partitioned under the UHPHA unless all of the cotenants otherwise agree in a record.
- c) Chapter 23A supplements Chapter 23 and the TRCP governing partition of real property.
- d) As such, Chapter 23A supersedes provisions of Chapter 23 and the TRCP as they may relate to a regular partition.

#### 2) Comments and Analysis

- a) §23A.003 does not state that it supersedes the Texas Estates Code. Of particular note is an Estates Code statute passed in the same legislative session as the UHPHA: Tex. Est. Code §405.0015 which, "provides an independent executor with the tools necessary to make non-pro rata distributions and avoid the common partition litigation among heirs anticipated and addressed by the [UPHPA]." *Estate of Phillips*, No., 2025 WL 1006386, at \*3. *Estate of Phillips* also stated that, "'it is not a coincidence section 405.0015 became effective simultaneously with the [UPHPA].'" *Id.* at \*3 (quoting *In re Estate of Stewart*, 2021 WL 1987541, at \*9). *Estate of Phillips* affirmed the trial



court's decision denying the availability of partition in an independent administration. *Id.* at \*4 (citing *Estate of Stewart*, 2021 WL 1987541, at \*9; R. Shaun Rainey, *Uniform Partition of Heirs' Property Act: Partition with an Acetate Overlay*, 13 Est. Plan. & Community Prop. L.J. 233, 260, 266 (2020) ("describing Section 405.0015 as a tool estate planners can use 'in an attempt to avoid the application of the UHPA'")).

- b) Texas Estates Code §405.0015 states, "Unless the will, if any, or a court order provides otherwise, an independent executor may, in distributing property not specifically devised that the independent executor is authorized to sell:
  - (1) make distributions in divided or undivided interests;
  - (2) allocate particular assets in proportionate or disproportionate shares;
  - (3) value the estate property for the purposes of acting under Subdivision (1) or (2); and
  - (4) adjust the distribution, division, or termination for resulting differences in valuation."

#### **IV)SERVICE; NOTICE BY POSTING. §23A.004**

##### **1) Section Overview**

- a) The UHPA does not limit or affect the method by which service of a petition in a partition case may be made.
- b) However, if the plaintiff in a partition case seeks citation by publication and the court determines that the property may be heirs' property, the plaintiff, not later than 10 days after the determination is made, shall post, and maintain while the actions is pending, a

conspicuous sign on the property that states that the action has commenced and identify 1) the name and address of the court and 2) the common designation by which the property is known.

- c) The Court *may* also require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

##### **2) Comments and Analysis**

- a) Texas Rule of Civil Procedure 757 contains the general citation requirements for a partition: that all cotenants should receive citation.

#### **V) COMMISSIONERS. §23A.005**

- 1) If the Court appoints commissioners under Rule 761 of the TRCP, each commissioner must be impartial and may not be a party to or a participant in the action.

#### **VI)DETERMINATION OF VALUE. §23A.006**

##### **1) Introduction**

- a) If the court determines the property is heirs' property, the court shall determine the fair market value of the property by ordering an appraisal under Subsection (d).

- b) Exceptions include the following:

- (1) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt the agreed to or other method of valuation.
- (2) If the court determines the evidentiary value of the appraisal is outweighed by the cost, the court, after its own evidentiary hearing, shall determine the fair market value of the property

and send not to the parties of the value.

## **2) Appraisal. §23A.006(d)**

a) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser to determine the fair market value of the property.

b) On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

### **c) Key Point**

(1) This is where most properties will end up having their value determined in real life.

d) Once the appraisal is filed, the court, within 10 days, shall send notice to each party with a known address stating the following:

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

(2) That the appraisal is available at the clerk's office; and

(3) That a party may file with the Court an objection to the appraisal not later than the 30<sup>th</sup> day after the date notice of sent, stating the ground for the objection.

## **3) Fair Market Value Hearing. §23A.006(f)**

a) If the appraisal is filed under Subsection (d), the court shall conduct a hearing to determine the fair market value of the property not earlier than 30 days after the court sent notice to the parties of the appraised value.

b) Failure to hold an evidentiary hearing on fair market value is reversible error. *Rogers*, 646 S.W. 3d at 11.

