

# SB134

Measure Title: RELATING TO PARTITION OF HEIRS PROPERTY.  
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).  
Companion:  
Package: None  
Current Referral: CPN, JDL  
Introducer(s): KEITH-AGARAN, ENGLISH, SHIMABUKURO

<u>Sort by Date</u>		<b>Status Text</b>
1/22/2015	S	Introduced.
1/22/2015	S	Passed First Reading.
1/22/2015	S	Referred to CPN, JDL.
1/30/2015	S	The committee(s) on CPN has scheduled a public hearing on 02-04-15 9:00AM in conference room 229.



*The Judiciary, State of Hawaii*

**Testimony to the Senate Committee on Commerce and Consumer Protection**

Senator Rosalyn H. Baker, Chair  
Senator Brian T. Taniguchi, Vice Chair

Wednesday, February 4, 2015, 9:00 a.m.  
State Capitol, Conference Room 229

**WRITTEN TESTIMONY ONLY**

by  
Rodney A. Maile  
Administrative Director of the Courts

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**Bill No. and Title:** Senate Bill No. 134, Relating to Partition of Heirs Property.

**Purpose:** 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).

**Judiciary's Position:**

This measure adds a new chapter to Hawaii Revised Statutes entitled the Uniform Partition of Heirs Property Act that sets forth a protocol for circuit court civil cases where partition of real property is sought.

The Judiciary takes no position on the merits of this measure. However, the Judiciary notes that there appear to be inconsistencies in the measure that should be addressed.

S.B. 134, page 9, lines 11-12, references "any notice that the court is required to send pursuant to subsection (b)..." Subsection (b) of § -7 does not require the court to send any notice (S.B. 134, page 8, lines 4-8, "Not later than forty-five days after the notice is sent under subsection (a), any cotenant except a cotenant that requested partition by sale may give notice to the court that it elects to buy all the interests of the cotenants that requested partition by sale").



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Additionally, S.B. 134, page 12, lines 17-18, references the court sending “notice to the parties pursuant to subsection (a)....” Subsection (a) of § -7 does not require the court to send any notice (S.B. 134, page 7, line 18 – page 8, line 3, “If any cotenant requested partition by sale, after the determination of value under section -6, the movant for determination that the property is heirs property pursuant to section -3(b) shall send notice to the parties that any cotenant except a cotenant that requested partition by sale may buy the interest of any cotenant that requested partition by sale”).

Generally in Circuit Court civil cases, responsibility for giving notice rests with the parties. For consistency, the Judiciary recommends that parties in a civil case be responsible for giving notice, which allows the court to determine whether the notice requirements have been satisfied.

Thank you for the opportunity to testify on Senate Bill 134.

**SB134**

Submitted on: 2/2/2015

Testimony for CPN on Feb 4, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara L Franklin	Barbara L Franklin, Esq., Attorney at Law	Support	No

Comments: This is a much needed clarification of the law and will provide direction and important procedures for estate attorneys.