

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

Committee/Subcommittee hearing bill: Civil Justice Subcommittee
Representative Ausley offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Sections 64.011, 64.022, 64.031, 64.041, 64.051, 64.061, 64.071, 64.081, and 64.091, Florida Statutes, are designated as part I of chapter 64, Florida Statutes, and entitled "General Provisions."

Section 2. Part II of chapter 64, Florida Statutes, consisting of sections 64.201, 64.202, 64.203, 64.204, 64.205, 64.206, 64.207, 64.208, 64.209, 64.210, 64.211, 64.212, 64.213, and 64.214, is created to read:

PART II

UNIFORM PARTITION OF HEIRS PROPERTY ACT

64.201 Short title.—This part may be cited as the "Uniform

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17 Partition of Heirs Property Act".

18 64.202 Definitions.—As used in this part, the term:

19 (1) "Ascendant" means an individual who precedes another
20 individual in lineage, in the direct line of ascent from the
21 other individual.

22 (2) "Collateral" means an individual who is related to
23 another individual under the law of intestate succession of this
24 state but who is not the other individual's ascendant or
25 descendant.

26 (3) "Descendant" means an individual who follows another
27 individual in lineage, in the direct line of descent from the
28 other individual.

29 (4) "Determination of value" means a court order
30 determining the fair market value of heirs property under s.
31 64.206 or s. 64.210 or adopting the valuation of the property
32 agreed to by all cotenants.

33 (5) "Equitable accounting" means considering contributions
34 and adjustments of accounts between cotenants, which are related
35 to the real property and are based upon such contributions and
36 adjustments, s. 64.081, and common law.

37 (6) "Heirs property" means real property held in tenancy
38 in common which satisfies all of the following requirements as
39 of the filing of a partition action:

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

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

44 (c) Any of the following applies:

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

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

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

51 (7) "Partition by sale" means a court-ordered sale of the
52 entire heirs property, whether by open-market sale, sealed bids,
53 or auction conducted under s. 64.210.

54 (8) "Partition in kind" means the division of heirs
55 property into physically distinct and separately titled parcels.

56 (9) "Record" means information that is inscribed on a
57 tangible medium or that is stored in an electronic or other
58 medium and is retrievable in perceivable form.

59 (10) "Relative" means an ascendant, descendant, or
60 collateral or an individual otherwise related to another
61 individual by blood, marriage, adoption, or law of this state
62 other than this part.

63 64.203 Applicability; relation to other law.—

64 (1) This part applies to partition actions filed on or
65 after July 1, 2020.

66 (2) Provided that a partition action is otherwise

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67 available under part I of this chapter, the court shall
68 determine whether the property is heirs property. If the court
69 determines that the property is heirs property, the property
70 must be partitioned under this part unless all of the cotenants
71 otherwise agree in a record.

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

75 64.204 Service; notice by posting.-

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

78 (2) If the plaintiff in a partition action seeks notice by
79 publication, and the court determines that the property is heirs
80 property, then the court shall order the clerk of the court to
81 issue a notice of action to the plaintiff in the form set forth
82 in s. 49.08 and the plaintiff must, not later than 10 days after
83 receipt, post the notice of action on the property that is the
84 subject of the action.

85 64.205 Commissioners.-If the court appoints commissioners
86 pursuant to s. 64.061, each commissioner, in addition to the
87 requirements and disqualifications applicable to commissioners
88 in part I of this chapter, must be disinterested and impartial
89 and not a party to or a participant in the action.

90 64.206 Determination of value.-

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

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92 (3), if the court determines that the property that is the
93 subject of a partition action is heirs property, the court shall
94 determine the fair market value of the property by ordering an
95 appraisal pursuant to subsection (4).

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

100 (3) If the court determines that the evidentiary value of
101 an appraisal is outweighed by the cost of the appraisal, the
102 court, after an evidentiary hearing, shall determine the fair
103 market value of the property and send notice to the parties of
104 the value.

105 (4) If the court orders an appraisal, the court shall
106 appoint a disinterested real estate appraiser licensed in this
107 state to determine the fair market value of the property
108 assuming sole ownership of the fee simple estate. On completion
109 of the appraisal, the appraiser shall file a sworn or verified
110 appraisal with the court.

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

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

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

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

120 (6) If an appraisal is filed with the court pursuant to
121 subsection (4), the court shall conduct a hearing to determine
122 the fair market value of the property not sooner than 31 days
123 after a copy of the notice of the appraisal is sent to each
124 party under subsection (5), whether or not an objection to the
125 appraisal is filed under paragraph (5)(c). In addition to the
126 court-ordered appraisal, the court may consider any other
127 evidence of value offered by a party.

