

By Senator Bracy

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1 A bill to be entitled
2 An act relating to the Uniform Partition of Heirs
3 Property Act; designating part I of ch. 64, F.S.,
4 entitled "General Provisions"; creating part II of ch.
5 64, F.S., entitled "Uniform Partition of Heirs
6 Property Act"; creating s. 64.201, F.S.; providing a
7 short title; creating s. 64.202, F.S.; defining terms;
8 creating s. 64.203, F.S.; providing applicability;
9 providing requirements relating to the court
10 determination of heirs property; specifying the
11 relation of the act to other law; creating s. 64.204,
12 F.S.; providing for service and notice; creating s.
13 64.205, F.S.; providing for appointment and
14 qualifications of commissioners; creating s. 64.206,
15 F.S.; providing for the determination of property
16 value; creating s. 64.207, F.S.; providing for buyout
17 of cotenants; creating s. 64.208, F.S.; providing for
18 alternatives to partition; creating s. 64.209, F.S.;
19 providing factors to be considered in determining
20 whether partition in kind may be ordered; creating s.
21 64.210, F.S.; providing for sale of property through
22 open-market sale, sealed bids, or auction; creating s.
23 64.211, F.S.; providing requirements for reporting of
24 an open-market sale of property; creating s. 64.212,
25 F.S.; providing for uniformity of application and
26 construction; creating s. 64.213, F.S.; specifying the
27 relation of the act to the Electronic Signatures in
28 Global and National Commerce Act; providing an
29 effective date.

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31 Be It Enacted by the Legislature of the State of Florida:
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33 Section 1. Sections 64.011, 64.022, 64.031, 64.041, 64.051,
34 64.061, 64.071, 64.081, and 64.091, Florida Statutes, are
35 designated as part I of chapter 64, Florida Statutes, and
36 entitled "General Provisions."

37 Section 2. Part II of chapter 64, Florida Statutes,
38 consisting of sections 64.201, 64.202, 64.203, 64.204, 64.205,
39 64.206, 64.207, 64.208, 64.209, 64.210, 64.211, 64.212, and
40 64.213, is created to read:

41 PART II

42 UNIFORM PARTITION OF HEIRS PROPERTY ACT

43 64.201 Short title.—This part may be cited as the "Uniform
44 Partition of Heirs Property Act".

45 64.202 Definitions.—As used in this part, the term:

46 (1) "Ascendant" means an individual who precedes another
47 individual in lineage, in the direct line of ascent from the
48 other individual.

49 (2) "Collateral" means an individual who is related to
50 another individual under the law of intestate succession of this
51 state but who is not the other individual's ascendant or
52 descendant.

53 (3) "Descendant" means an individual who follows another
54 individual in lineage, in the direct line of descent from the
55 other individual.

56 (4) "Determination of value" means a court order
57 determining the fair market value of heirs property under s.
58 64.206 or s. 64.210 or adopting the valuation of the property

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59 agreed to by all cotenants.

60 (5) "Heirs property" means real property held in tenancy in
61 common which satisfies all of the following requirements as of
62 the filing of a partition action:

63 (a) There is no agreement in a record binding all the
64 cotenants which governs the partition of the property;

65 (b) One or more of the cotenants acquired title from a
66 relative, whether living or deceased; and

67 (c) Any of the following applies:

68 1. Twenty percent or more of the interests are held by
69 cotenants who are relatives;

70 2. Twenty percent or more of the interests are held by an
71 individual who acquired title from a relative, whether living or
72 deceased; or

73 3. Twenty percent or more of the cotenants are relatives.

74 (6) "Partition by sale" means a court-ordered sale of the
75 entire heirs property, whether by open-market sale, sealed bids,
76 or auction conducted under s. 64.210.

77 (7) "Partition in kind" means the division of heirs
78 property into physically distinct and separately titled parcels.

79 (8) "Record" means information that is inscribed on a
80 tangible medium or that is stored in an electronic or other
81 medium and is retrievable in perceivable form.

82 (9) "Relative" means an ascendant, descendant, or
83 collateral or an individual otherwise related to another
84 individual by blood, marriage, adoption, or law of this state
85 other than this part.

86 64.203 Applicability; relation to other law.—

87 (1) This part applies to partition actions filed on or

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88 after July 1, 2020.

89 (2) In an action to partition real property under part I of
90 this chapter, the court shall determine whether the property is
91 heirs property. If the court determines that the property is
92 heirs property, the property must be partitioned under this part
93 unless all of the cotenants otherwise agree in a record.