## **4) Notice of Fair Market Value. 23A.006(g)**

a) After the Fair Market Value Hearing, but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

## **5) Comments and Analysis**

a) An order issued under 23A.006 determining the value of the property is not a final, appealable order. *Atkinson*, 2025 WL 1773247, at \*1, 5.

## **VII) COTENANT BUYOUT. §23A.007**

### **1) Introduction**

a) Once Fair Market Value is judicially established under the UHPA, this sets up the coup-de-gras for the co-owner seeking partition by putting the onus on the holdout owner to buyout the co-owner, otherwise the property is partitioned if no buyout takes place.

### **2) Section Overview**

a) If any cotenant requested partition by sale, the court sends notice to the parties that any cotenant (except one that requested sale of the property) may buy all the interests of the cotenants that requested partition by sale.

b) The cotenant then has 45 days to notify the court that the cotenant elects to buy all the interests of the cotenants that requested partition by sale.

c) The purchase price for each of the interest of a cotenant that requested partition by sale is the value of the

entire parcel multiplied by the cotenant's fractional ownership of the entire parcel.

- (1) After the 45 days expires, if only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all parties of that fact.
- (2) But if more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall:
  - (a) Allocate the right to buy those interests among the electing cotenants based on fractional owners of the entire parcel divided by the total existing fractional ownership of cotenants electing to buy, and send notice to all parties of that fact and of the price to be paid by each electing cotenant.
- d) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall 1) send notice to all the parties of that fact, and 2) resolve the partition action under §23A.008(a) or (b).
- e) For a cotenant or cotenants who have elected to buyout the other cotenants electing sale, the court sets a date, no earlier than 60 days after the notice was sent under Subsection (d)(1) or (2), by which an electing cotenant must pay the cotenant's apportioned price into the court. After that date:
  - (1) If all electing cotenants timely pay their apportion price into court, the court shall issue an order reallocating all the interests of the cotenants, and disburse the amounts held by the court to the persons entitled to them.
  - (2) If no electing cotenant timely pays is apportioned price, the court shall resolve the partition action under §23A.008(a) or (b), which provides for partition-in-kind, unless substantial prejudice to the cotenants as a group can be shown. *See also* §23A.009.
- (3) If one or more but not all of the electing cotenants fail to pay their apportion price on time, the court shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.
- f) Not later than 20 days after the court gives notice under Subsection (3), any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the Court. After that period expires:
  - (1) If only one cotenant pays the entire price for the remaining interest, the court shall 1) issue an order reallocating the remaining interest to that cotenant, 2) promptly issue an order reallocating the interest of all of the cotenants, and 3) disburse the amounts held by the court to the person entitled to the amounts.
- g) If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under §23A.008(a) or (b) (i.e. partition in kind) as if the interests of the cotenants were not purchased; OR
- h) If more than one cotenant pays the entire price for the remaining interest,

the court shall 1) reapportion the remaining interest among those paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest, 2) promptly issue an order reallocating all of the cotenants' interests, 3) disburse the amounts held by the court to the persons entitled to the amounts, and 4) promptly refund any excess payment held by the court.

- i) Not later than 45 days after the court's notice under Subsection (a), any cotenant entitled to buy an interest may request the court to authorize the sale as part of the pending action of cotenants named as defendants who did not appear after service. Subsection (g)
- j) If the court receives a timely request under Subsection (g), the court, after hearing, may deny the request or authorize the requested additional sale on such terms as the court finds fair and reasonable, subject to the following limitations:
  - (1) A sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under Subsections (a) through (f) have been paid into court and those interests have been reallocated among the cotenants; and
  - (2) The purchase price for the interest of a non-appearing cotenant is based on the court's determination of value under §23A.006.

### 3) Comments and Analysis

- a) A party must have live pleadings requesting partition under Chapter 23A in order to preserve error on appeal complaining of a court's lack of application of the provisions of Chapter 23A. *Estate of Webb*, No. 05-22-00673-CV, 2023 WL 7144639, at \*1 (Tex. App.—Dallas Oct. 31, 2023, no pet.).

