

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 July
12 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
2 does not limit or affect the method by which service of a
3 complaint 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
16 commissioners pursuant to section 668-13, each commissioner, in
17 addition to 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 court.

20 (e) If an appraisal is conducted pursuant to subsection
21 (d), not later than ten days after the appraisal is filed, the



1 court shall send notice to each party with a known address,
2 stating:

- 3 (1) The appraised fair market value of the property;
- 4 (2) That the appraisal is available at the clerk of the
5 court's office; and
- 6 (3) That a party may object to the appraisal not later
7 than thirty days after the notice is sent, stating the
8 grounds for the objection.

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

17 (g) After the hearing under subsection (f), but before
18 considering the merits of the action for partition, the court
19 shall determine the fair market value of the property and send
20 notice to the parties of the value.

21 § -7 **Cotenant buyout.** (a) If any cotenant requested
22 partition by sale, after the determination of value under



1 section -6, the court shall send notice to the parties that
2 any cotenant except a cotenant that requested partition by sale
3 may buy the interest of any cotenant that requested partition by
4 sale.

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

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

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

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

19 (2) If more than one cotenant elects to buy all the
20 interests of the cotenants that requested partition by
21 sale, the court shall allocate the right to buy those
22 interests among the electing cotenants based on each



1 electing cotenant's existing fractional ownership of
2 the entire parcel divided by the total existing
3 fractional ownership of all cotenants electing to buy
4 and send notice to all the parties of that fact and of
5 the price to be paid by each electing cotenant; and
6 (3) If no cotenant elects to buy all the interests of the
7 cotenants that requested partition by sale, the court
8 shall send notice to all the parties of that fact and
9 resolve the action for partition under section -
10 8(a) and (b).

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

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

21 (2) If no electing cotenant timely pays its apportioned
22 price, the court shall resolve the action for



1 partition under section -8(a) and (b), as if the
2 interests of the cotenants that requested partition by
3 sale were not purchased; and

4 (3) If one or more but not all the electing cotenants fail
5 to timely pay their apportioned price, the court, on
6 motion, shall give notice to the electing cotenants
7 that paid their apportioned price of the interest
8 remaining and the price for all that interest.

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

14 (1) If only one cotenant pays the entire price for the
15 remaining interest, the court shall issue an order
16 reallocating the remaining interest to that cotenant.
17 The court shall issue promptly an order reallocating
18 all the interests of all the cotenants and disburse
19 the amounts held by the court to the persons entitled
20 to them;

21 (2) If no cotenant pays the entire price for the remaining
22 interest, the court shall resolve the partition action



1 under section -8(a) and (b), as if the interests
2 of the cotenants that requested partition by sale were
3 not purchased; and

4 (3) If more than one cotenant pays the entire price for
5 the remaining interest, the court shall reapportion
6 the remaining interest among those paying cotenants,
7 based on each paying cotenant's original fractional
8 ownership of the entire parcel divided by the total
9 original fractional ownership of all cotenants that
10 paid the entire price for the remaining interest. The
11 court shall issue promptly an order reallocating all
12 the cotenants' interests, disburse the amounts held by
13 the court to the persons entitled to them, and
14 promptly refund any excess payment held by the court.

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

21 (h) If the court receives a timely request under
22 subsection (g), the court, after hearing, may deny the request



1 or authorize the requested additional sale on such terms as the
2 court determines are fair and reasonable, subject to the
3 following limitations:

4 (1) A sale authorized under this subsection may occur only
5 after the purchase prices for all interests subject to
6 sale under subsections (a) through (f) have been paid
7 into the court and those interests have been
8 reallocated among the cotenants as provided in those
9 subsections; and

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

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



1 shall approve a request by two or more parties to have their
2 individual interests aggregated.

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

7 (c) If the court orders partition in kind pursuant to
8 subsection (a), the court may require that one or more cotenants
9 pay one or more other cotenants amounts so that the payments,
10 taken together with the value of the in-kind distributions to
11 the cotenants, will make the partition in kind just and
12 proportionate in value to the fractional interests held.