128 (7) After a hearing under subsection (6), but before
129 considering the merits of the partition action, the court shall
130 determine the fair market value of the property and send notice
131 to the parties of the value.

132
133 In addition to a determination of value under this section, the
134 court shall determine the amount of the equitable accounting
135 upon the request of any cotenant and shall appropriately adjust
136 any price, purchase price, apportioned price, buyout, judgment,
137 or partition granted under this part based on the results of the
138 equitable accounting.

139 64.207 Cotenant buyout.—

140 (1) If any cotenant requested partition by sale, after the
141 determination of value under s. 64.206, the court shall send

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142 notice to the parties that any cotenant except a cotenant that
143 requested partition by sale may buy all the interests of the
144 cotenants that requested partition by sale.

145 (2) Not later than 45 days after the notice is sent under
146 subsection (1), any cotenant, except a cotenant that requested
147 partition by sale, may give notice to the court that it elects
148 to buy all the interests of the cotenants that requested
149 partition by sale.

150 (3) The purchase price for each of the interests of a
151 cotenant that requested partition by sale is the value of the
152 entire parcel determined under s. 64.206 multiplied by the
153 cotenant's fractional ownership of the entire parcel.

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

156 (a) If only one cotenant elects to buy all the interests
157 of the cotenants that requested partition by sale, the court
158 shall notify all the parties of that fact.

159 (b) If more than one cotenant elects to buy all the
160 interests of the cotenants that requested partition by sale, the
161 court shall allocate the right to buy those interests among the
162 electing cotenants based on each electing cotenant's existing
163 fractional ownership of the entire parcel divided by the total
164 existing fractional ownership of all cotenants electing to buy
165 and send notice to all the parties of that fact and of the price
166 to be paid by each electing cotenant.

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

171 (5) If the court sends notice to the parties under
172 paragraph (4) (a) or paragraph (4) (b), the court shall set a
173 date, not sooner than 60 days after the date the notice was
174 sent, by which electing cotenants must pay their apportioned
175 price into the court. After this date, the following rules
176 apply:

177 (a) If all electing cotenants timely pay their apportioned
178 price into the court, the court shall issue a judgment of
179 partition reallocating all the interests of the cotenants,
180 disburse the amounts held by the court to the persons entitled
181 to them, and direct the clerk of the court to record the
182 judgment in the official records of the county where the
183 property is located.

184 (b) If no electing cotenant timely pays its apportioned
185 price, the court shall resolve the partition action under s.
186 64.208(1) and (2) as if the interests of the cotenants that
187 requested partition by sale were not purchased.

188 (c) If one or more but not all of the electing cotenants
189 fail to pay their apportioned price on time, the court shall
190 give notice to the electing cotenants that paid their
191 apportioned price of the interest remaining and the price for

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192 all that interest.

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

198 (a) If only one cotenant pays the entire price for the
199 remaining interest, the court shall issue a judgment of
200 partition reallocating the remaining interest to that cotenant
201 and reallocating the interests of all of the cotenants. The
202 court shall also disburse the amounts held by the court to the
203 persons entitled to them and direct the clerk of the court to
204 record such judgment in the official records of the county where
205 the property is located.

206 (b) If no cotenant pays the entire price for the remaining
207 interest, the court shall resolve the partition action under s.
208 64.208(1) and (2) as if the interests of the cotenants that
209 requested partition by sale were not purchased.

210 (c) If more than one cotenant pays the entire price for
211 the remaining interest, the court shall reapportion the
212 remaining interest among those paying cotenants, based on each
213 paying cotenant's original fractional ownership of the entire
214 parcel divided by the total original fractional ownership of all
215 cotenants that paid the entire price for the remaining interest.
216 The court shall issue promptly a judgment of partition

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217 reallocating all of the cotenants' interests, disburse the
218 amounts held by the court to the persons entitled to them,
219 promptly refund any excess payment held by the court, and direct
220 the clerk of the court to record the judgment in the official
221 records of the county where the property is located.

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

228 (8) If the court receives a timely request under
229 subsection (7), the court, after hearing, may deny the request
230 or authorize the requested additional sale on such terms as the
231 court determines are fair and reasonable, provided the court
232 ensures the due process rights of the nonappearing cotenants,
233 subject to the following limitations:

234 (a) A sale authorized under this subsection may occur only
235 after the purchase prices for all interests subject to sale
236 under subsections (1) through (6) have been paid into court and
237 those interests have been reallocated among the cotenants as
238 provided in those subsections.

