

JAN 22 2015

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 that it
7 elects to buy all the interests of the cotenants that requested
8 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 notify all the parties of that fact;

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



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

6 (3) If no cotenant elects to buy all the interests of the
7 cotenants that requested partition by sale, the court
8 shall send notice to all the parties of that fact and
9 resolve the action for partition under section -
10 8(a) and (b).

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

20 (e) If the court sends notice to the parties under either
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 this date, the following rules shall apply:

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

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

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



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

9 (f) Not 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 all the remaining interest by paying the
12 entire price to the court. After the twenty-day period, the
13 following 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 (g) Not later than forty-five days after the court sends
18 notice to the parties pursuant to subsection (a), any cotenant
19 entitled to buy an interest under this section may request the
20 court to authorize the sale as part of the pending action of the



1 interests of cotenants named as defendants and served with the
2 complaint but that did not appear in the 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 **§ -8 Partition alternatives.** (a) If all the interests
18 of all cotenants that requested partition by sale are not
19 purchased by other cotenants pursuant to section -7, or if
20 after conclusion of the buyout under section -7, a cotenant
21 remains that has requested partition in kind, the court shall



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

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

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

17 (d) If the court orders partition in kind, the court shall
18 allocate to the cotenants that are unknown, unlocatable, or are
19 the subject of a default judgment, a part of the property
20 representing the combined interests of these cotenants as
21 determined by the court, and this part of the property shall



1 remain undivided; provided that their interests were not bought
2 out pursuant to section -7.

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

7 (1) Whether the heirs property practicably may be divided
8 among the cotenants;

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

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



- 1 (4) A cotenant's sentimental attachment to the property,
2 including, without limitation, any attachment arising
3 because the property has ancestral or other unique or
4 special value to the cotenant;
- 5 (5) The lawful use being made of the property by a
6 cotenant and the degree to which the cotenant would be
7 harmed if the cotenant could not continue the same use
8 of the property;
- 9 (6) The degree to which the cotenants have contributed
10 their pro rata share of the property taxes, insurance,
11 and other expenses associated with maintaining
12 ownership of the property or have contributed to the
13 physical improvement, maintenance, or upkeep of the
14 property; and
- 15 (7) Any other relevant factor.

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

19 **§ -10 Open-market sale, sealed bids, or auction.** (a)
20 If the court orders a sale of heirs property, the sale shall be
21 an open-market sale unless the court finds that a sale by sealed



1 bids or an auction would be more economically advantageous and
2 in the best interest of the cotenants as a group.

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

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

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

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



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

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

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

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

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

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

19 **§ -11 Report of open-market sale.** (a) Unless required
20 to do so within a shorter time by chapter 668, a broker
21 appointed under section -10(b) to offer heirs property for



1 open-market sale shall file a report not later than seven days
2 after receiving an offer to purchase the property for at least
3 the value determined under section -6 or -10.

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

6 (1) A description of the property to be sold to each
7 buyer;

8 (2) The name of each buyer;

9 (3) The proposed purchase price;

10 (4) The terms and conditions of the proposed sale,
11 including, without limitation, the terms of any owner
12 financing;

13 (5) The amounts to be paid to lienholders;

14 (6) A statement of contractual or other arrangements or
15 conditions of the broker's commission; and

16 (7) Other material facts relevant to the sale.

17 **§ -12 Uniformity of application and construction.** In
18 applying and construing this chapter, consideration shall be
19 given to the need to promote uniformity of the law with respect
20 to its subject matter among the states that enact similar
21 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. 134

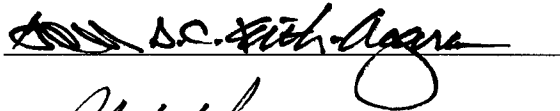
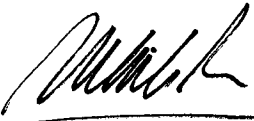
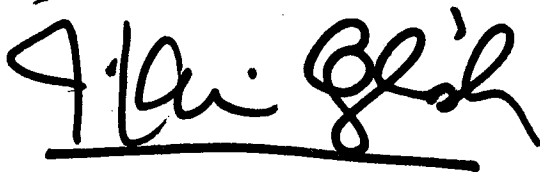
1 power, in any action for partition, to proceed according to the
 2 usual practice of courts of equity in cases of partition, and
 3 according to this chapter in enlargement thereof."

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 July 1, 2015.

10

INTRODUCED BY: ~~SC. 4th Degree~~






S.B. NO. 134

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).

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