94 (3) This part supplements part I of this chapter and, if an
95 action is governed by this part, replaces provisions of part I
96 of this chapter that are inconsistent with this part.

97 64.204 Service; notice by posting.—

98 (1) This part does not limit or affect the method by which
99 service of a complaint in a partition action may be made.

100 (2) If the plaintiff in a partition action seeks notice by
101 publication and the court determines that the property may be
102 heirs property, the plaintiff, not later than 10 days after the
103 court's determination, shall post, and maintain while the action
104 is pending, a conspicuous sign on the property that is the
105 subject of the action. The sign must state that the action has
106 commenced and must identify the name and address of the court
107 and the common designation by which the property is known. The
108 court may require the plaintiff to publish on the sign the name
109 of the plaintiff and the known defendants.

110 64.205 Commissioners.—If the court appoints commissioners
111 pursuant to s. 64.061, each commissioner, in addition to the
112 requirements and disqualifications applicable to commissioners
113 in part I of this chapter, must be disinterested and impartial
114 and not a party to or a participant in the action.

115 64.206 Determination of value.—

116 (1) Except as otherwise provided in subsections (2) and

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117 (3), if the court determines that the property that is the
118 subject of a partition action is heirs property, the court shall
119 determine the fair market value of the property by ordering an
120 appraisal pursuant to subsection (4).

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

125 (3) If the court determines that the evidentiary value of
126 an appraisal is outweighed by the cost of the appraisal, the
127 court, after an evidentiary hearing, shall determine the fair
128 market value of the property and send notice to the parties of
129 the value.

130 (4) If the court orders an appraisal, the court shall
131 appoint a disinterested real estate appraiser licensed in this
132 state to determine the fair market value of the property
133 assuming sole ownership of the fee simple estate. On completion
134 of the appraisal, the appraiser shall file a sworn or verified
135 appraisal with the court.

136 (5) If an appraisal is conducted pursuant to subsection
137 (4), not later than 10 days after the appraisal is filed, the
138 court shall send notice to each party with a known address,
139 stating:

140 (a) The appraised fair market value of the property.

141 (b) That the appraisal is available at the clerk's office.

142 (c) That a party may file with the court an objection to
143 the appraisal not later than 30 days after the notice is sent,
144 stating the grounds for the objection.

145 (6) If an appraisal is filed with the court pursuant to

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146 subsection (4), the court shall conduct a hearing to determine
147 the fair market value of the property not sooner than 31 days
148 after a copy of the notice of the appraisal is sent to each
149 party under subsection (5), whether or not an objection to the
150 appraisal is filed under paragraph (5)(c). In addition to the
151 court-ordered appraisal, the court may consider any other
152 evidence of value offered by a party.

153 (7) After a hearing under subsection (6), but before
154 considering the merits of the partition action, the court shall
155 determine the fair market value of the property and send notice
156 to the parties of the value.

157 64.207 Cotenant buyout.—

158 (1) If any cotenant requested partition by sale, after the
159 determination of value under s. 64.206, the court shall send
160 notice to the parties that any cotenant except a cotenant that
161 requested partition by sale may buy all the interests of the
162 cotenants that requested partition by sale.

163 (2) Not later than 45 days after the notice is sent under
164 subsection (1), any cotenant, except a cotenant that requested
165 partition by sale, may give notice to the court that it elects
166 to buy all the interests of the cotenants that requested
167 partition by sale.

168 (3) The purchase price for each of the interests of a
169 cotenant that requested partition by sale is the value of the
170 entire parcel determined under s. 64.206 multiplied by the
171 cotenant's fractional ownership of the entire parcel.

172 (4) After expiration of the period in subsection (2), the
173 following rules apply:

174 (a) If only one cotenant elects to buy all the interests of

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175 the cotenants that requested partition by sale, the court shall
176 notify all the parties of that fact.

177 (b) If more than one cotenant elects to buy all the
178 interests of the cotenants that requested partition by sale, the
179 court shall allocate the right to buy those interests among the
180 electing cotenants based on each electing cotenant's existing
181 fractional ownership of the entire parcel divided by the total
182 existing fractional ownership of all cotenants electing to buy
183 and send notice to all the parties of that fact and of the price
184 to be paid by each electing cotenant.

185 (c) If no cotenant elects to buy all the interests of the
186 cotenants that requested partition by sale, the court shall send
187 notice to all the parties of that fact and resolve the partition
188 action under s. 64.208(1) and (2).