## VIII) PARTITION      ALTERNATIVES

### §23A.008

#### 1) Introduction

- a) Once the potential cotenant buyout is resolved, the court orders the partition of the property. If requested, the partition will be in kind unless, after consideration of the 23A.009 factors, the partition would result in substantial prejudice to the cotenants as a group. In that case, the court may order partition by sale.
- b) Partition in kind results in the property being divided into separate parcels with each parcel being allotted to different owner(s). Partition by sale means that the property is sold and the proceeds are divided among the owners.

#### 2) Section Overview

- a) Generally, there is a requirement for partition in kind. Following the cotenant buyout procedures of 23A.007, if any cotenant who requested partition by sale has an interest which has not been purchased or if any cotenant remains who has not requested partition in kind, the court shall order partition in kind. However, partition in kind may be avoided if the court, after consideration of the factors in 23A.009, finds that partition in kind will result in substantial prejudice to the cotenants as a group. If two or more parties request that their interests be aggregated for

purposes of the analysis, the court is required to approve that request.

- b) After conducting the partition in kind analysis, if the court does not order partition in kind then it shall order partition by sale. However, if no cotenant requested partition by sale then the action shall be dismissed.
- c) After conducting the partition in kind analysis, if the court orders partition in kind it has flexibility to arrive at a just and proportionate division among the fractional interests held. To do so, the court may order one or more cotenants to pay one or more other cotenants amounts in addition to what the cotenants receive through the in kind division.
- d) The court will not necessarily fully partition the entire tract among each and every cotenant when partitioning in kind. Rather, the court must leave a part of the property unpartitioned for any cotenants that are unknown, unlocatable, or the subject of default judgment, and who were not bought out under 23A.007. The combined interests of such cotenants must remain undivided.

### 3) Comments and Analysis

- a) Sections 23A.008 and 23A.009 reflect the Act's preference for partition in kind. That policy is consistent with longstanding law in the state, "Texas law favors partition in kind over partition by sale." *Atkinson*, 2025 WL 1773250, at \*6).
- b) The burden of proof in a 23A proceeding is on a party opposing partition in kind to show that the property is not subject to a fair division

and is thus incapable of partition in kind. *Id.* at 8 (citing *Daven Corp. v. Tarh E & P Holdings, L.P.*, 441 S.W.3d 770, 777 (Tex. App.—San Antonio 2014, pet. denied)).

## IX) CONSIDERATIONS FOR PARTITION IN KIND §23A.009

### 1) Introduction

- a) The court must consider the totality of the circumstances when deciding whether substantial prejudice would be caused to the cotenants as a whole if the property is partitioned in kind. No one factor is determinative for substantial prejudice, and any relevant factor should be considered.

### 2) Section Overview

- a) The Act sets forth a number of nonexclusive factors the court must consider in its determination of substantial prejudice to the cotenants as a group as required by 23A.008(a) they include:

- (1) whether the heirs' property practicably can be divided among the cotenants;
- (2) whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if the property were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;
- (3) evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the

cotenant who are or were relatives of the cotenant or each other;

- (4) a cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;
- (5) the lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;
- (6) the degree to which the cotenants have contributed the cotenants' pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property; and
- (7) any other relevant factor.

- b) The Act expressly prevents the court from considering any single factor to be dispositive without considering all relevant factors and circumstances.

### 3) Comments and Analysis

- a) *Freeney v. Flowers* demonstrates the application of case facts to the 23A.009 factors. No. 06-24-00079-CV, 2025 WL 1318022 (Tex. App.—Texarkana May 7, 2025, pet. denied) (Mem. Op.). *Freeney* explains that, “[t]he rules of equity govern the trial court's partition of property.” *Id.* at \*2 (quoting *Bowman v. Stephens*, 569 S.W.3d 210, 223 (Tex. App.—Houston [1st Dist.] 2018, no pet.). Additionally, “A trial court exercises broad discretion in balancing

