
A BILL FOR AN ACT

RELATING TO PARTITION OF HEIRS PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 **UNIFORM PARTITION OF HEIRS PROPERTY ACT**

6 § -1 **Short title.** This chapter may be cited as the
7 Uniform Partition of Heirs Property Act.

8 § -2 **Definitions.** As used in this chapter:

9 "Ascendant" means an individual who precedes another
10 individual in lineage, in the direct line of ascent from the
11 other individual.

12 "Collateral" means an individual who is related to another
13 individual under the law of intestate succession of this State
14 but who is not the other individual's ascendant or descendant.

15 "Descendant" means an individual who follows another
16 individual in lineage, in the direct line of descent from the
17 other individual.



1 "Determination of value" means an order of a court
2 determining the fair market value of heirs property under
3 section -6 or -10 or adopting the valuation of the
4 property agreed to by all cotenants.

5 "Heirs property" means real property held in tenancy in
6 common that satisfies all the following requirements as of the
7 filing of an action for partition:

- 8 (1) There is no agreement in a record binding all the
9 cotenants that governs the partition of the property;
- 10 (2) One or more of the cotenants acquired title from a
11 relative, whether living or deceased; and
- 12 (3) Any of the following applies:
- 13 (A) Twenty per cent or more of the interests are held
14 by cotenants who are relatives;
- 15 (B) Twenty per cent or more of the interests are held
16 by an individual who acquired title from a
17 relative, whether living or deceased; or
- 18 (C) Twenty per cent or more of the cotenants are
19 relatives.

20 "Partition by sale" means a court-ordered sale of the
21 entire heirs property, whether by auction, sealed bids, or open-
22 market sale conducted under section -10.



1 "Partition in kind" means the division of heirs property
2 into physically distinct and separately titled parcels.

3 "Record" means information that is inscribed on a tangible
4 medium or that is stored in an electronic or other medium and is
5 retrievable in perceivable form.

6 "Relative" means an ascendant, descendant, or collateral or
7 an individual otherwise related to another individual by blood,
8 marriage, adoption, or law of this State other than this
9 chapter.

10 **§ -3 Applicability; relation to other law.** (a) This
11 chapter applies to actions for partition filed on or after
12 July 1, 2013.

13 (b) In any action for partition of real property, the
14 court shall determine whether the property is heirs property.
15 If the court determines that the property is heirs property, the
16 property shall be partitioned under this chapter, unless all the
17 cotenants agree otherwise in a record.

18 (c) This chapter supplements chapter 668 and, if an action
19 is governed by this chapter, supersedes provisions of chapter
20 668 that are inconsistent with this chapter.



1 **§ -4 Service; notice by posting.** (a) This chapter does
2 not limit or affect the method by which service of a complaint
3 in an action for partition may be made.

4 (b) If an order of service by publication of the summons
5 for an action for partition of real property is granted and the
6 court determines that the property may be heirs property, the
7 plaintiff, not later than ten days after the court's
8 determination, shall post, and maintain while the action is
9 pending, a conspicuous sign on the property that is the subject
10 of the action. The sign shall state that the action has
11 commenced and identify the name and address of the court and the
12 common designation by which the property is known. The court
13 may require the plaintiff to publish on the sign the name of the
14 plaintiff and the known defendants.

15 **§ -5 Commissioners.** If the court appoints commissioners
16 pursuant to section 668-13, each commissioner, in addition to
17 the requirements and disqualifications applicable to
18 commissioners in section 668-13, shall be disinterested,
19 impartial, and neither a party to nor a participant in the
20 action.

21 **§ -6 Determination of value.** (a) Except as otherwise
22 provided in subsections (b) and (c), if the court determines



1 that the property that is the subject of the action for
2 partition is heirs property, the court shall determine the fair
3 market value of the property by ordering an appraisal pursuant
4 to subsection (d).

5 (b) If all cotenants have agreed to the value of the
6 property or to another method of valuation, the court shall
7 adopt that value or the value produced by the agreed method of
8 valuation.

9 (c) If the court determines that the evidentiary value of
10 an appraisal is outweighed by the cost of the appraisal, the
11 court, after an evidentiary hearing, shall determine the fair
12 market value of the property and send notice to the parties of
13 the value.

14 (d) If the court orders an appraisal, the court shall
15 appoint a disinterested real estate appraiser licensed in this
16 State to determine the fair market value of the property
17 assuming sole ownership of the fee simple estate. On completion
18 of the appraisal, the appraiser shall file a sworn or verified
19 appraisal with the clerk of the court and mail or deliver to the
20 chambers of the presiding judge a file-marked copy of the
21 appraisal filed with the clerk of the court.



