

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.



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

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

6 "Record" means information that is inscribed on a tangible
7 medium or that is stored in an electronic or other medium and is
8 retrievable in perceivable form.

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

13 § -3 Applicability; relation to other law. (a) This
14 chapter applies to actions for partition filed on or after
15 January 1, 2017.

16 (b) In any action for partition of real property, the
17 court, upon motion by any party, shall determine whether the
18 property is heirs property. If the court determines that the
19 property is heirs property, the property shall be partitioned
20 under this chapter, unless all the cotenants agree otherwise in
21 a record.



1 (c) This chapter supplements chapter 668 and, if an action
2 is governed by this chapter, supersedes provisions of chapter
3 668 that are inconsistent with this chapter.

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

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

18 § -5 Commissioners. If the court appoints commissioners
19 pursuant to section 668-13, each commissioner, in addition to
20 the requirements and disqualifications applicable to
21 commissioners in section 668-13, shall be disinterested,



1 impartial, and neither a party to nor a participant in the
2 action.

3 § -6 Determination of value. (a) Except as otherwise
4 provided in subsections (b) and (c), if the court determines
5 that the property that is the subject of the action for
6 partition is heirs property, the court shall determine the fair
7 market value of the property by ordering an appraisal pursuant
8 to subsection (d).

9 (b) If all cotenants have agreed to the value of the
10 property or to another method of valuation, the court shall
11 adopt that value or the value produced by the agreed method of
12 valuation.

13 (c) If the court determines that the evidentiary value of
14 an appraisal is outweighed by the cost of the appraisal, the
15 court, after an evidentiary hearing, shall determine the fair
16 market value of the property. The movant for determination that
17 the property is heirs property pursuant to section -3(b)
18 shall send notice to the parties of the value.

19 (d) If the court orders an appraisal, the court shall
20 appoint a disinterested real estate appraiser licensed in this
21 state to determine the fair market value of the property



1 assuming sole ownership of the fee simple estate. On completion
2 of the appraisal, the appraiser shall file a sworn or verified
3 appraisal with the clerk of the court. The appraiser shall:

- 4 (1) Mail or deliver to the court a file-marked copy of the
5 appraisal filed with the clerk of the court; and
- 6 (2) Notify the movant for determination that the property
7 is heirs property pursuant to section -3(b) and
8 that the appraisal has been filed with the clerk of
9 the court.

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

- 15 (1) The appraised fair market value of the property as set
16 forth in the appraisal that was filed with the clerk
17 of the court;
- 18 (2) That the appraisal is available at the office of the
19 clerk of the court; and



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

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

12 (g) Before considering the merits of the action for
13 partition, the court shall determine the fair market value of
14 the property. The movant for determination that the property is
15 heirs property pursuant to section -3(b) shall send notice to
16 the parties of the value.

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



1 partition by sale may buy the interest of any cotenant that
2 requested partition by sale.

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

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

12 (d) After expiration of the period in subsection (b), the
13 following rules shall apply:

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

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



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

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

18 (e) If the court sends notice to the parties under
 19 subsection (d)(1) or (2), the court shall set a date, not
 20 earlier than sixty days after the date the notice was sent, by
 21 which electing cotenants must pay their apportioned price into



1 the court. After the deadline for payment set by the court, the
2 following rules shall apply:

3 (1) If all electing cotenants timely pay their apportioned
4 price, the court shall issue an order reallocating all
5 the interests of the cotenants and disburse the
6 amounts held by the court to the persons entitled to
7 them;

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

13 (3) If one or more but not all the electing cotenants fail
14 to timely pay their apportioned price, the court, on
15 motion, shall give notice to the electing cotenants
16 that paid their apportioned price of the interest
17 remaining and the price for that interest. Unless
18 otherwise ordered by the court, for any notice that
19 the court is required to give pursuant to this
20 paragraph, the movant for notice to be given to
21 electing cotenants pursuant to this paragraph shall



1 deliver to the court a notice in blank to be completed
2 by the court with sufficient copies for service on the
3 electing cotenants along with envelopes stamped with
4 sufficient postage and addressed to each electing
5 cotenant. The court may direct the movant to provide
6 notice of the value by any other means.

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

12 (1) If only one cotenant pays the entire price for the
13 remaining interest, the court shall issue an order
14 reallocating the remaining interest to that cotenant.

15 The court shall promptly issue an order reallocating
16 all the interests of all the cotenants and disburse
17 the amounts held by the court to the persons entitled
18 to them;

19 (2) If no cotenant pays the entire price for the remaining
20 interest, the court shall resolve the partition action
21 under section -8(a) and (b), as if the interests of



1 the cotenants that requested partition by sale were
2 not purchased; and

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

15 (g) Not later than forty-five days after the movant 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 of the interests of cotenants named
19 as defendants and served with the complaint but that did not
20 appear in the action as part of the pending action.

