



GOV. MSG. NO. 1369

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 12, 2016

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 12, 2016, the following bill was signed into law:

SB2408 SD1 HD2 CD1

RELATING TO PARTITION OF HEIRS
PROPERTY
ACT 260 (16)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

1 "Determination of value" means an order of a court
2 determining the fair market value of heirs property under
3 section -7 or -11 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 -11.

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 Special master. The court shall appoint a special
4 master to fulfill the notice requirements pursuant to this
5 chapter or that are not specifically assigned to any cotenant by
6 this chapter. The costs of the services of the special master
7 and the expenses of the notices shall be paid by the cotenants
8 at the conclusion of the partition action; provided that the
9 court may in its discretion order the payment of costs and
10 expenses from the estate of the deceased, the proceeds of the
11 partition by sale, the cotenants, or a combination thereof.

12 § -7 Determination of value. (a) Except as otherwise
13 provided in subsections (b) and (c), if the court determines
14 that the property that is the subject of the action for
15 partition is heirs property, the court shall determine the fair
16 market value of the property by ordering an appraisal pursuant
17 to subsection (d).

18 (b) If all cotenants have agreed to the value of the
19 property or to another method of valuation, the court shall
20 adopt that value or the value produced by the agreed method of
21 valuation.



1 (c) If the court determines that the evidentiary value of
2 an appraisal is outweighed by the cost of the appraisal, the
3 court, after an evidentiary hearing, shall determine the fair
4 market value of the property and the special master shall send
5 notice to the parties of the value.

6 (d) If the court orders an appraisal, the court shall
7 appoint a disinterested real estate appraiser licensed in this
8 State to determine the fair market value of the property
9 assuming sole ownership of the fee simple estate. On completion
10 of the appraisal, the appraiser shall file a sworn or verified
11 appraisal with the clerk of the court. The appraiser shall mail
12 or deliver to the court a file-marked copy of the appraisal
13 filed with the clerk of the court.

14 (e) If an appraisal is conducted pursuant to subsection
15 (d), not later than ten days after the appraisal is filed, the
16 special master shall send notice to each party with a known
17 address, stating:

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



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

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

6 (f) If an appraisal is filed with the court pursuant to
7 subsection (d), the court shall conduct a hearing to determine
8 the fair market value of the property not earlier than thirty
9 days after a copy of the notice of appraisal is sent to each
10 party under subsection (e), regardless of whether an objection
11 to the appraisal is filed under subsection (e)(3). In addition
12 to the court-ordered appraisal, the court may consider any other
13 evidence of value that is offered by a party.

14 (g) Before considering the merits of the action for
15 partition, the court shall determine the fair market value of
16 the property and the special master shall send notice to the
17 parties of the value.

18 § -8 Cotenant buyout. (a) If any cotenant requested
19 partition by sale, after the determination of value under
20 section -7, the special master shall send notice to the
21 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 special master shall notify all the parties of that
17 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 the special master shall send notice to all the
5 parties of that fact and of the price to be paid by
6 each electing cotenant; and

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

12 (e) If the special master sends notice to the parties
13 under subsection (d) (1) or (2), the court shall set a date, not
14 earlier than sixty days after the date the notice was sent, by
15 which electing cotenants must pay their apportioned price into
16 the court. After the deadline for payment set by the court, the
17 following rules shall apply:

18 (1) If all electing cotenants timely pay their apportioned
19 price, the court shall issue an order reallocating all
20 the interests of the cotenants and disburse the

1 amounts held by the court to the persons entitled to
2 them;

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

8 (3) If one or more but not all the electing cotenants fail
9 to timely pay their apportioned price, the court, on
10 motion, shall direct the special master to give notice
11 to the electing cotenants that paid their apportioned
12 price of the interest remaining and the price for that
13 interest. Unless otherwise ordered by the court, for
14 any notice that the special master is required to give
15 pursuant to this paragraph, the movant for notice to
16 be given to electing cotenants pursuant to this
17 paragraph shall deliver to the court a notice in blank
18 to be completed by the special master with sufficient
19 copies for service on the electing cotenants along
20 with envelopes stamped with sufficient postage and
21 addressed to each electing cotenant. The court may



1 direct the movant to provide notice of the value by
2 any other means.