1 (e) If an appraisal is conducted pursuant to subsection
2 (d), not later than ten days after the appraisal is filed, the
3 court shall send notice to each party with a known address,
4 stating:

5 (1) The appraised fair market value of the property as set
6 forth in the appraisal that was filed with the clerk
7 of the court;

8 (2) That the appraisal is available at the clerk of the
9 court's office; and

10 (3) That a party may object to the appraisal not later
11 than thirty days after the notice is sent, stating the
12 grounds for the objection.

13 (f) If an appraisal is filed with the court pursuant to
14 subsection (d), the court shall conduct a hearing to determine
15 the fair market value of the property not earlier than thirty
16 days after a copy of the notice of appraisal is sent to each
17 party under subsection (e), whether or not an objection to the
18 appraisal is filed under subsection (e)(3). In addition to the
19 court-ordered appraisal, the court may consider any other
20 evidence of value that is offered by a party.

21 (g) After the hearing under subsection (f), but before
22 considering the merits of the action for partition, the court

1 shall determine the fair market value of the property and send
2 notice to the parties of the value.

3 **§ -7 Cotenant buyout.** (a) If any cotenant requested
4 partition by sale, after the determination of value under
5 section -6, the court shall send notice to the parties that
6 any cotenant except a cotenant that requested partition by sale
7 may buy the interest of any cotenant that requested partition by
8 sale.

9 (b) Not later than forty-five days after the notice is
10 sent under subsection (a), any cotenant except a cotenant that
11 requested partition by sale may give notice to the court that it
12 elects to buy all the interests of the cotenants that requested
13 partition by sale.

14 (c) The purchase price for each of the interests of a
15 cotenant that requested partition by sale is the value of the
16 entire parcel determined under section -6 multiplied by that
17 cotenant's fractional ownership of the entire parcel.

18 (d) After expiration of the period in subsection (b), the
19 following rules apply:

20 (1) If only one cotenant elects to buy all the interests
21 of the cotenants that requested partition by sale, the
22 court shall notify all the parties of that fact;



1 (2) If more than one cotenant elects to buy all the
2 interests of the cotenants that requested partition by
3 sale, the court shall allocate the right to buy those
4 interests among the electing cotenants based on each
5 electing cotenant's existing fractional ownership of
6 the entire parcel divided by the total existing
7 fractional ownership of all cotenants electing to buy
8 and send notice to all the parties of that fact and of
9 the price to be paid by each electing cotenant; and

10 (3) If no cotenant elects to buy all the interests of the
11 cotenants that requested partition by sale, the court
12 shall send notice to all the parties of that fact and
13 resolve the action for partition under section -
14 8(a) and (b).

15 (e) If the court sends notice to the parties under either
16 subsection (d)(1) or (2), the court shall set a date, not
17 earlier than sixty days after the date the notice was sent, by
18 which electing cotenants must pay their apportioned price into
19 the court. After this date, the following rules apply:

20 (1) If all electing cotenants timely pay their apportioned
21 price, the court shall issue an order reallocating all
22 the interests of the cotenants and disburse the

1 amounts held by the court to the persons entitled to
2 them;

3 (2) If no electing cotenant timely pays its apportioned
4 price, the court shall resolve the action for
5 partition under section -8(a) and (b), as if the
6 interests of the cotenants that requested partition by
7 sale were not purchased; and

8 (3) If one or more but not all the electing cotenants fail
9 to timely pay their apportioned price, the court, on
10 motion, shall give notice to the electing cotenants
11 that paid their apportioned price of the interest
12 remaining and the price for all that interest. Unless
13 otherwise ordered by the court, for any notice that
14 the court is required to give pursuant to this
15 paragraph, the movant for notice to be given to
16 electing cotenants pursuant to this paragraph shall
17 deliver to the chambers of the presiding judge a
18 notice in blank to be completed by the court with
19 sufficient copies for service on the electing
20 cotenants along with envelopes stamped with sufficient
21 postage and addressed to each electing cotenant. The



1 court may direct the movant to provide notice of the
2 value by any other means.

