

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, upon motion by any party, shall determine whether the
15 property is heirs property. If the court determines that the
16 property is heirs property, the property shall be partitioned
17 under this chapter, unless all the cotenants agree otherwise in
18 a record.

19 (c) This chapter supplements chapter 668 and, if an action
20 is governed by this chapter, supersedes provisions of chapter
21 668 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. The movant for determination that
13 the property is heirs property pursuant to section -3(b)
14 shall send notice to the parties of the value.

15 (d) If the court orders an appraisal, the court shall
16 appoint a disinterested real estate appraiser licensed in this
17 State to determine the fair market value of the property
18 assuming sole ownership of the fee simple estate. On completion
19 of the appraisal, the appraiser shall file a sworn or verified
20 appraisal with the clerk of the court. The appraiser shall:



1 (1) Mail or deliver to the chambers of the presiding judge
2 a file-marked copy of the appraisal filed with the
3 clerk of the court; and

4 (2) Notify the movant for determination that the property
5 is heirs property pursuant to section -3(b) and
6 that the appraisal has been filed with the clerk of
7 the court.

8 (e) If an appraisal is conducted pursuant to subsection
9 (d), not later than ten days after the appraisal is filed, the
10 movant for determination that the property is heirs property
11 pursuant to section -3(b) shall send notice to each party
12 with a known address, stating:

13 (1) The appraised fair market value of the property as set
14 forth in the appraisal that was filed with the clerk
15 of the court;

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

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

21 (f) If an appraisal is filed with the court pursuant to
22 subsection (d), the court shall conduct a hearing to determine



1 the fair market value of the property not earlier than thirty
2 days after a copy of the notice of appraisal is sent to each
3 party under subsection (e), whether or not an objection to the
4 appraisal is filed under subsection (e)(3). In addition to the
5 court-ordered appraisal, the court may consider any other
6 evidence of value that is offered by a party.

7 (g) After the hearing under subsection (f), but before
8 considering the merits of the action for partition, the court
9 shall determine the fair market value of the property. The
10 movant for determination that the property is heirs property
11 pursuant to section -3(b) shall send notice to the parties of
12 the value.

13 § -7 **Cotenant buyout.** (a) If any cotenant requested
14 partition by sale, after the determination of value under
15 section -6, the movant for determination that the property is
16 heirs property pursuant to section -3(b) shall send notice to
17 the parties that any cotenant except a cotenant that requested
18 partition by sale may buy the interest of any cotenant that
19 requested partition by sale.

20 (b) Not later than forty-five days after the notice is
21 sent under subsection (a), any cotenant except a cotenant that
22 requested partition by sale may give notice to the court that it



1 elects to buy all the interests of the cotenants that requested
2 partition by sale.

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

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

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

12 (2) If more than one cotenant elects to buy all the
13 interests of the cotenants that requested partition by
14 sale, the court shall allocate the right to buy those
15 interests among the electing cotenants based on each
16 electing cotenant's existing fractional ownership of
17 the entire parcel divided by the total existing
18 fractional ownership of all cotenants electing to buy
19 and send notice to all the parties of that fact and of
20 the price to be paid by each electing cotenant; and

21 (3) If no cotenant elects to buy all the interests of the
22 cotenants that requested partition by sale, the court



1 shall send notice to all the parties of that fact and
 2 resolve the action for partition under section -
 3 8(a) and (b).

4 Unless otherwise ordered by the court, for any notice that the
 5 court is required to send pursuant to subsection (b), the movant
 6 for determination that the property is heirs property pursuant
 7 to section -3(b) shall deliver to the chambers of the
 8 presiding judge a notice in blank to be completed by the court
 9 with sufficient copies for service on interested parties along
 10 with stamped addressed envelopes for each interested party. The
 11 court may direct the movant to provide notice of the value by
 12 any other means.

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

18 (1) If all electing cotenants timely pay their apportioned
 19 price, the court shall issue an order reallocating all
 20 the interests of the cotenants and disburse the
 21 amounts held by the court to the persons entitled to
 22 them;



- 1 (2) If no electing cotenant timely pays its apportioned
2 price, the court shall resolve the action for
3 partition under section -8(a) and (b), as if the
4 interests of the cotenants that requested partition by
5 sale were not purchased; and
- 6 (3) If one or more but not all the electing cotenants fail
7 to timely pay their apportioned price, the court, on
8 motion, shall give notice to the electing cotenants
9 that paid their apportioned price of the interest
10 remaining and the price for all that interest. Unless
11 otherwise ordered by the court, for any notice that
12 the court is required to give pursuant to this
13 paragraph, the movant for notice to be given to
14 electing cotenants pursuant to this paragraph shall
15 deliver to the chambers of the presiding judge a
16 notice in blank to be completed by the court with
17 sufficient copies for service on the electing
18 cotenants along with envelopes stamped with sufficient
19 postage and addressed to each electing cotenant. The
20 court may direct the movant to provide notice of the
21 value by any other means.