the equities involved in a case seeking equitable relief.” *Id.*

- b) In *Freeney*, the trial court's finding that partitioning in kind an approximately 94 acre tract would reduce the aggregate fair-market value and would result in substantial prejudice to the cotenants was supported by sufficient evidence. *Id.* at \*3. Evidence included that the rural tract was inaccessible, partially in a floodplain, had no improvements in many years, that taxes had been paid by the parties seeking partition by sale, and that partition in kind would require experts and surveyors to determine an equitable division and necessary easements. *Id.* The trial court rejected arguments seeking partition in kind of a small fraction based on the historical connection to the family's past at the property. *Id.*
- c) *Freeney* explains that, “the threshold question here is whether the Property is ‘susceptible of partition’ in kind, Tex. R. Civ. P. 761, or if it is ‘incapable of partition’ in kind because a “fair and equitable division” cannot be made, Tex. R. Civ. P. 770.” *Id.* Case law is clear that single-family homes are not susceptible to partition in kind. *Dejean v. Spates*, No. 14-22-00908-CV, 2024 WL 1668018, at \*3 (Tex. App.—Houston [14th Dist.] Apr. 18, 2024, no pet.) (Mem. Op.); See also *Beago v. Ceres*, 619 S.W.2d 293, 295 (Tex. App.—Houston [1st Dist.] 1981, no writ). Additionally, the fact that one party to the partition may live in the subject property does not defeat another co-owner's right to partition. *Dejean*, 2024 WL 1668018 at \*3 (citing *Grant v. Clouser*, 287 S.W.3d 914, 920 (Tex. App.—Houston [14th Dist.] 2009, no

pet.). However, a property may not be partitioned if it is the primary residence of a deceased owner's surviving spouse or minor child. Tex. Est. C. §102.005. A surviving spouse may remain residing in the property for the remainder of his/her life, and the guardian of a decedent's minor child may use and occupy the homestead under a court order. *Id.*

- d) As an example of a case in which the trial court's finding that a property was susceptible to partition in kind was upheld, see *Atkinson*, 2025 WL 1773250, at \*5-7.

## **X) OPEN-MARKET SALE, SEALED BIDS, OR AUCTION §23A.010**

### **1) Introduction**

- a) Once partition by sale has been ordered, section 23A.010 explains how the sale will be conducted. Open market sale is favored, and the sale is based on the property value as determined by 23A.006.

### **2) Section Overview**

- a) A partition by sale must be an open-market sale unless the court finds that a sale by sealed bids or at an auction would be more economically advantageous and in the best interest of the cotenants as a group.
- b) In the event of open-market sale, the parties have ten days to agree on a broker to sell the property or the court shall appoint a disinterested broker. The court shall establish a reasonable commission for the broker. The broker shall offer the property for sale at a price no lower than the 23A.006 value.
- c) If the broker receives an offer then a report of sale must be filed which

includes the information listed in 23A.011, and the sale may be completed in accordance with law other than in 23A.

- d) If a reasonable time passes and the broker has not obtained an offer of at least the 23A.006 value, then after hearing the court may accept the highest offer, redetermine the value, or order the property sold by sealed bids or at an auction.
- e) If the court orders sale by sealed bids or at an auction, the court shall set the terms and conditions. If the sale is at auction, the sale must be conducted in the manner of a sale made under execution. See Texas Rules of Civil Procedure 621 through 656 and Civil Practice and Remedies Code Chapter 34.
- f) A purchaser who is also a co-owner of the property may have a credit against the price equal to the purchase's share of the proceeds.

### **3) Comments and Analysis**

- a) *Rogers v. Coslett* discusses the application of sections 23A.010 and 23A.011. Notably, the court held that the trial order's order to sell must direct the broker to comply with the provisions chapter 23A, including to file a report and that the report must include the information stated in 23A.011. 646 S.W.3d 1, 9 (Tex. App.—Texarkana 2022, no pet.). Additionally, the court held that the order must state that the net proceeds of the sale must be paid into the registry of the trial court. *Id.* at 10. (citing Texas Rule of Civil Procedure 770 controlling due to silence on the issue by Property Code chapter 23 and 23A). The order should

also expressly state that the property be sold at a price no lower than the determined value. *Id.* at 11.