189 (5) If the court sends notice to the parties under
190 paragraph (4) (a) or paragraph (4) (b), the court shall set a
191 date, not sooner than 60 days after the date the notice was
192 sent, by which electing cotenants must pay their apportioned
193 price into the court. After this date, the following rules
194 apply:

195 (a) If all electing cotenants timely pay their apportioned
196 price into court, the court shall issue an order reallocating
197 all the interests of the cotenants and disburse the amounts held
198 by the court to the persons entitled to them.

199 (b) If no electing cotenant timely pays its apportioned
200 price, the court shall resolve the partition action under s.
201 64.208(1) and (2) as if the interests of the cotenants that
202 requested partition by sale were not purchased.

203 (c) If one or more but not all of the electing cotenants

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204 fail to pay their apportioned price on time, the court shall
205 give notice to the electing cotenants that paid their
206 apportioned price of the interest remaining and the price for
207 all that interest.

208 (6) Not later than 20 days after the court gives notice
209 pursuant to paragraph (5) (c), any cotenant that paid may elect
210 to purchase all of the remaining interest by paying the entire
211 price into the court. After the 20-day period, the following
212 rules apply:

213 (a) If only one cotenant pays the entire price for the
214 remaining interest, the court shall issue an order reallocating
215 the remaining interest to that cotenant. The court shall issue
216 promptly an order reallocating the interests of all of the
217 cotenants and disburse the amounts held by it to the persons
218 entitled to them.

219 (b) If no cotenant pays the entire price for the remaining
220 interest, the court shall resolve the partition action under s.
221 64.208(1) and (2) as if the interests of the cotenants that
222 requested partition by sale were not purchased.

223 (c) If more than one cotenant pays the entire price for the
224 remaining interest, the court shall reapportion the remaining
225 interest among those paying cotenants, based on each paying
226 cotenant's original fractional ownership of the entire parcel
227 divided by the total original fractional ownership of all
228 cotenants that paid the entire price for the remaining interest.
229 The court shall issue promptly an order reallocating all of the
230 cotenants' interests, disburse the amounts held by it to the
231 persons entitled to them, and promptly refund any excess payment
232 held by the court.

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233 (7) Not later than 45 days after the court sends notice to
234 the parties pursuant to subsection (1), any cotenant entitled to
235 buy an interest under this section may request the court to
236 authorize the sale as part of the pending action of the
237 interests of cotenants named as defendants and served with the
238 complaint but that did not appear in the action.

239 (8) If the court receives a timely request under subsection
240 (7), the court, after hearing, may deny the request or authorize
241 the requested additional sale on such terms as the court
242 determines are fair and reasonable, subject to the following
243 limitations:

244 (a) A sale authorized under this subsection may occur only
245 after the purchase prices for all interests subject to sale
246 under subsections (1) through (6) have been paid into court and
247 those interests have been reallocated among the cotenants as
248 provided in those subsections.

249 (b) The purchase price for the interest of a nonappearing
250 cotenant is based on the court's determination of value under s.
251 64.206.

252 64.208 Partition alternatives.—

253 (1) If all the interests of all cotenants that requested
254 partition by sale are not purchased by other cotenants pursuant
255 to s. 64.207, or, if after conclusion of the buyout under s.
256 64.207, a cotenant remains that has requested partition in kind,
257 the court shall order partition in kind unless the court, after
258 consideration of the factors listed in s. 64.209, finds that
259 partition in kind will result in manifest prejudice to the
260 cotenants as a group. In considering whether to order partition
261 in kind, the court shall approve a request by two or more

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262 parties to have their individual interests aggregated.

263 (2) If the court does not order partition in kind under
264 subsection (1), the court shall order partition by sale pursuant
265 to s. 64.210 or, if no cotenant requested partition by sale, the
266 court shall dismiss the action.

267 (3) If the court orders partition in kind pursuant to
268 subsection (1), the court may require that one or more cotenants
269 pay one or more other cotenants amounts so that the payments,
270 taken together with the value of the in-kind distributions to
271 the cotenants, will make the partition in kind just and
272 proportionate in value to the fractional interests held.

273 (4) If the court orders partition in kind, the court shall
274 allocate to the cotenants that are unknown, unlocatable, or the
275 subject of a default judgment, if their interests were not
276 bought out pursuant to s. 64.207, a part of the property
277 representing the combined interests of these cotenants as
278 determined by the court and this part of the property shall
279 remain undivided.

