



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, 2014.

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 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 March 9, 2017.



**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 March 9, 2017. (SB499 HD2)

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

