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# A BILL FOR AN ACT

RELATING TO PARTITION OF HEIRS PROPERTY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4                                       **"CHAPTER**

5                                       **UNIFORM PARTITION OF HEIRS PROPERTY ACT**

6           **§ -1 Short title.** This chapter may be cited as the  
7 Uniform Partition of Heirs Property Act.

8           **§ -2 Definitions. As used in this chapter:**

9           "Ascendant" means an individual who precedes another  
10 individual in lineage, in the direct line of ascent from the  
11 other individual.

12           "Collateral" means an individual who is related to another  
13 individual under the law of intestate succession of this State,  
14 but who is not the other individual's ascendant or descendant.

15           "Descendant" means an individual who follows another  
16 individual in lineage, in the direct line of descent from the  
17 other individual.



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) 20 per cent or more of the interests are held by  
14 cotenants who are relatives;

15 (B) 20 per cent or more of the interests are held by  
16 an individual who acquired title from a relative,  
17 whether living or deceased; or

18 (C) 20 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 July 1, 2015.

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 chambers of the presiding judge  
5 a file-marked copy of the appraisal filed with the  
6 clerk of the court; and

7 (2) Notify the movant for determination that the property  
8 is heirs property pursuant to section -3(b) and  
9 that the appraisal has been filed with the clerk of  
10 the court.

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

16 (1) The appraised fair market value of the property as set  
17 forth in the appraisal that was filed with the clerk  
18 of the court;

19 (2) That the appraisal is available at the clerk of the  
20 court's office; 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), whether an objection to the  
9 appraisal is filed under subsection (e)(3). In addition to the  
10 court-ordered appraisal, the court may consider any other  
11 evidence of value that is offered by a party.

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

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



1 the parties that any cotenant except a cotenant that requested  
2 partition by sale may buy the interest of any cotenant that  
3 requested partition by sale.

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

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

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

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





1 interests among the electing cotenants based on each  
2 electing cotenant's existing fractional ownership of  
3 the entire parcel divided by the total existing  
4 fractional ownership of all cotenants electing to buy  
5 and order the electing cotenants to send notice to all  
6 the parties of that fact and of the price to be paid  
7 by each electing cotenant; and

8 (3) If no cotenant elects to buy all the interests of the  
9 cotenants that requested partition by sale, the court  
10 shall order the movant for determination that the  
11 property is heirs property pursuant to section -3(b)  
12 to send notice to all the parties of that fact and  
13 shall resolve the action for partition under section  
14 -8(a) and (b).

15 The court may direct an electing cotenant or the movant to  
16 provide notice by any means.

17 (e) If the court orders notice to the parties under either  
18 subsection (d)(1) or (2), the court shall set a date, not  
19 earlier than sixty days after the date the notice was sent, by  
20 which electing cotenants must pay their apportioned price into  
21 the court. After this date, the following rules shall apply:



- 1           (1) If all electing cotenants timely pay their apportioned  
2 price, the court shall issue an order reallocating all  
3 the interests of the cotenants and disburse the  
4 amounts held by the court to the persons entitled to  
5 them;
- 6           (2) If no electing cotenant timely pays its apportioned  
7 price, the court shall resolve the action for  
8 partition under section     -8(a) and (b), as if the  
9 interests of the cotenants that requested partition by  
10 sale were not purchased; and
- 11          (3) If one or more but not all the electing cotenants fail  
12 to timely pay their apportioned price, the court, on  
13 motion, shall order the movant to give notice to the  
14 electing cotenants that paid their apportioned price  
15 of the interest remaining and the price for all that  
16 interest. The court may direct the movant to provide  
17 notice of the value by any means.
- 18          (f) Not later than twenty days after the movant gives the  
19 notice pursuant to subsection (e)(3), any electing cotenant that  
20 paid the cotenant's apportioned price may elect to purchase all  
21 the remaining interest by paying the entire price for the



1 remaining interest to the court. After the twenty-day period,  
2 the following rules shall apply:

3 (1) If only one electing cotenant pays the entire price  
4 for the remaining interest, the court shall issue an  
5 order reallocating the remaining interest to that  
6 cotenant. The court shall promptly issue an order  
7 reallocating all the interests of all the cotenants  
8 and disburse the amounts held by the court to the  
9 persons entitled to them;

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

15 (3) If more than one electing cotenant pays the entire  
16 price for the remaining interest, the court shall  
17 reapportion the remaining interest among those  
18 electing cotenants, based on each paying cotenant's  
19 original fractional ownership of the entire parcel  
20 divided by the total original fractional ownership of  
21 all electing cotenants that paid the entire price for



1 the remaining interest. The court shall promptly  
2 issue an order reallocating all the cotenants'  
3 interests, disburse the amounts held by the court to  
4 the persons entitled to them, and promptly refund any  
5 excess payment held by the court.