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

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

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

18 (3) If more than one cotenant pays the entire price for
19 the remaining interest, the court shall reapportion
20 the remaining interest among those paying cotenants,
21 based on each paying cotenant's original fractional
22 ownership of the entire parcel divided by the total

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

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

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

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



1 reallocated among the cotenants as provided in those
2 subsections; and

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

6 § -8 **Partition alternatives.** (a) If all the interests
7 of all cotenants that requested partition by sale are not
8 purchased by other cotenants pursuant to section -7, or if
9 after conclusion of the buyout under section -7, a cotenant
10 remains that has requested partition in kind, the court shall
11 order partition in kind unless the court, after consideration of
12 the factors listed in section -9, finds that partition in
13 kind will result in great prejudice to the cotenants as a group.
14 In considering whether to order partition in kind, the court
15 shall approve a request by two or more parties to have their
16 individual interests aggregated.

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

21 (c) If the court orders partition in kind pursuant to
22 subsection (a), the court may require that one or more cotenants



1 pay one or more other cotenants amounts so that the payments,
 2 taken together with the value of the in-kind distributions to
 3 the cotenants, will make the partition in kind just and
 4 proportionate in value to the fractional interests held.

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

12 § -9 Considerations for partition in kind. (a) In
 13 determining under section -8(a), whether partition in kind
 14 would result in great prejudice to the cotenants as a group, the
 15 court shall consider the following:

- 16 (1) Whether the heirs property practicably may be divided
 17 among the cotenants;
- 18 (2) Whether partition in kind would apportion the property
 19 in such a way that the aggregate fair market value of
 20 the parcels resulting from the division would be
 21 materially less than the value of the property if it
 22 were sold as a whole, taking into account the



1 condition under which the court-ordered sale likely
2 would occur;

3 (3) Evidence of the collective duration of ownership or
4 possession of the property by a cotenant and one or
5 more predecessors in title or predecessors in
6 possession to the cotenant who are or were relatives
7 of that cotenant or each other;

8 (4) A cotenant's sentimental attachment to the property,
9 including, without limitation, any attachment arising
10 because the property has ancestral or other unique or
11 special value to the cotenant;

12 (5) The lawful use being made of the property by a
13 cotenant and the degree to which the cotenant would be
14 harmed if the cotenant could not continue the same use
15 of the property;

16 (6) The degree to which the cotenants have contributed
17 their pro rata share of the property taxes, insurance,
18 and other expenses associated with maintaining
19 ownership of the property or have contributed to the
20 physical improvement, maintenance, or upkeep of the
21 property; and

22 (7) Any other relevant factor.



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

4 § -10 **Open-market sale, sealed bids, or auction.** (a)
5 If the court orders a sale of heirs property, the sale shall be
6 an open-market sale unless the court finds that a sale by sealed
7 bids or an auction would be more economically advantageous and
8 in the best interest of the cotenants as a group.

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

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



- 1 (1) The broker shall comply with the reporting
2 requirements set forth in section -11; and
- 3 (2) The sale may be completed in accordance with state law
4 other than this chapter.
- 5 (d) If the broker appointed under subsection (b) does not
6 obtain within a reasonable time an offer to purchase the
7 property for at least the determination of value, the court,
8 after hearing, may:
- 9 (1) Approve the highest outstanding offer, if any;
- 10 (2) Redetermine the value of the property and order that
11 the property continue to be offered for an additional
12 time; or
- 13 (3) Order that the property be sold by sealed bids or at
14 an auction.
- 15 (e) If the court orders a sale by sealed bids or an
16 auction, the court shall set terms and conditions of the sale.
17 If the court orders an auction, the auction shall be conducted
18 pursuant to chapter 667 or 668, as applicable.
- 19 (f) If a purchaser is entitled to a share of the proceeds
20 of the sale, the purchaser is entitled to a credit against the
21 price in an amount equal to the purchaser's share of the
22 proceeds.



1 § -11 **Report of open-market sale.** (a) Unless required
2 to do so within a shorter time by chapter 668, a broker
3 appointed under section -10(b) to offer heirs property for
4 open-market sale shall file a report not later than seven days
5 after receiving an offer to purchase the property for at least
6 the value determined under section -6 or -10.

7 (b) The report required by subsection (a) shall contain
8 the following information:

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

20 § -12 **Uniformity of application and construction.** In
21 applying and construing this chapter, consideration shall be
22 given to the need to promote uniformity of the law with respect



1 to its subject matter among the states that enact similar
2 uniform legislation.

3 § -13 **Relation to Electronic Signatures in Global and**
4 **National Commerce Act.** This chapter modifies, limits, and
5 supersedes the federal Electronic Signatures in Global and
6 National Commerce Act, P.L. 106-229, title 15 United States Code
7 chapter 96, but does not modify, limit, or supersede title 15
8 United States Code section 7001(c), or authorize electronic
9 delivery of any of the notices described in title 15 United
10 States Code section 7003(b)."

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

13 "**§668-1 Actions for partition.** When two or more persons
14 hold or are in possession of real property as joint tenants or
15 as tenants in common, in which one or more of them have an
16 estate in fee, or a life estate in possession, any one or more
17 of such persons may bring an action in the circuit court of the
18 circuit in which the property or some part thereof is situated,
19 for a partition of the property, according to the respective
20 rights of the parties interested therein, and for a sale of the
21 same or a part thereof if it appears that a partition cannot be
22 made without great prejudice to the owners. [The] Except as



1 provided in chapter , the several circuit courts shall have
2 power, in any action for partition, to proceed according to the
3 usual practice of courts of equity in cases of partition, and
4 according to this chapter in enlargement thereof."

5 SECTION 3. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

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

8



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 07/01/50. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