280 64.209 Considerations for partition in kind.—

281 (1) In determining under s. 64.208(1) whether partition in
282 kind would result in manifest prejudice to the cotenants as a
283 group, the court shall consider the following:

284 (a) Whether the heirs property practicably can be divided
285 among the cotenants.

286 (b) Whether partition in kind would apportion the property
287 in such a way that the aggregate fair market value of the
288 parcels resulting from the division would be materially less
289 than the value of the property if it were sold as a whole,
290 taking into account the condition under which a court-ordered

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291 sale likely would occur.

292 (c) Evidence of the collective duration of ownership or
293 possession of the property by a cotenant and one or more
294 predecessors in title or predecessors in possession to the
295 cotenant who are or were relatives of the cotenant or each
296 other.

297 (d) A cotenant's sentimental attachment to the property,
298 including any attachment arising because the property has
299 ancestral or other unique or special value to the cotenant.

300 (e) The lawful use being made of the property by a cotenant
301 and the degree to which the cotenant would be harmed if the
302 cotenant could not continue the same use of the property.

303 (f) The degree to which the cotenants have contributed
304 their pro rata share of the property taxes, insurance, and other
305 expenses associated with maintaining ownership of the property
306 or have contributed to the physical improvement, maintenance, or
307 upkeep of the property.

308 (g) Any other relevant factor.

309 (2) The court may not consider any one factor in subsection
310 (1) to be dispositive without weighing the totality of all
311 relevant factors and circumstances.

312 64.210 Open-market sale, sealed bids, or auction.—

313 (1) If the court orders a sale of heirs property, the sale
314 must be an open-market sale unless the court finds that a sale
315 by sealed bids or an auction would be more economically
316 advantageous and in the best interest of the cotenants as a
317 group.

318 (2) If the court orders an open-market sale and the
319 parties, not later than 10 days after the entry of the order,

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320 agree on a real estate broker licensed in this state to offer
321 the property for sale, the court shall appoint the broker and
322 establish a reasonable commission. If the parties do not agree
323 on a broker, the court shall appoint a disinterested real estate
324 broker licensed in this state to offer the property for sale and
325 shall establish a reasonable commission. The broker shall offer
326 the property for sale in a commercially reasonable manner at a
327 price no lower than the determination of value and on the terms
328 and conditions established by the court.

329 (3) If the broker appointed under subsection (2) obtains
330 within a reasonable time an offer to purchase the property for
331 at least the determination of value:

332 (a) The broker shall comply with the reporting requirements
333 in s. 64.211; and

334 (b) The sale may be completed in accordance with the laws
335 of this state other than this part.

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

340 (a) Approve the highest outstanding offer, if any;

341 (b) Redetermine the value of the property and order that
342 the property continue to be offered for an additional time; or

343 (c) Order that the property be sold by sealed bids or at an
344 auction.

345 (5) If the court orders a sale by sealed bids or an
346 auction, the court shall set terms and conditions of the sale.
347 If the court orders an auction, the auction must be conducted
348 under part I of this chapter.

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

353 64.211 Report of open-market sale.—

354 (1) Unless required to do so within a shorter time by part
355 I of this chapter, a broker appointed under s. 64.210(2) to
356 offer heirs property for open-market sale shall file a report
357 with the court not later than 7 days after receiving an offer to
358 purchase the property for at least the value determined under s.
359 64.206 or s. 64.210.

360 (2) The report required by subsection (1) must contain the
361 following information:

362 (a) A description of the property to be sold to each buyer.

363 (b) The name of each buyer.

364 (c) The proposed purchase price.

365 (d) The terms and conditions of the proposed sale,
366 including the terms of any owner financing.

367 (e) The amounts to be paid to lienholders.

368 (f) A statement of contractual or other arrangements or
369 conditions of the broker's commission.

370 (g) Other material facts relevant to the sale.

371 64.212 Uniformity of application and construction.—In
372 applying and construing this uniform act, consideration must be
373 given to the need to promote uniformity of the law with respect
374 to its subject matter among states that enact it.

375 64.213 Relation to Electronic Signatures in Global and
376 National Commerce Act.—This part modifies, limits, and
377 supersedes the Electronic Signatures in Global and National

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378 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
379 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
380 or authorize electronic delivery of any of the notices described
381 in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

382 Section 3. This act shall take effect July 1, 2020.