## **XI)REPORT OF OPEN-MARKET SALE §23A.011**

### **1) Section Overview**

- a) Unless already required, the broker of an open market sale shall file a report with the court within seven days after the date an offer is received to purchase the property for at least the court determined value.

- b) The report must contain the following information:

- (1) The name of each buyer;
- (2) The proposed purchase price;
- (3) The terms and conditions of the proposed sale, including the terms of any owner financing;
- (4) The amounts to be paid to lienholders;
- (5) A statement of contractual or other arrangements or conditions of the broker's commission; and
- (6) Other material facts relevant to the sale.

### **2) Comments and Analysis**

- a) It should be noted that the information required by section 23A.011 exceeds that required for a report of sale of real property during an estate administration as set forth in Texas Estates Code §356.551. The catch-all of (b)(7) could be create difficulties for compliance.

## **XII) UNIFORMITY OF APPLICATION AND CONSTRUCTION §23A.012**

### **1) Section Overview**

- a) In applying and construing 23A, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of 23A among states that enact a law based on the uniform Act.

### **2) Comments and Analysis**

- a) The implication of this section is that case law from any state which has passed the Uniform Partition of Heirs' Property Act may be cited as authority for interpretation of Chapter 23A. As of November 2025, 26 states have enacted the Act including California, New York, Florida, Illinois, and Virginia.

## **XIII) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT §23A.013**

### **1) Section Overview**

- a) Chapter 23A modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act.

## **XIV) LITIGATION AND APPELLATE CONSIDERATIONS**

- 1) Due to the recency of the UPHPA, there are currently few appellate decisions regarding the act. Be aware of new decisions which may address matters of first impression. However, cases pertaining to partition under Texas Property Code Chapter 23 and under the Rules of Civil Procedure will remain relevant on issues which are not



superseded by the UHPA. For example, the UHPA is silent as to allocation of costs. However, Texas Rule of Civil Procedure 778 states, “The court shall adjudge the costs in a partition suit to be paid by each party to whom a share has been allotted in proportion to the value of such share.” Further, Texas Property Code §23.005 states that the fees of commissioners shall be taxed as costs.

- 2) A partition of real property may be brought in district court in the county in which any part of the property is located. TEX. PROP. C. §23.002(a).
- 3) The partition of property is governed by the rules of equity. *Dejean*, 2024 WL 1668018, at \*2 (citing *Bowman v. Stephens*, 569 S.W.3d 210, 223 (Tex.App.—Houston [1st Dist.] 2018, no pet.)). “A trial court exercises broad discretion in balancing the equities involved in a case seeking equitable relief.” *Freeney*, at \*2 (citing *Bowman*, 569 S.W.3d at 223).
- 4) A court of appeals will review trial court’s equitable decisions under an abuse of discretion standard. *Dejean*, 2024 WL 1668018, at \*2; *Freeney*, at \*2. “A trial court abuses its discretion when it acts unreasonably or in an arbitrary manner without reference to guiding rules or principles *Id.* (citing *Samlowski v. Wooten*, 332 S.W.3d 404, 410 (Tex. 2011)).
- 5) In situations where one cotenant has paid funds for the real property subject to the partition, the trial court may award reimbursement to the cotenant from the share(s) of other cotenants. For example, in *Dejean*, one cotenant had been paying the mortgage without contribution from the other cotenants. *Dejean*, 2024 WL

1668018, at \*1. The trial court awarded that cotenant half of the proceeds of the sale for his undivided one-half ownership interest and additional funds paid from the sale proceeds from each of the six other cotenants as reimbursement for his mortgage principal payments. *Id.* The Fourteenth Court of Appeals stated, ““On partition, a cotenant who expends funds necessary to protect or preserve the common property is entitled to have those expenditures charged to the tenants in common according to their pro rata ownership.” *Id.* at \*3 (quoting *McGehee v. Campbell*, No. 01-08-1023-CV, 2010 WL 1241300, at \*3 (Tex.App.—Houston [1st Dist.] Mar. 25, 2010, no pet.).