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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) 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 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 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 either  
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



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, 2112.



**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 7/1/2112. (HD1)

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

