

The Uniform Partition of Heirs Property Act



Jane Sternecky, Legislative Counsel
jsternecky@uniformlaws.org

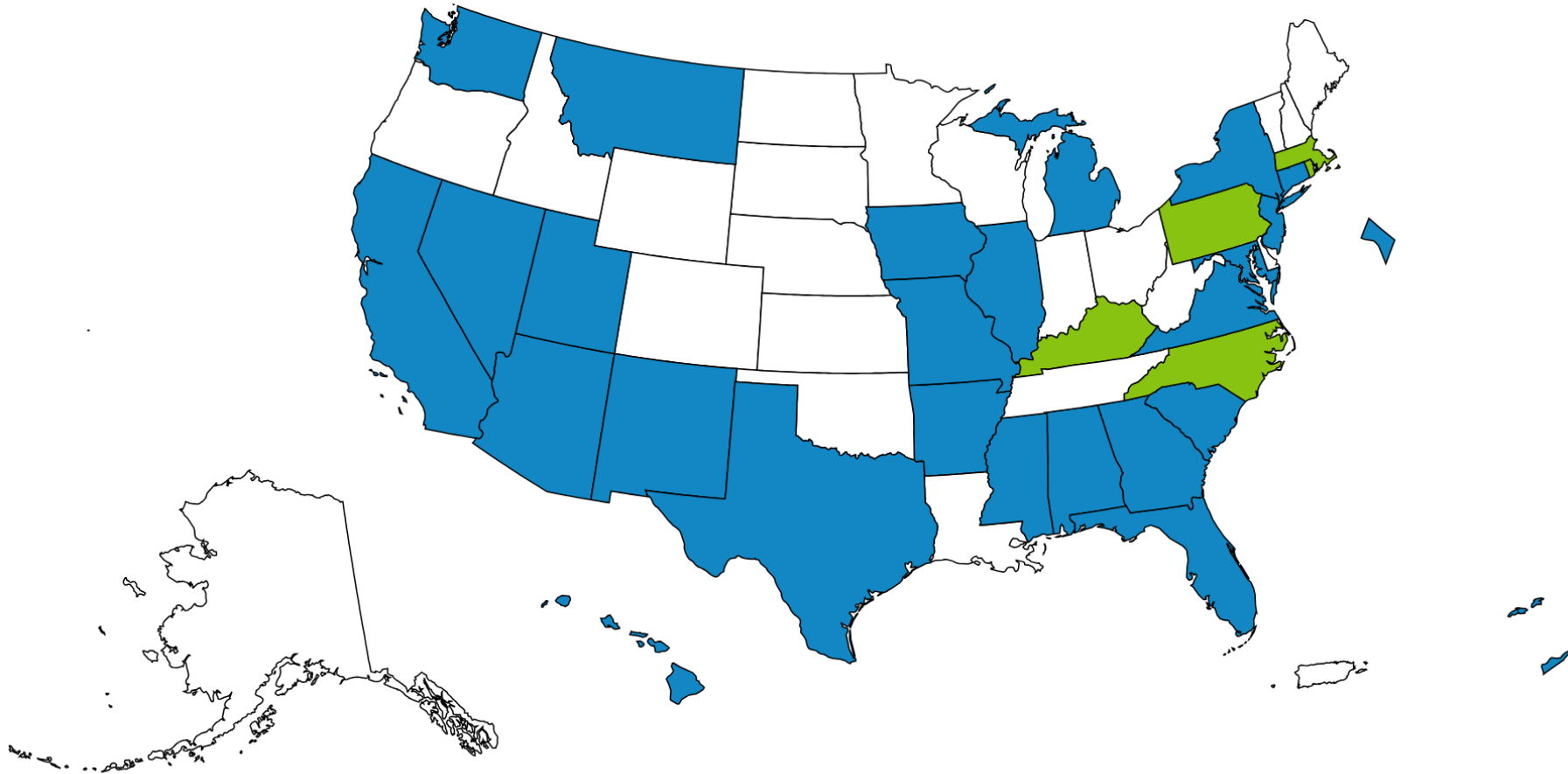
Uniform Partition of Heirs Property Act

- Drafted by the ULC, a non-profit, state-supported organization that creates uniform legislation
- Available to the states for enactment since 2009, following 3 years of study and drafting
- Enacted in 26 states/territories—see map on next slide



2010 | Partition of Heirs Property Act

Real Property, Mortgages, & Liens | Probate, Trusts, & Estates



Enactment Map ● Introduced ● Enacted

Uniform Partition of Heirs Property Act

- Owners of heirs' property inherit from a relative who died without a will or with just a simple estate plan; this can result in dozens of heirs who own as tenants in common
 - Instead of owning separate acres of the property, tenants in common own a small percentage of every single molecule of the property
 - The day-to-day maintenance of tenancy in common property is complex and poses many issues, but the UHPA addresses a major one: their vulnerability to forced sales



Forced Sales of Heirs' Property

- Under the current law in Kentucky, if one heir files for partition, the property often ends up being sold in a forced sale for pennies on the dollar
 - This deprives heirs' property owners of both their ancestral home and any generational wealth associated with it
 - Heirs' property can be an attractive target for property developers who wish to acquire the entire parcel—all they need to buy is one heir's share and file for partition



How the UHPHA Protects Heirs' Property Owners

- Creates a series of due process protections designed to keep families on their ancestral land whenever possible
- When the land cannot be kept within the family, the UHPHA's sale provisions mimic a sale between a willing seller and a willing buyer, designed to maximize the property's value



Due Process Protections Under the UHPHA

1. Enhanced notice, including notice by posting at the property (Section 4)
2. An independent appraisal or agreement by the heirs on the property's value (Section 6)
3. An opportunity for the responding cotenants to buy out the share of the individual who filed for partition and wishes to sell, with time to secure financing (Section 7)



Due Process Protections Under the UPHPA

4. Specific factors the court must consider in determining whether the land can be physically partitioned (partition-in-kind) (Sections 8 & 9)
5. If the cotenants do not exercise the buyout option and the land cannot be physically divided, then the court will order a sale on the open market for at least fair market value (Section 10)

