

ACT 260

S.B. NO. 2408

A Bill for an Act Relating to Partition of Heirs Property.

Be It Enacted by the Legislature of the State of Hawaii:

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

**“CHAPTER
UNIFORM PARTITION OF HEIRS PROPERTY ACT**

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

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

“Ascendant” means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.

“Collateral” means an individual who is related to another individual under the law of intestate succession of this State, but who is not the other individual’s ascendant or descendant.

“Descendant” means an individual who follows another individual in lineage, in the direct line of descent from the other individual.

“Determination of value” means an order of a court determining the fair market value of heirs property under section -7 or -11 or adopting the valuation of the property agreed to by all cotenants.

“Heirs property” means real property held in tenancy in common that satisfies all the following requirements as of the filing of an action for partition:

- (1) There is no agreement in a record binding all the cotenants that governs the partition of the property;
- (2) One or more of the cotenants acquired title from a relative, whether living or deceased; and
- (3) Any of the following applies:
 - (A) Twenty per cent or more of the interests are held by cotenants who are relatives;
 - (B) Twenty per cent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or
 - (C) Twenty per cent or more of the cotenants are relatives.

“Partition by sale” means a court-ordered sale of the entire heirs property, whether by auction, sealed bids, or open-market sale conducted under section -11.

“Partition in kind” means the division of heirs property into physically distinct and separately titled parcels.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Relative” means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this State other than this chapter.

§ -3 **Applicability; relation to other law.** (a) This chapter applies to actions for partition filed on or after January 1, 2017.

(b) In any action for partition of real property under chapter 668, the court shall determine whether the property is heirs property. If the court determines that the property is heirs property, the property shall be partitioned under this chapter, unless all the cotenants agree otherwise in a record.

(c) This chapter supplements chapter 668 and, if an action is governed by this chapter, supersedes provisions of chapter 668 that are inconsistent with this chapter.

§ -4 **Service; notice by posting.** (a) This chapter does not limit or affect the method by which service of a complaint in an action for partition may be made.

(b) If an order of service by publication of the summons for an action for partition of real property is granted and the court determines that the property may be heirs property, the plaintiff, not later than ten days after the court's determination, shall post, and maintain while the action is pending, a conspicuous sign on the property that is the subject of the action. The sign shall state that the action has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

§ -5 **Commissioners.** If the court appoints commissioners pursuant to section 668-13, each commissioner, in addition to the requirements and disqualifications applicable to commissioners in section 668-13, shall be disinterested, impartial, and neither a party to nor a participant in the action.

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

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

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

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

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

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

- (1) The appraised fair market value of the property as set forth in the appraisal that was filed with the clerk of the court;
- (2) That the appraisal is available at the office of the clerk of the court; and
- (3) That a party may object to the appraisal not later than thirty days after the notice is sent, stating the grounds for the objection.

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

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

§ -8 Cotenant buyout. (a) If any cotenant requested partition by sale, after the determination of value under section -7, the special master shall send notice to the parties that any cotenant except a cotenant that requested partition by sale may buy the interest of any cotenant that requested partition by sale.

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

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

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

- (1) If only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the special master shall notify all the parties of that fact;
- (2) If more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall allocate the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy and the special master shall send notice to all the parties of that fact and of the price to be paid by each electing cotenant; and
- (3) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the special master shall send notice to all the parties of that fact and resolve the action for partition under section -9(a) and (b).

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

- (1) If all electing cotenants timely pay their apportioned price, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them;
- (2) If no electing cotenant timely pays its apportioned price, the court shall resolve the action for partition under section -9(a) and (b), as if the interests of the cotenants that requested partition by sale were not purchased; and
- (3) If one or more but not all the electing cotenants fail to timely pay their apportioned price, the court, on motion, shall direct the spe-

cial master to give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for that interest. Unless otherwise ordered by the court, for any notice that the special master is required to give pursuant to this paragraph, the movant for notice to be given to electing cotenants pursuant to this paragraph shall deliver to the court a notice in blank to be completed by the special master with sufficient copies for service on the electing cotenants along with envelopes stamped with sufficient postage and addressed to each electing cotenant. The court may direct the movant to provide notice of the value by any other means.

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

- (1) If only one cotenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to that cotenant. The court shall promptly issue an order reallocating all the interests of all the cotenants and disburse the amounts held by the court to the persons entitled to them;
- (2) If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under section 9(a) and (b), as if the interests of the cotenants that requested partition by sale were not purchased; and
- (3) If more than one cotenant pays the entire price for the remaining interest, the court shall reapportion the remaining interest among those paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest. The court shall promptly issue an order reallocating all the cotenants' interests, disburse the amounts held by the court to the persons entitled to them, and promptly refund any excess payment held by the court to the appropriate cotenant.

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

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

- (1) A sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under subsections (a) through (f) have been paid into the court and those interests have been reallocated among the cotenants as provided in those subsections; and
- (2) The purchase price for the interest of an absent cotenant is based on the court's determination of value under section 7.

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

§ 9 Partition alternatives. (a) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to section 8, or if after conclusion of the buyout under section 8, a cotenant

remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in section -10, finds that partition in kind will result in great prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have their individual interests aggregated.

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

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

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

§ -10 **Considerations for partition in kind.** (a) In determining under section -9(a) whether partition in kind would result in great prejudice to the cotenants as a group, the court shall consider the following:

- (1) Whether the heirs property practicably may be divided among the cotenants;
- (2) Whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which the court-ordered sale likely would occur;
- (3) Evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of that cotenant or each other;
- (4) A cotenant's sentimental attachment to the property, including, without limitation, any attachment arising because the property has ancestral or other unique or special value to the cotenant;
- (5) The lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;
- (6) The degree to which the cotenants have contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property; and
- (7) Any other relevant factor.

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

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

(b) If the court orders an open-market sale and the parties, not later than ten days after the entry of the order, agree on a real estate broker licensed

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

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

- (1) The broker shall comply with the reporting requirements set forth in section -12; and
- (2) The sale may be completed in accordance with state law other than this chapter.

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

- (1) Approve the highest outstanding offer, if any;
- (2) Redetermine the value of the property and order that the property continue to be offered for an additional time; or
- (3) Order that the property be sold by sealed bids or at an auction.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. This Act shall take effect on January 1, 2017.
(Approved July 12, 2016.)