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

20 § -9 Considerations for partition in kind. (a) In
21 determining under section -8(a), whether partition in kind



1 would result in great prejudice to the cotenants as a group, the
2 court shall consider the following:

3 (1) Whether the heirs property practicably may be divided
4 among the cotenants;

5 (2) Whether partition in kind would apportion the property
6 in such a way that the aggregate fair market value of
7 the parcels resulting from the division would be
8 materially less than the value of the property if it
9 were sold as a whole, taking into account the
10 condition under which the court-ordered sale likely
11 would occur;

12 (3) Evidence of the collective duration of ownership or
13 possession of the property by a cotenant and one or
14 more predecessors in title or predecessors in
15 possession to the cotenant who are or were relatives
16 of that cotenant or each other;

17 (4) A cotenant's sentimental attachment to the property,
18 including, without limitation, any attachment arising
19 because the property has ancestral or other unique or
20 special value to the cotenant;

21 (5) The lawful use being made of the property by a
22 cotenant and the degree to which the cotenant would be



1 harmed if the cotenant could not continue the same use
2 of the property;

3 (6) The degree to which the cotenants have contributed
4 their pro rata share of the property taxes, insurance
5 and other expenses associated with maintaining
6 ownership of the property or have contributed to the
7 physical improvement, maintenance or upkeep of the
8 property; and

9 (7) Any other relevant factor.

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

13 § -10 **Open-market sale, sealed bids, or auction.** (a)
14 If the court orders a sale of heirs property, the sale shall be
15 an open-market sale unless the court finds that a sale by sealed
16 bids or an auction would be more economically advantageous and
17 in the best interest of the cotenants as a group.

18 (b) If the court orders an open-market sale and the
19 parties, not later than ten days after the entry of the order,
20 agree on a real estate broker licensed in this State to offer
21 the property for sale, the court shall appoint that broker and
22 establish a reasonable commission. If the parties do not agree



1 on a broker, the court shall appoint a disinterested real estate
2 broker licensed in this State to offer the property for sale and
3 shall establish a reasonable commission. The broker shall offer
4 the property for sale in a commercially reasonable manner at a
5 price not lower than the determination of value and on the terms
6 and conditions established by the court.

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

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

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

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

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

19 (2) Redetermine the value of the property and order that
20 the property continue to be offered for an additional
21 time; or



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

3 (e) If the court orders a sale by sealed bids or an
4 auction, the court shall set terms and conditions of the sale.
5 If the court orders an auction, the auction shall be conducted
6 pursuant to chapter 667 or 668, as applicable.

7 (f) If a purchaser is entitled to a share of the proceeds
8 of the sale, the purchaser is entitled to a credit against the
9 price in an amount equal to the purchaser's share of the
10 proceeds.

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

17 (b) The report required by subsection (a) shall contain
18 the following information:

- 19 (1) A description of the property to be sold to each
20 buyer;
- 21 (2) The name of each buyer;
- 22 (3) The proposed purchase price;



- 1 (4) The terms and conditions of the proposed sale,
- 2 including, without limitation, the terms of any owner
- 3 financing;
- 4 (5) The amounts to be paid to lienholders;
- 5 (6) A statement of contractual or other arrangements or
- 6 conditions of the broker's commission; and
- 7 (7) Other material facts relevant to the sale.

8 § -12 **Uniformity of application and construction.** In
9 applying and construing this chapter, consideration shall be
10 given to the need to promote uniformity of the law with respect
11 to its subject matter among the states that enact similar
12 uniform legislation.

13 § -13 **Relation to Electronic Signatures in Global and**
14 **National Commerce Act.** This chapter modifies, limits, and
15 supersedes the federal Electronic Signatures in Global and
16 National Commerce Act, P.L. 106-229, Title 15 United States Code
17 Chapter 96, but does not modify, limit, or supersede Title 15
18 United States Code, Section 7001(c), or authorize electronic
19 delivery of any of the notices described in Title 15 United
20 States Code, Section 7003(b)."

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



1 "§668-1 Actions for partition. When two or more persons
 2 hold or are in possession of real property as joint tenants or
 3 as tenants in common, in which one or more of them have an
 4 estate in fee, or a life estate in possession, any one or more
 5 of such persons may bring an action in the circuit court of the
 6 circuit in which the property or some part thereof is situated,
 7 for a partition of the property, according to the respective
 8 rights of the parties interested therein, and for a sale of the
 9 same or a part thereof if it appears that a partition cannot be
 10 made without great prejudice to the owners. [The] Except as
 11 provided in chapter , the several circuit courts shall have
 12 power, in any action for partition, to proceed according to the
 13 usual practice of courts of equity in cases of partition, and
 14 according to this chapter in enlargement thereof."

15 SECTION 3. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect on July 1, 2013.

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S.B. NO. 499

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).

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