3 (f) No later than twenty days after the special master
4 gives the notice pursuant to subsection (e)(3), any cotenant
5 that paid may elect to purchase the remaining interest by paying
6 the entire price to the court. After the twenty-day period, the
7 following rules shall apply:

8 (1) If only one cotenant pays the entire price for the
9 remaining interest, the court shall issue an order
10 reallocating the remaining interest to that cotenant.
11 The court shall promptly issue an order reallocating
12 all the interests of all the cotenants and disburse
13 the amounts held by the court to the persons entitled
14 to them;

15 (2) If no cotenant pays the entire price for the remaining
16 interest, the court shall resolve the partition action
17 under section -9(a) and (b), as if the interests of
18 the cotenants that requested partition by sale were
19 not purchased; and

20 (3) If more than one cotenant pays the entire price for
21 the remaining interest, the court shall reapportion



1 the remaining interest among those paying cotenants,
2 based on each paying cotenant's original fractional
3 ownership of the entire parcel divided by the total
4 original fractional ownership of all cotenants that
5 paid the entire price for the remaining interest. The
6 court shall promptly issue an order reallocating all
7 the cotenants' interests, disburse the amounts held by
8 the court to the persons entitled to them, and
9 promptly refund any excess payment held by the court
10 to the appropriate cotenant.

11 (g) No later than forty-five days after the special master
12 sends notice to the parties pursuant to subsection (a), any
13 cotenant entitled to buy an interest under this section may
14 request the court to authorize the sale of the interests of
15 cotenants named as defendants and served with the complaint but
16 that did not appear in the action as part of the pending action.

17 (h) If the court receives a timely request under
18 subsection (g), the court, after hearing, may deny the request
19 or authorize the requested additional sale on such terms as the
20 court determines are fair and reasonable, subject to the
21 following limitations:



1 (1) A sale authorized under this subsection may occur only
2 after the purchase prices for all interests subject to
3 sale under subsections (a) through (f) have been paid
4 into the court and those interests have been
5 reallocated among the cotenants as provided in those
6 subsections; and

7 (2) The purchase price for the interest of an absent
8 cotenant is based on the court's determination of
9 value under section -7.

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

12 § -9 Partition alternatives. (a) If all the interests
13 of all cotenants that requested partition by sale are not
14 purchased by other cotenants pursuant to section -8, or if
15 after conclusion of the buyout under section -8, a cotenant
16 remains that has requested partition in kind, the court shall
17 order partition in kind unless the court, after consideration of
18 the factors listed in section -10, finds that partition in
19 kind will result in great prejudice to the cotenants as a group.
20 In considering whether to order partition in kind, the court



1 shall approve a request by two or more parties to have their
2 individual interests aggregated.

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

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

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

20 § -10 Considerations for partition in kind. (a) In
21 determining under section -9(a) whether partition in kind



1 would result in great prejudice to the cotenants as a group, the
2 court shall consider the following:

- 3 (1) Whether the heirs property practicably may be divided
4 among the cotenants;
- 5 (2) Whether partition in kind would apportion the property
6 in such a way that the aggregate fair market value of
7 the parcels resulting from the division would be
8 materially less than the value of the property if it
9 were sold as a whole, taking into account the
10 condition under which the court-ordered sale likely
11 would occur;
- 12 (3) Evidence of the collective duration of ownership or
13 possession of the property by a cotenant and one or
14 more predecessors in title or predecessors in
15 possession to the cotenant who are or were relatives
16 of that cotenant or each other;
- 17 (4) A cotenant's sentimental attachment to the property,
18 including, without limitation, any attachment arising
19 because the property has ancestral or other unique or
20 special value to the cotenant;



1 (5) The lawful use being made of the property by a
2 cotenant and the degree to which the cotenant would be
3 harmed if the cotenant could not continue the same use
4 of the property;

5 (6) The degree to which the cotenants have contributed
6 their pro rata share of the property taxes, insurance,
7 and other expenses associated with maintaining
8 ownership of the property or have contributed to the
9 physical improvement, maintenance, or upkeep of the
10 property; and

11 (7) Any other relevant factor.