239 (b) The purchase price for the interest of a nonappearing
240 cotenant is based on the court's determination of value under s.
241 64.206.

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64.208 Partition alternatives.-

(1) If any cotenant requested partition in kind, or if all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to s. 64.207, or, if after conclusion of the buyout under s. 64.207, a cotenant remains that has requested partition in kind, the court shall enter a judgment of partition in kind unless the court is satisfied that commissioners appointed pursuant to s. 64.061 have considered the factors listed in s. 64.209 and found that partition in kind will result in 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. Such judgment of partition must include the legal description of the real property before partition, the legal description of each new parcel, and the name of each parcel's owner and shall be recorded by the clerk of the court in the official records of the county where the property is located.

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

(3) If the court orders partition in kind pursuant to subsection (1), the court may require that one or more cotenants pay one or more other cotenants amounts so that the payments,

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267 taken together with the value of the in-kind distributions to
268 the cotenants, will make the partition in kind just and
269 proportionate in value to the fractional interests held.

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

277 64.209 Considerations for partition in kind.—

278 (1) In determining under s. 64.208(1) whether partition in
279 kind would result in prejudice to the cotenants as a group, the
280 commissioners shall consider the following:

281 (a) Whether the heirs property practicably can be divided
282 among the cotenants.

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

289 (c) Evidence of the collective duration of ownership or
290 possession of the property by a cotenant and one or more
291 predecessors in title or predecessors in possession to the

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292 cotenant who are or were relatives of the cotenant or each
293 other.

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

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

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

305 (g) Any other relevant factor.

306 (2) The commissioners may not consider any one factor in
307 subsection (1) to be dispositive without weighing the totality
308 of all relevant factors and circumstances.

309 64.210 Open-market sale, sealed bids, or auction.—

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

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

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

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

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

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

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

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

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

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

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

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

350 64.211 Report of open-market sale.-

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

357 (2) The report required by subsection (1) must contain the
358 following information:

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

361 (b) The name of each buyer.

362 (c) The proposed purchase price.

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

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

366 (f) A statement of contractual or other arrangements or

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367 conditions of the broker's commission.

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

369 64.212 Uniformity of application and construction.—In
370 applying and construing this uniform act, consideration must be
371 given to the need to promote uniformity of the law with respect
372 to its subject matter among states that enact it.

373 64.213 Relation to Electronic Signatures in Global and
374 National Commerce Act.—This part modifies, limits, and
375 supersedes the Electronic Signatures in Global and National
376 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
377 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
378 or authorize electronic delivery of any of the notices described
379 in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

380 64.214 Access for all residents.—Notwithstanding any
381 provision to the contrary in this part, cotenants owning real
382 property that is not heirs property may agree to partition such
383 real property under this part. All of the cotenants must jointly
384 notify the court of such agreement.

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

386
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388 -----
389 **T I T L E A M E N D M E N T**

390 Remove everything before the enacting clause and insert:

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391 An act relating to the Uniform Partition of Heirs Property Act;
392 designating part I of ch. 64, F.S., entitled "General
393 Provisions"; creating part II of ch. 64, F.S., entitled "Uniform
394 Partition of Heirs Property Act"; creating s. 64.201, F.S.;
395 providing a short title; creating s. 64.202, F.S.; defining
396 terms; creating s. 64.203, F.S.; providing applicability;
397 providing requirements relating to the court determination of
398 heirs property; specifying the relation of the act to other law;
399 creating s. 64.204, F.S.; providing construction; providing for
400 service and notice; creating s. 64.205, F.S.; providing for
401 appointment and qualifications of commissioners; creating s.
402 64.206, F.S.; providing for the determination of property value;
403 creating s. 64.207, F.S.; providing for buyout of cotenants;
404 creating s. 64.208, F.S.; providing for alternatives to
405 partition; creating s. 64.209, F.S.; providing factors to be
406 considered in determining whether partition in kind may be
407 ordered; creating s. 64.210, F.S.; providing for sale of
408 property through open-market sale, sealed bids, or auction;
409 creating s. 64.211, F.S.; providing requirements for reporting
410 of an open-market sale of property; creating s. 64.212, F.S.;
411 providing for uniformity of application and construction;
412 creating s. 64.213, F.S.; specifying the relation of the act to
413 the Electronic Signatures in Global and National Commerce Act;
414 creating s. 64.214, F.S.; authorizing certain cotenants to agree
415 to certain partitions of real property; requiring such cotenants

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Bill No. HB 349 (2020)

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416 | to jointly notify the court of such agreement; providing an
417 | effective date.