

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

on S.B. NO. 2408, SD 1, HD 1

RELATING TO PARTITION OF HEIRS PROPERTY

**BEFORE THE HOUSE COMMITTEE ON
JUDICIARY**

DATE: Thursday, March 31, 2016 at 2:00 p.m.
Conference Room 325, State Capitol

WRITTEN TESTIMONY ONLY: For more information, please contact Ken Takayama,
Commissioner, Commission to Promote Uniform Legislation, at 542-3659

To Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

My name is Ken Takayama, and I am submitting the following testimony on behalf of the Commission to Promote Uniform Legislation (the “Commission”). Thank you very much for this opportunity to testify **in SUPPORT** of S.B. No. 2408, SD 1, HD 1, Relating to **PARTITION OF HEIRS PROPERTY**.

The Uniform Law Commission, a national organization including members of the Commission, promulgated the **Uniform Partition of Heirs Property Act** (the “Act”) in 2010 to provide a fair, common-sense solution to the risks posed to those who own “heirs property”. Overall, the Act provides cotenants with many of the protections and rights commonly found in private agreements governing the partition of tenancy-in-common property. The Act does not displace existing partition law for non-heirs property, it does not prohibit a party from petitioning for a partition by sale, and it does not apply to situations where all the cotenants have a written agreement relating to partition their property.

“Heirs property” is defined in the Act as real property that is held under a tenancy in common in which there is no binding agreement among the cotenants governing partition of the property. Additionally, one or more of the cotenants must have acquired title from a relative, and one of the following conditions must be true:

- 20% or more of the interests are held by cotenants who are relatives; or

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- 20% or more of the interests are held by an individual who acquired title from a relative; or
- 20% or more of the cotenants themselves are relatives.

If heirs property is the subject of the partition action, the Act uses a 5-step process to ensure all owners of heirs property are treated fairly when one or more cotenants wish to sell their share:

1. The cotenant requesting the partition must give notice to all of the other cotenants.
2. The court must order an appraisal to determine the property's fair market value. If any cotenant objects to the appraised value, the court must hold a hearing to consider other evidence.
3. Any cotenant (except the cotenant who requests partition) may buy the interest of the selling cotenant at the court-determined fair market value. The cotenants have 45 days to exercise their right of first refusal, and if exercised, another 60 days in which to arrange for financing.
4. If no cotenant elects to purchase the selling cotenant's share, the court must order a partition-in-kind, unless the court determines that partition-in-kind will result in great prejudice to the co-tenants as a group. The Act specifies the factors a court must consider when determining whether partition-in-kind is appropriate.
5. If partition-in-kind is not appropriate and the court orders a partition-by-sale, the property must be offered for sale on the open market at a price no lower than the court-determined value, for a reasonable period of time and in a commercially reasonable manner. If an open market sale is unsuccessful or the court determines that a sale by sealed bids or by auction would be more economically advantageous for the cotenants as a group, the court may order a sale by one of those methods.

In summary, the Act preserves the right of a cotenant to sell his or her interest in inherited real estate, while ensuring that the other cotenants will have the necessary due process to prevent a forced sale: notice, appraisal, and right of first refusal. If the other cotenants do not exercise their right to purchase property from the seller, the court must order a partition-in-kind if

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feasible, and if not, a commercially reasonable sale for fair market value.

The Act has been enacted in six states: Nevada, Alabama, Georgia, Montana, Arkansas and Connecticut. So far this year, the Act has also been introduced in the legislatures of South Carolina and West Virginia.

S. B. No. 2408, SD 1, HD 1 is, from the Commission's standpoint, superior to all prior drafts, because it removes certain revisions that had been made to this bill that were inconsistent with the intention of the Act as originally proposed by the Uniform Law Commission. One notable revision had required that a motion be made by a party before heirs property procedures would apply to a partition action. That requirement appeared to go against the heart of the Act. Because the defending family members in partition actions often cannot afford and do not have counsel and may not understand what rights they have under the partition action, the original Act was purposely drafted by the Uniform Law Commission so that the court should determine, as a jurisdictional matter, whether the property in question is heirs property. This draft of S.B. No. 2408 much closer to the Heirs Property Act as it had been initially drafted.

We understand the concerns of the Judiciary and attorneys who handle partition actions that have been expressed in the past about this proposal regarding heirs property. For this reason, while we support passage of this measure, we would not oppose delaying its effective date by a year to give the parties time to iron out some differences. We have literally just received newly enacted legislation from another state that has addressed similar concerns, and believe it can be applied in Hawaii.

Thank you for the opportunity to testify on S. B. No. 2408, SD 1, HD 1.



The Judiciary, State of Hawaii

Testimony to the House Committee on Judiciary

Rep. Karl Rhoads, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Thursday, March 31, 2016, 2:00 p.m.
State Capitol, Conference Room 325

WRITTEN TESTIMONY ONLY

by

Rodney A. Maile

Administrative Director of the Courts

Bill No. and Title: Senate Bill No. 2408, S.D. 1, H.D. 1, Relating to Partition of Heirs Property.

Purpose: Adopts Uniform Partition of Heirs Property Act. Establishes procedures and remedies for use in actions for partition of real property involving heirs property, real property held in tenancy in common that meets certain requirements.

Judiciary's Position:

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

While the Judiciary takes no position on the merits of this bill, in circuit court civil cases, responsibility for providing notice generally rests with the parties. For consistency, the Judiciary recommends that parties in a civil action involving partition of heirs property remain responsible for providing notice. This would avoid any potential conflicts of interest or liability that could arise from situations where a court would be responsible for both providing notice and determining whether notice requirements have been fulfilled.



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Additionally, the Judiciary notes that S.B. 2408, S.D. 1, H.D. 1, page 6, lines 6-7 (§ - 6(e)), specifies that the court “send notice to each party with a known address” “not later than ten days after the appraisal is filed.” This provision appears to be the only instance among the court-provided notice requirements that includes a specific deadline by which notice must be given. Should the court remain responsible for providing notice once an appraisal is filed, the Judiciary requests that this ten-day provision be removed.

Thank you for the opportunity to testify on Senate Bill No. 2408, S.D. 1, H.D. 1.

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 31, 2016 7:41 AM
To: JUDtestimony
Cc: lhirano@tghawaii.com
Subject: Submitted testimony for SB2408 on Mar 31, 2016 14:00PM

SB2408

Submitted on: 3/31/2016

Testimony for JUD on Mar 31, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lorin Hirano	Individual	Comments Only	Yes

Comments: As an attorney who has worked on quiet title cases in the past, I do not think that the uniform statute proposed by this bill is necessary or will be helpful to many of the situations that give rise to partition cases in Hawaii. I respectfully submit that proposed Senate Bill 2408 should be discussed further, and if this committee is inclined to pass it, that its effective date be set well into the future to allow interested parties to continue to work on amending its provisions.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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