3 (f) Not later than twenty days after the court gives the
4 notice pursuant to subsection (e)(3), any cotenant that paid may
5 elect to purchase all the remaining interest by paying the
6 entire price to the court. After the twenty-day period, the
7 following rules apply:

8 (1) If only one cotenant pays the entire price for the
9 remaining interest, the court shall issue an order
10 reallocating the remaining interest to that cotenant.
11 The court shall issue promptly an order reallocating
12 all the interests of all the cotenants and disburse
13 the amounts held by the court to the persons entitled
14 to them;

15 (2) If no cotenant pays the entire price for the remaining
16 interest, the court shall resolve the partition action
17 under section -8(a) and (b), as if the interests of
18 the cotenants that requested partition by sale were
19 not purchased; and

20 (3) If more than one cotenant pays the entire price for
21 the remaining interest, the court shall reapportion
22 the remaining interest among those paying cotenants,



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

9 (g) Not later than forty-five days after the court sends
10 notice to the parties pursuant to subsection (a), any cotenant
11 entitled to buy an interest under this section may request the
12 court to authorize the sale as part of the pending action of the
13 interests of cotenants named as defendants and served with the
14 complaint but that did not appear in the action.

15 (h) If the court receives a timely request under
16 subsection (g), the court, after hearing, may deny the request
17 or authorize the requested additional sale on such terms as the
18 court determines are fair and reasonable, subject to the
19 following limitations:

20 (1) A sale authorized under this subsection may occur only
21 after the purchase prices for all interests subject to
22 sale under subsections (a) through (f) have been paid



1 into the court and those interests have been
2 reallocated among the cotenants as provided in those
3 subsections; and

4 (2) The purchase price for the interest of an absent
5 cotenant is based on the court's determination of
6 value under section -6.

7 **§ -8 Partition alternatives.** (a) If all the interests
8 of all cotenants that requested partition by sale are not
9 purchased by other cotenants pursuant to section -7, or if
10 after conclusion of the buyout under section -7, a cotenant
11 remains that has requested partition in kind, the court shall
12 order partition in kind unless the court, after consideration of
13 the factors listed in section -9, finds that partition in
14 kind will result in great prejudice to the cotenants as a group.
15 In considering whether to order partition in kind, the court
16 shall approve a request by two or more parties to have their
17 individual interests aggregated.

18 (b) If the court does not order partition in kind under
19 subsection (a), the court shall order partition by sale pursuant
20 to section -10 or, if no cotenant requested partition by
21 sale, the court shall dismiss the action.



1 (c) If the court orders partition in kind pursuant to
 2 subsection (a), the court may require that one or more cotenants
 3 pay one or more other cotenants amounts so that the payments,
 4 taken together with the value of the in-kind distributions to
 5 the cotenants, will make the partition in kind just and
 6 proportionate in value to the fractional interests held.

7 (d) If the court orders partition in kind, the court shall
 8 allocate to the cotenants that are unknown, unlocatable, or are
 9 the subject of a default judgment, a part of the property
 10 representing the combined interests of these cotenants as
 11 determined by the court, and this part of the property shall
 12 remain undivided; provided that their interests were not bought
 13 out pursuant to section -7.

14 **§ -9 Considerations for partition in kind.** (a) In
 15 determining under section -8(a), whether partition in kind
 16 would result in great prejudice to the cotenants as a group, the
 17 court shall consider the following:

- 18 (1) Whether the heirs property practicably may be divided
 19 among the cotenants;
- 20 (2) Whether partition in kind would apportion the property
 21 in such a way that the aggregate fair market value of
 22 the parcels resulting from the division would be



- 1 materially less than the value of the property if it
2 were sold as a whole, taking into account the
3 condition under which the court-ordered sale likely
4 would occur;
- 5 (3) Evidence of the collective duration of ownership or
6 possession of the property by a cotenant and one or
7 more predecessors in title or predecessors in
8 possession to the cotenant who are or were relatives
9 of that cotenant or each other;
- 10 (4) A cotenant's sentimental attachment to the property,
11 including, without limitation, any attachment arising
12 because the property has ancestral or other unique or
13 special value to the cotenant;
- 14 (5) The lawful use being made of the property by a
15 cotenant and the degree to which the cotenant would be
16 harmed if the cotenant could not continue the same use
17 of the property;
- 18 (6) The degree to which the cotenants have contributed
19 their pro rata share of the property taxes, insurance,
20 and other expenses associated with maintaining
21 ownership of the property or have contributed to the



1 physical improvement, maintenance, or upkeep of the
2 property; and

3 (7) Any other relevant factor.

4 (b) The court shall not consider any one factor in
5 subsection (a) to be dispositive without weighing the totality
6 of all relevant factors and circumstances.

