

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

26 |           effective date.

27 |

28 | Be It Enacted by the Legislature of the State of Florida:

29 |

30 |           Section 1. The Division of Law Revision is directed to  
 31 | designate ss. 64.011-64.091, Florida Statutes, as part I of  
 32 | chapter 64, Florida Statutes, entitled "General Provisions," and  
 33 | ss. 64.201-64.215, Florida Statutes, as part II of that chapter,  
 34 | entitled "Uniform Partition of Heirs Property Act."

35 |           Section 2. Section 64.201, Florida Statutes, is created to  
 36 | read:

37 |           64.201 Short title.—This part may be cited as the "Uniform  
 38 | Partition of Heirs Property Act".

39 |           64.202 Definitions.—As used in this part, the term:

40 |           (1) "Ascendant" means an individual who precedes another  
 41 | individual in lineage, in the direct line of ascent from the  
 42 | other individual.

43 |           (2) "Collateral" means an individual who is related to  
 44 | another individual under the law of intestate succession of this  
 45 | state but who is not the other individual's ascendant or  
 46 | descendant.

47 |           (3) "Descendant" means an individual who follows another  
 48 | individual in lineage, in the direct line of descent from the  
 49 | other individual.

50 |           (4) "Determination of value" means a court order

51 determining the fair market value of heirs property under s.  
52 64.206 or s. 64.210 or adopting the valuation of the property  
53 agreed to by all cotenants.

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

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

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

61 (c) Any of the following applies:

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

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

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

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

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

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

76           (9) "Relative" means an ascendant, descendant, or  
 77 collateral or an individual otherwise related to another  
 78 individual by blood, marriage, adoption, or law of this state  
 79 other than this part.

80           64.203 Applicability; relation to other law.—

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

83           (2) In an action to partition real property under part I  
 84 of this chapter the court shall determine whether the property  
 85 is heirs property. If the court determines that the property is  
 86 heirs property, the property must be partitioned under this part  
 87 unless all of the cotenants otherwise agree in a record.

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

91           64.204 Service; notice by posting.—

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

94           (2) If the plaintiff in a partition action seeks notice by  
 95 publication and the court determines that the property may be  
 96 heirs property, the plaintiff, not later than 10 days after the  
 97 court's determination, shall post and maintain while the action  
 98 is pending a conspicuous sign on the property that is the  
 99 subject of the action. The sign must state that the action has  
 100 commenced and identify the name and address of the court and the

101 common designation by which the property is known. The court may  
102 require the plaintiff to publish on the sign the name of the  
103 plaintiff and the known defendants.

104 64.205 Commissioners.—If the court appoints commissioners  
105 pursuant to s. 64.061, each commissioner, in addition to the  
106 requirements and disqualifications applicable to commissioners  
107 in part I of this chapter, must be disinterested and impartial  
108 and not a party to or a participant in the action.

109 64.206 Determination of value.—

110 (1) Except as otherwise provided in subsections (2) and  
111 (3), if the court determines that the property that is the  
112 subject of a partition action is heirs property, the court shall  
113 determine the fair market value of the property by ordering an  
114 appraisal pursuant to subsection (4).

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

119 (3) If the court determines that the evidentiary value of  
120 an appraisal is outweighed by the cost of the appraisal, the  
121 court, after an evidentiary hearing, shall determine the fair  
122 market value of the property and send notice to the parties of  
123 the value.

124 (4) If the court orders an appraisal, the court shall  
125 appoint a disinterested real estate appraiser licensed in this

126 state to determine the fair market value of the property  
127 assuming sole ownership of the fee simple estate. On completion  
128 of the appraisal, the appraiser shall file a sworn or verified  
129 appraisal with the court.

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

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

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

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

139 (6) If an appraisal is filed with the court pursuant to  
140 subsection (4), the court shall conduct a hearing to determine  
141 the fair market value of the property not sooner than 31 days  
142 after a copy of the notice of the appraisal is sent to each  
143 party under subsection (5), whether or not an objection to the  
144 appraisal is filed under paragraph (5)(c). In addition to the  
145 court-ordered appraisal, the court may consider any other  
146 evidence of value offered by a party.

147 (7) After a hearing under subsection (6), but before  
148 considering the merits of the partition action, the court shall  
149 determine the fair market value of the property and send notice  
150 to the parties of the value.

151 64.207 Cotenant buyout.—

152 (1) If any cotenant requested partition by sale, after the  
153 determination of value under s. 64.206, the court shall send  
154 notice to the parties that any cotenant except a cotenant that  
155 requested partition by sale may buy all the interests of the  
156 cotenants that requested partition by sale.

157 (2) Not later than 45 days after the notice is sent under  
158 subsection (1), any cotenant, except a cotenant that requested  
159 partition by sale, may give notice to the court that it elects  
160 to buy all the interests of the cotenants that requested  
161 partition by sale.

162 (3) The purchase price for each of the interests of a  
163 cotenant that requested partition by sale is the value of the  
164 entire parcel determined under s. 64.206 multiplied by the  
165 cotenant's fractional ownership of the entire parcel.