1 (h) If the court receives a timely request under
2 subsection (g), the court, after hearing, may deny the request
3 or authorize the requested additional sale on such terms as the
4 court determines are fair and reasonable, subject to the
5 following limitations:

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

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

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



1 kind will result in great prejudice to the cotenants as a group.
2 In considering whether to order partition in kind, the court
3 shall approve a request by two or more parties to have their
4 individual interests aggregated.

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

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

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



1 § -9 Considerations for partition in kind. (a) In
2 determining under section -8(a) whether partition in kind
3 would result in great prejudice to the cotenants as a group, the
4 court shall consider the following:

5 (1) Whether the heirs property practicably may be divided
6 among the cotenants;

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

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

19 (4) A cotenant's sentimental attachment to the property,
20 including, without limitation, any attachment arising



1 because the property has ancestral or other unique or
2 special value to the cotenant;

3 (5) The lawful use being made of the property by a
4 cotenant and the degree to which the cotenant would be
5 harmed if the cotenant could not continue the same use
6 of the property;

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

13 (7) Any other relevant factor.

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

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



1 (b) If the court orders an open-market sale and the
2 parties, not later than ten days after the entry of the order,
3 agree on a real estate broker licensed in this State to offer
4 the property for sale, the court shall appoint that broker and
5 establish a reasonable commission. If the parties do not agree
6 on a broker, the court shall appoint a disinterested real estate
7 broker licensed in this State to offer the property for sale and
8 shall establish a reasonable commission. The broker shall offer
9 the property for sale in a commercially reasonable manner at a
10 price not lower than the determination of value and on the terms
11 and conditions established by the court.

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

- 15 (1) The broker shall comply with the reporting
16 requirements set forth in section -11; and
17 (2) The sale may be completed in accordance with state law
18 other than this chapter.

19 (d) If the broker appointed under subsection (b) does not
20 obtain within a reasonable time an offer to purchase the



1 property for at least the determination of value, the court,
2 after hearing, may:

- 3 (1) Approve the highest outstanding offer, if any;
- 4 (2) Redetermine the value of the property and order that
5 the property continue to be offered for an additional
6 time; or
- 7 (3) Order that the property be sold by sealed bids or at
8 an auction.

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

13 (f) If a purchaser is entitled to a share of the proceeds
14 of the sale, the purchaser is entitled to a credit against the
15 price in an amount equal to the purchaser's share of the
16 proceeds.

17 § -11 Report of open-market sale. (a) Unless required
18 to do so within a shorter time by chapter 668, a broker
19 appointed under section -10(b) to offer heirs property for
20 open-market sale shall file a report not later than seven days



1 after receiving an offer to purchase the property for at least
2 the value determined under section -6 or -10.

3 (b) The report required by subsection (a) shall contain
4 the following information:

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

16 § -12 Uniformity of application and construction. In
17 applying and construing this chapter, consideration shall be
18 given to the need to promote uniformity of the law with respect
19 to its subject matter among the states that enact similar
20 uniform legislation.



1 § -13 Relation to Electronic Signatures in Global and
2 National Commerce Act. This chapter modifies, limits, and
3 supersedes the federal Electronic Signatures in Global and
4 National Commerce Act, P.L. 106-229, title 15 United States Code
5 chapter 96, but does not modify, limit, or supersede title 15
6 United States Code section 7001(c), or authorize electronic
7 delivery of any of the notices described in title 15 United
8 States Code section 7003(b)."

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

11 "§668-1 Actions for partition. When two or more persons
12 hold or are in possession of real property as joint tenants or
13 as tenants in common, in which one or more of them have an
14 estate in fee, or a life estate in possession, any one or more
15 of such persons may bring an action in the circuit court of the
16 circuit in which the property or some part thereof is situated,
17 for a partition of the property, according to the respective
18 rights of the parties interested therein, and for a sale of the
19 same or a part thereof if it appears that a partition cannot be
20 made without great prejudice to the owners. ~~[The]~~ Except as
21 provided in chapter , the several circuit courts shall have



S.B. NO. 2408

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

4 SECTION 3. This Act does not affect rights and duties that
 5 matured, penalties that were incurred, and proceedings that were
 6 begun before its effective date.

7 SECTION 4. Statutory material to be repealed is bracketed
 8 and stricken. New statutory material is underscored.

9 SECTION 5. This Act shall take effect on January 1, 2017.

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INTRODUCED BY:

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[Handwritten signature]
 Clarence Michikawa

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[Handwritten signature]
 Michelle Tolani
[Handwritten signature]



S.B. NO. 2408

Report Title:

Real Property; Partition; Heirs Property; Uniform Partition of Heirs Property Act

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 1/1/17.

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