7 **§ -10 Open-market sale, sealed bids, or auction. (a)**

8 If the court orders a sale of heirs property, the sale shall be
9 an open-market sale unless the court finds that a sale by sealed
10 bids or an auction would be more economically advantageous and
11 in the best interest of the cotenants as a group.

12 (b) If the court orders an open-market sale and the
13 parties, not later than ten days after the entry of the order,
14 agree on a real estate broker licensed in this State to offer
15 the property for sale, the court shall appoint that broker and
16 establish a reasonable commission. If the parties do not agree
17 on a broker, the court shall appoint a disinterested real estate
18 broker licensed in this State to offer the property for sale and
19 shall establish a reasonable commission. The broker shall offer
20 the property for sale in a commercially reasonable manner at a
21 price not lower than the determination of value and on the terms
22 and conditions established by the court.



1 (c) If the broker appointed under subsection (b) obtains
2 within a reasonable time an offer to purchase the property for
3 at least the determination of value:

4 (1) The broker shall comply with the reporting
5 requirements set forth in section -11; and

6 (2) The sale may be completed in accordance with state law
7 other than this chapter.

8 (d) If the broker appointed under subsection (b) does not
9 obtain within a reasonable time an offer to purchase the
10 property for at least the determination of value, the court,
11 after hearing, may:

12 (1) Approve the highest outstanding offer, if any;

13 (2) Redetermine the value of the property and order that
14 the property continue to be offered for an additional
15 time; or

16 (3) Order that the property be sold by sealed bids or at
17 an auction.

18 (e) If the court orders a sale by sealed bids or at an
19 auction, the court shall set terms and conditions of the sale.
20 If the court orders an auction, the auction shall be conducted
21 pursuant to chapter 667 or 668, as applicable.



1 (f) If a purchaser is entitled to a share of the proceeds
2 of the sale, the purchaser is entitled to a credit against the
3 price in an amount equal to the purchaser's share of the
4 proceeds.

5 **§ -11 Report of open-market sale.** (a) Unless required
6 to do so within a shorter time by chapter 668, a broker
7 appointed under section -10(b) to offer heirs property for
8 open-market sale shall file a report not later than seven days
9 after receiving an offer to purchase the property for at least
10 the value determined under section -6 or -10.

11 (b) The report required by subsection (a) shall contain
12 the following information:

- 13 (1) A description of the property to be sold to each
14 buyer;
- 15 (2) The name of each buyer;
- 16 (3) The proposed purchase price;
- 17 (4) The terms and conditions of the proposed sale,
18 including, without limitation, the terms of any owner
19 financing;
- 20 (5) The amounts to be paid to lienholders;
- 21 (6) A statement of contractual or other arrangements or
22 conditions of the broker's commission; and



1 (7) Other material facts relevant to the sale.

2 § -12 **Uniformity of application and construction.** In
3 applying and construing this chapter, consideration shall be
4 given to the need to promote uniformity of the law with respect
5 to its subject matter among the states that enact similar
6 uniform legislation.

7 § -13 **Relation to Electronic Signatures in Global and**
8 **National Commerce Act.** This chapter modifies, limits, and
9 supersedes the federal Electronic Signatures in Global and
10 National Commerce Act, P.L. 106-229, title 15 United States Code
11 chapter 96, but does not modify, limit, or supersede title 15
12 United States Code section 7001(c), or authorize electronic
13 delivery of any of the notices described in title 15 United
14 States Code section 7003(b)."

15 SECTION 2. Section 668-1, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§668-1 **Actions for partition.** When two or more persons
18 hold or are in possession of real property as joint tenants or
19 as tenants in common, in which one or more of them have an
20 estate in fee, or a life estate in possession, any one or more
21 of such persons may bring an action in the circuit court of the
22 circuit in which the property or some part thereof is situated,



1 for a partition of the property, according to the respective
2 rights of the parties interested therein, and for a sale of the
3 same or a part thereof if it appears that a partition cannot be
4 made without great prejudice to the owners. [~~The~~] Except as
5 provided in chapter , the several circuit courts shall have
6 power, in any action for partition, to proceed according to the
7 usual practice of courts of equity in cases of partition, and
8 according to this chapter in enlargement thereof."

9 SECTION 3. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 4. This Act shall take effect on July 1, 2050.



Report Title:

Real Property; Partition; Heirs Property

Description:

Adopts Uniform Partition of Heirs Property Act. Establishes procedures and remedies for use in actions for partition of real property involving heirs property (real property held in tenancy in common that meets certain requirements). Effective on July 1, 2050. (SB499 HD1)

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