

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 under
17 chapter 668, the court, shall determine whether the property is
18 heirs property. If the court determines that the property is
19 heirs property, the property shall be partitioned under this
20 chapter, unless all the cotenants agree otherwise in 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 and send notice to the parties of
17 the value.

18 (d) If the court orders an appraisal, the court shall
19 appoint a disinterested real estate appraiser licensed in this
20 State to determine the fair market value of the property
21 assuming sole ownership of the fee simple estate. On completion



1 of the appraisal, the appraiser shall file a sworn or verified
2 appraisal with the clerk of the court. The appraiser shall mail
3 or deliver to the court a file-marked copy of the appraisal
4 filed with the clerk of the court.

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

9 (1) The appraised fair market value of the property as set
10 forth in the appraisal that was filed with the clerk
11 of the court;

12 (2) That the appraisal is available at the office of the
13 clerk of the court; and

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

17 (f) If an appraisal is filed with the court pursuant to
18 subsection (d), the court shall conduct a hearing to determine
19 the fair market value of the property not earlier than thirty
20 days after a copy of the notice of appraisal is sent to each
21 party under subsection (e), regardless of whether an objection



1 to the appraisal is filed under subsection (e)(3). In addition
2 to the court-ordered appraisal, the court may consider any other
3 evidence of value that is offered by a party.

4 (g) Before considering the merits of the action for
5 partition, the court shall determine the fair market value of
6 the property and shall send notice to the parties of the value.

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

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

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



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

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

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

15 (3) If no cotenant elects to buy all the interests of the
16 cotenants that requested partition by sale, the court
17 shall send notice to all the parties of that fact and
18 resolve the action for partition under section

19 -8(a) and (b).

20 (e) If the court sends notice to the parties under
21 subsection (d) (1) or (2), the court shall set a date, not



1 earlier than sixty days after the date the notice was sent, by
2 which electing cotenants must pay their apportioned price into
3 the court. After the deadline for payment set by the court, the
4 following rules shall apply:

- 5 (1) If all electing cotenants timely pay their apportioned
6 price, the court shall issue an order reallocating all
7 the interests of the cotenants and disburse the
8 amounts held by the court to the persons entitled to
9 them;
- 10 (2) If no electing cotenant timely pays its apportioned
11 price, the court shall resolve the action for
12 partition under section -8(a) and (b), as if the
13 interests of the cotenants that requested partition by
14 sale were not purchased; and
- 15 (3) If one or more but not all the electing cotenants fail
16 to timely pay their apportioned price, the court, on
17 motion, shall give notice to the electing cotenants
18 that paid their apportioned price of the interest
19 remaining and the price for that interest. Unless
20 otherwise ordered by the court, for any notice that
21 the court is required to give pursuant to this



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

9 (f) No 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 the remaining interest by paying the entire
12 price to the court. After the twenty-day period, the following
13 rules shall 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 promptly issue 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;



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

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

18 (g) No later than forty-five days after the movant sends
19 notice to the parties pursuant to subsection (a), any cotenant
20 entitled to buy an interest under this section may request the
21 court to authorize the sale of the interests of cotenants named

1 as defendants and served with the complaint but that did not
2 appear in the action as part of the pending action.

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

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

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

17 (i) The cotenant requesting partition by sale shall be
18 liable for reasonable court fees.

19 § -8 Partition alternatives. (a) If all the interests
20 of all cotenants that requested partition by sale are not
21 purchased by other cotenants pursuant to section -7, or if



1 after conclusion of the buyout under section -7, a cotenant
2 remains that has requested partition in kind, the court shall
3 order partition in kind unless the court, after consideration of
4 the factors listed in section -9, finds that partition in
5 kind will result in great prejudice to the cotenants as a group.
6 In considering whether to order partition in kind, the court
7 shall approve a request by two or more parties to have their
8 individual interests aggregated.

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

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

19 (d) If the court orders partition in kind, the court shall
20 allocate to the cotenants that are unknown, unlocatable, or are
21 the subject of a default judgment, a part of the property



1 representing the combined interests of these cotenants as
2 determined by the court, and this part of the property shall
3 remain undivided; provided that their interests were not bought
4 out pursuant to section -7.

5 § -9 Considerations for partition in kind. (a) In
6 determining under section -8(a) whether partition in kind
7 would result in great prejudice to the cotenants as a group, the
8 court shall consider the following:

- 9 (1) Whether the heirs property practicably may be divided
10 among the cotenants;
- 11 (2) Whether partition in kind would apportion the property
12 in such a way that the aggregate fair market value of
13 the parcels resulting from the division would be
14 materially less than the value of the property if it
15 were sold as a whole, taking into account the
16 condition under which the court-ordered sale likely
17 would occur;
- 18 (3) Evidence of the collective duration of ownership or
19 possession of the property by a cotenant and one or
20 more predecessors in title or predecessors in



1 possession to the cotenant who are or were relatives
2 of that cotenant or each other;

3 (4) A cotenant's sentimental attachment to the property,
4 including, without limitation, any attachment arising
5 because the property has ancestral or other unique or
6 special value to the cotenant;

7 (5) The lawful use being made of the property by a
8 cotenant and the degree to which the cotenant would be
9 harmed if the cotenant could not continue the same use
10 of the property;

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

17 (7) Any other relevant factor.

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



1 § -10 Open-market sale, sealed bids, or auction. (a)
2 If the court orders a sale of heirs property, the sale shall be
3 an open-market sale unless the court finds that a sale by sealed
4 bids or an auction would be more economically advantageous and
5 in the best interest of the cotenants as a group.

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

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

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



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

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

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

8 (2) Redetermine the value of the property and order that
9 the property continue to be offered for an additional
10 time; or

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

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

17 (f) If a purchaser is entitled to a share of the proceeds
18 of the sale, the purchaser is entitled to a credit against the
19 price in an amount equal to the purchaser's share of the
20 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

1 given to the need to promote uniformity of the law with respect
2 to its subject matter among the states that enact similar
3 uniform legislation.

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

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

14 "§668-1 Actions for partition. When two or more persons
15 hold or are in possession of real property as joint tenants or
16 as tenants in common, in which one or more of them have an
17 estate in fee, or a life estate in possession, any one or more
18 of such persons may bring an action in the circuit court of the
19 circuit in which the property or some part thereof is situated,
20 for a partition of the property, according to the respective
21 rights of the parties interested therein, and for a sale of the



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

7 SECTION 3. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

10 SECTION 4. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act shall take effect on January 7, 2059.



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. (SB2408 SD1 HD1)

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