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

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

171 (b) If more than one cotenant elects to buy all the  
172 interests of the cotenants that requested partition by sale, the  
173 court shall allocate the right to buy those interests among the  
174 electing cotenants based on each electing cotenant's existing  
175 fractional ownership of the entire parcel divided by the total

176 existing fractional ownership of all cotenants electing to buy  
177 and send notice to all the parties of that fact and of the price  
178 to be paid by each electing cotenant.

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

183 (5) If the court sends notice to the parties under  
184 paragraph (4) (a) or paragraph (4) (b), the court shall set a  
185 date, not sooner than 60 days after the date the notice was  
186 sent, by which electing cotenants must pay their apportioned  
187 price into the court. After this date, the following rules  
188 apply:

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

193 (b) If no electing cotenant timely pays its apportioned  
194 price, the court shall resolve the partition action under s.  
195 64.208(1) and (2) as if the interests of the cotenants that  
196 requested partition by sale were not purchased.

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



201 all that interest.

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

207 (a) If only one cotenant pays the entire price for the  
208 remaining interest, the court shall issue an order reallocating  
209 the remaining interest to that cotenant. The court shall issue  
210 promptly an order reallocating the interests of all of the  
211 cotenants and disburse the amounts held by it to the persons  
212 entitled to them.

213 (b) If no cotenant pays the entire price for the remaining  
214 interest, the court shall resolve the partition action under s.  
215 64.208(1) and (2) as if the interests of the cotenants that  
216 requested partition by sale were not purchased.

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

226 held by the court.

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

233 (8) If the court receives a timely request under  
234 subsection (7), the court, after hearing, may deny the request  
235 or authorize the requested additional sale on such terms as the  
236 court determines are fair and reasonable, subject to the  
237 following limitations:

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

243 (b) The purchase price for the interest of a nonappearing  
244 cotenant is based on the court's determination of value under s.  
245 64.206.

246 64.208 Partition alternatives.-

247 (1) If all the interests of all cotenants that requested  
248 partition by sale are not purchased by other cotenants pursuant  
249 to s. 64.207, or if after conclusion of the buyout under s.  
250 64.207, a cotenant remains that has requested partition in kind,

251 the court shall order partition in kind unless the court, after  
252 consideration of the factors listed in s. 64.209, finds that  
253 partition in kind will result in manifest prejudice to the  
254 cotenants as a group. In considering whether to order partition  
255 in kind, the court shall approve a request by two or more  
256 parties to have their individual interests aggregated.

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

261 (3) If the court orders partition in kind pursuant to  
262 subsection (1), the court may require that one or more cotenants  
263 pay one or more other cotenants amounts so that the payments,  
264 taken together with the value of the in-kind distributions to  
265 the cotenants, will make the partition in kind just and  
266 proportionate in value to the fractional interests held.

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

274 64.209 Considerations for partition in kind.—

275 (1) In determining under s. 64.208(1) whether partition in

276 kind would result in manifest prejudice to the cotenants as a  
277 group, the court shall consider the following:

278 (a) Whether the heirs property practicably can be divided  
279 among the cotenants.

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

286 (c) Evidence of the collective duration of ownership or  
287 possession of the property by a cotenant and one or more  
288 predecessors in title or predecessors in possession to the  
289 cotenant who are or were relatives of the cotenant or each  
290 other.

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

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

297 (f) The degree to which the cotenants have contributed  
298 their pro rata share of the property taxes, insurance, and other  
299 expenses associated with maintaining ownership of the property  
300 or have contributed to the physical improvement, maintenance, or

301 upkeep of the property.

302 (g) Any other relevant factor.

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

306 64.210 Open-market sale, sealed bids, or auction.—

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

312 (2) If the court orders an open-market sale and the  
313 parties, not later than 10 days after the entry of the order,  
314 agree on a real estate broker licensed in this state to offer  
315 the property for sale, the court shall appoint the broker and  
316 establish a reasonable commission. If the parties do not agree  
317 on a broker, the court shall appoint a disinterested real estate  
318 broker licensed in this state to offer the property for sale and  
319 shall establish a reasonable commission. The broker shall offer  
320 the property for sale in a commercially reasonable manner at a  
321 price no lower than the determination of value and on the terms  
322 and conditions established by the court.

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

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

328        (b) The sale may be completed in accordance with state law  
 329 other than this part.

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

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

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

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

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

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

347        64.211 Report of open-market sale.—

348            (1) Unless required to do so within a shorter time by part  
 349 I of this chapter, a broker appointed under s. 64.210(2) to  
 350 offer heirs property for open-market sale shall file a report

351 with the court not later than 7 days after receiving an offer to  
352 purchase the property for at least the value determined under s.  
353 64.206 or s. 64.210.

354 (2) The report required by subsection (1) must contain the  
355 following information:

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

358 (b) The name of each buyer.

359 (c) The proposed purchase price.

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

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

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

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

366 64.212 Uniformity of application and construction.—In  
367 applying and construing this uniform act, consideration must be  
368 given to the need to promote uniformity of the law with respect  
369 to its subject matter among states that enact it.

370 64.213 Relation to Electronic Signatures in Global and  
371 National Commerce Act.—This part modifies, limits, and  
372 supersedes the Electronic Signatures in Global and National  
373 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,  
374 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),  
375 or authorize electronic delivery of any of the notices described

HB 349

2020

376 | in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

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