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

15 § -11 Open-market sale, sealed bids, or auction. (a)
16 If the court orders a sale of heirs property, the sale shall be
17 an open-market sale unless the court finds that a sale by sealed
18 bids or an auction would be more economically advantageous and
19 in the best interest of the cotenants as a group.

20 (b) If the court orders an open-market sale and the
21 parties, not later than ten days after the entry of the order,



1 agree on a real estate broker licensed in this State to offer
2 the property for sale, the court shall appoint that broker and
3 establish a reasonable commission. If the parties do not agree
4 on a broker, the court shall appoint a disinterested real estate
5 broker licensed in this State to offer the property for sale and
6 shall establish a reasonable commission. The broker shall offer
7 the property for sale in a commercially reasonable manner at a
8 price not lower than the determination of value and on the terms
9 and conditions established by the court.

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

13 (1) The broker shall comply with the reporting
14 requirements set forth in section -12; and

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

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

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



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

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

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

10 (f) If a purchaser is entitled to a share of the proceeds
11 of the sale, the purchaser is entitled to a credit against the
12 price in an amount equal to the purchaser's share of the
13 proceeds.

14 § -12 Report of open-market sale. (a) Unless required
15 to do so within a shorter time by chapter 668, a broker
16 appointed under section -11(b) to offer heirs property for
17 open-market sale shall file a report not later than seven days
18 after receiving an offer to purchase the property for at least
19 the value determined under section -7 or -11.

20 (b) The report required by subsection (a) shall contain
21 the following information:



- 1 (1) A description of the property to be sold to each
- 2 buyer;
- 3 (2) The name of each buyer;
- 4 (3) The proposed purchase price;
- 5 (4) The terms and conditions of the proposed sale,
- 6 including, without limitation, the terms of any owner
- 7 financing;
- 8 (5) The amounts to be paid to lienholders;
- 9 (6) A statement of contractual or other arrangements or
- 10 conditions of the broker's commission; and
- 11 (7) Other material facts relevant to the sale.

12 § -13 Uniformity of application and construction. In
 13 applying and construing this chapter, consideration shall be
 14 given to the need to promote uniformity of the law with respect
 15 to its subject matter among the states that enact similar
 16 uniform legislation.

17 § -14 Relation to Electronic Signatures in Global and
 18 National Commerce Act. This chapter modifies, limits, and
 19 supersedes the federal Electronic Signatures in Global and
 20 National Commerce Act, P.L. 106-229, title 15 United States Code
 21 chapter 96, but does not modify, limit, or supersede title 15



1 United States Code section 7001(c), or authorize electronic
2 delivery of any of the notices described in title 15 United
3 states Code section 7003(b)."

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

6 "§668-1 Actions for partition. When two or more persons
7 hold or are in possession of real property as joint tenants or
8 as tenants in common, in which one or more of them have an
9 estate in fee, or a life estate in possession, any one or more
10 of such persons may bring an action in the circuit court of the
11 circuit in which the property or some part thereof is situated,
12 for a partition of the property, according to the respective
13 rights of the parties interested therein, and for a sale of the
14 same or a part thereof if it appears that a partition cannot be
15 made without great prejudice to the owners. [~~The~~] Except as
16 provided in chapter , the several circuit courts shall have
17 power, in any action for partition, to proceed according to the
18 usual practice of courts of equity in cases of partition, and
19 according to this chapter in enlargement thereof."



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

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

6 SECTION 5. This Act shall take effect on January 1, 2017.

APPROVED this 12 day of JUL , 2016



GOVERNOR OF THE STATE OF HAWAII