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

12 (h) If the court receives a timely request under  
13 subsection (g), the court, after hearing, may deny the request  
14 or authorize the requested additional sale on such terms as the  
15 court determines are fair and reasonable, subject to the  
16 following limitations:

17 (1) A sale authorized under this subsection may occur only  
18 after the purchase prices for all interests subject to  
19 sale under subsections (a) through (f) have been paid  
20 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.



1 (c) If the court orders partition in kind pursuant to  
2 subsection (a), the court may require that one or more cotenants  
3 pay one or more other cotenants amounts so that the payments,  
4 taken together with the value of the in-kind distributions to  
5 the cotenants, will make the partition in kind just and  
6 proportionate in value to the fractional interests held.

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

14 **§ -9 Considerations for partition in kind.** (a) In  
15 determining under section -8(a), whether partition in kind  
16 would result in great prejudice to the cotenants as a group, the  
17 court shall consider the following:

- 18 (1) Whether the heirs property practicably may be divided  
19 among the cotenants;
- 20 (2) Whether partition in kind would apportion the property  
21 in such a way that the aggregate fair market value of



1 the parcels resulting from the division would be  
2 materially less than the value of the property if it  
3 were sold as a whole, taking into account the  
4 condition under which the court-ordered sale likely  
5 would occur;

6 (3) Evidence of the collective duration of ownership or  
7 possession of the property by a cotenant and one or  
8 more predecessors in title or predecessors in  
9 possession to the cotenant who are or were relatives  
10 of that cotenant or each other;

11 (4) A cotenant's sentimental attachment to the property,  
12 including, without limitation, any attachment arising  
13 because the property has ancestral or other unique or  
14 special value to the cotenant;

15 (5) The lawful use being made of the property by a  
16 cotenant and the degree to which the cotenant would be  
17 harmed if the cotenant could not continue the same use  
18 of the property;

19 (6) The degree to which the cotenants have contributed  
20 their pro rata share of the property taxes, insurance,  
21 and other expenses associated with maintaining



1 ownership of the property or have contributed to the  
2 physical improvement, maintenance, or upkeep of the  
3 property; and

4 (7) Any other relevant factor.

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

8 **§ -10 Open-market sale, sealed bids, or auction. (a)**

9 If the court orders a sale of heirs property, the sale shall be  
10 an open-market sale unless the court finds that a sale by sealed  
11 bids or an auction would be more economically advantageous and  
12 in the best interest of the cotenants as a group.

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





1 price not lower than the determination of value and on the terms  
2 and conditions established by the court.

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

6 (1) The broker shall comply with the reporting

7 requirements set forth in section -11; and

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

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

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

15 (2) Redetermine the value of the property and order that  
16 the property continue to be offered for an additional  
17 time; or

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

20 (e) If the court orders a sale by sealed bids or an  
21 auction, the court shall set terms and conditions of the sale.



1 If the court orders an auction, the auction shall be conducted  
2 pursuant to chapter 667 or 668, as applicable.

3 (f) If a purchaser is entitled to a share of the proceeds  
4 of the sale, the purchaser is entitled to a credit against the  
5 price in an amount equal to the purchaser's share of the  
6 proceeds.

7 **§ -11 Report of open-market sale.** (a) Unless required  
8 to do so within a shorter time by chapter 668, a broker  
9 appointed under section -10(b) to offer heirs property for  
10 open-market sale shall file a report not later than seven days  
11 after receiving an offer to purchase the property for at least  
12 the value determined under section -6 or -10.

13 (b) The report required by subsection (a) shall contain  
14 the following information:

- 15 (1) A description of the property to be sold to each  
16 buyer;
- 17 (2) The name of each buyer;
- 18 (3) The proposed purchase price;
- 19 (4) The terms and conditions of the proposed sale,  
20 including, without limitation, the terms of any owner  
21 financing;



- 1 (5) The amounts to be paid to lienholders;
- 2 (6) A statement of contractual or other arrangements or
- 3 conditions of the broker's commission; and
- 4 (7) Other material facts relevant to the sale.

5 **§ -12 Uniformity of application and construction.** In

6 applying and construing this chapter, consideration shall be

7 given to the need to promote uniformity of the law with respect

8 to its subject matter among the states that enact similar

9 uniform legislation.

10 **§ -13 Relation to Electronic Signatures in Global and**

11 **National Commerce Act.** This chapter modifies, limits, and

12 supersedes the federal Electronic Signatures in Global and

13 National Commerce Act, P.L. 106-229, title 15 United States Code

14 chapter 96, but does not modify, limit, or supersede title 15

15 United States Code section 7001(c), or authorize electronic

16 delivery of any of the notices described in title 15 United

17 States Code section 7003(b)."

18 SECTION 2. Section 668-1, Hawaii Revised Statutes, is

19 amended to read as follows:

20 **"§668-1 Actions for partition.** When two or more persons

21 hold or are in possession of real property as joint tenants or



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

13 SECTION 3. This Act does not affect rights and duties that  
14 matured, penalties that were incurred, and proceedings that were  
15 begun before its effective date.

16 SECTION 4. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 5. This Act shall take effect on July 1, 2015.



**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). (HB152 HD1)

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

