

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 construction; providing for service
13 and notice; creating s. 64.205, F.S.; providing for
14 appointment and qualifications of commissioners;
15 creating s. 64.206, F.S.; providing for the
16 determination of property value; creating s. 64.207,
17 F.S.; providing for buyout of cotenants; creating s.
18 64.208, F.S.; providing for alternatives to partition;
19 creating s. 64.209, F.S.; providing factors to be
20 considered in determining whether partition in kind
21 may be ordered; creating s. 64.210, F.S.; providing
22 for sale of property through open-market sale, sealed
23 bids, or auction; creating s. 64.211, F.S.; providing
24 requirements for reporting of an open-market sale of
25 property; creating s. 64.212, F.S.; providing for

26 | uniformity of application and construction; creating
 27 | s. 64.213, F.S.; specifying the relation of the act to
 28 | the Electronic Signatures in Global and National
 29 | Commerce Act; creating s. 64.214, F.S.; authorizing
 30 | certain cotenants to agree to certain partitions of
 31 | real property; requiring such cotenants to jointly
 32 | notify the court of such agreement; providing an
 33 | effective date.

34 |

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

36 |

37 | Section 1. Sections 64.011, 64.022, 64.031, 64.041,
 38 | 64.051, 64.061, 64.071, 64.081, and 64.091, Florida Statutes,
 39 | are designated as part I of chapter 64, Florida Statutes, and
 40 | entitled "General Provisions."

41 | Section 2. Part II of chapter 64, Florida Statutes,
 42 | consisting of sections 64.201, 64.202, 64.203, 64.204, 64.205,
 43 | 64.206, 64.207, 64.208, 64.209, 64.210, 64.211, 64.212, 64.213,
 44 | and 64.214, is created to read:

45 |

PART II

46 |

UNIFORM PARTITION OF HEIRS PROPERTY ACT

47 | 64.201 Short title.—This part may be cited as the "Uniform
 48 | Partition of Heirs Property Act".

49 |

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

50 |

(1) "Ascendant" means an individual who precedes another

51 individual in lineage, in the direct line of ascent from the
52 other individual.

53 (2) "Collateral" means an individual who is related to
54 another individual under the law of intestate succession of this
55 state but who is not the other individual's ascendant or
56 descendant.

57 (3) "Descendant" means an individual who follows another
58 individual in lineage, in the direct line of descent from the
59 other individual.

60 (4) "Determination of value" means a court order
61 determining the fair market value of heirs property under s.
62 64.206 or s. 64.210 or adopting the valuation of the property
63 agreed to by all cotenants.

64 (5) "Equitable accounting" means considering contributions
65 and adjustments of accounts between cotenants, which are related
66 to the real property and are based upon such contributions and
67 adjustments, s. 64.081, and common law.

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

71 (a) There is no agreement in a record binding all the
72 co-tenants which governs the partition of the property;

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

75 (c) Any of the following applies:

76 1. Twenty percent or more of the interests are held by
 77 cotenants who are relatives;
 78 2. Twenty percent or more of the interests are held by an
 79 individual who acquired title from a relative, whether living or
 80 deceased; or
 81 3. Twenty percent or more of the cotenants are relatives.
 82 (7) "Partition by sale" means a court-ordered sale of the
 83 entire heirs property, whether by open-market sale, sealed bids,
 84 or auction conducted under s. 64.210.
 85 (8) "Partition in kind" means the division of heirs
 86 property into physically distinct and separately titled parcels.
 87 (9) "Record" means information that is inscribed on a
 88 tangible medium or that is stored in an electronic or other
 89 medium and is retrievable in perceivable form.
 90 (10) "Relative" means an ascendant, descendant, or
 91 collateral or an individual otherwise related to another
 92 individual by blood, marriage, adoption, or law of this state
 93 other than this part.
 94 64.203 Applicability; relation to other law.—
 95 (1) This part applies to partition actions filed on or
 96 after July 1, 2020.
 97 (2) Provided that a partition action is otherwise
 98 available under part I of this chapter, the court shall
 99 determine whether the property is heirs property. If the court
 100 determines that the property is heirs property, the property

101 must be partitioned under this part unless all of the cotenants
 102 otherwise agree in a record.

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

106 64.204 Service; notice by posting.-

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

109 (2) If the plaintiff in a partition action seeks notice by
 110 publication, and the court determines that the property is heirs
 111 property, then the court shall order the clerk of the court to
 112 issue a notice of action to the plaintiff in the form set forth
 113 in s. 49.08 and the plaintiff must, not later than 10 days after
 114 receipt, post the notice of action on the property that is the
 115 subject of the action.

116 64.205 Commissioners.-If the court appoints commissioners
 117 pursuant to s. 64.061, each commissioner, in addition to the
 118 requirements and disqualifications applicable to commissioners
 119 in part I of this chapter, must be disinterested and impartial
 120 and not a party to or a participant in the action.

121 64.206 Determination of value.-

122 (1) Except as otherwise provided in subsections (2) and
 123 (3), if the court determines that the property that is the
 124 subject of a partition action is heirs property, the court shall
 125 determine the fair market value of the property by ordering an

126 appraisal pursuant to subsection (4).

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

131 (3) If the court determines that the evidentiary value of
132 an appraisal is outweighed by the cost of the appraisal, the
133 court, after an evidentiary hearing, shall determine the fair
134 market value of the property and send notice to the parties of
135 the value.

136 (4) If the court orders an appraisal, the court shall
137 appoint a disinterested real estate appraiser licensed in this
138 state to determine the fair market value of the property
139 assuming sole ownership of the fee simple estate. On completion
140 of the appraisal, the appraiser shall file a sworn or verified
141 appraisal with the court.

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

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

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

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

151 (6) If an appraisal is filed with the court pursuant to
152 subsection (4), the court shall conduct a hearing to determine
153 the fair market value of the property not sooner than 31 days
154 after a copy of the notice of the appraisal is sent to each
155 party under subsection (5), whether or not an objection to the
156 appraisal is filed under paragraph (5)(c). In addition to the
157 court-ordered appraisal, the court may consider any other
158 evidence of value offered by a party.

159 (7) After a hearing under subsection (6), but before
160 considering the merits of the partition action, the court shall
161 determine the fair market value of the property and send notice
162 to the parties of the value.

163
164 In addition to a determination of value under this section, the
165 court shall determine the amount of the equitable accounting
166 upon the request of any cotenant and shall appropriately adjust
167 any price, purchase price, apportioned price, buyout, judgment,
168 or partition granted under this part based on the results of the
169 equitable accounting.

170 64.207 Cotenant buyout.—

171 (1) If any cotenant requested partition by sale, after the
172 determination of value under s. 64.206, the court shall send
173 notice to the parties that any cotenant except a cotenant that
174 requested partition by sale may buy all the interests of the
175 cotenants that requested partition by sale.

176 (2) Not later than 45 days after the notice is sent under
177 subsection (1), any cotenant, except a cotenant that requested
178 partition by sale, may give notice to the court that it elects
179 to buy all the interests of the cotenants that requested
180 partition by sale.

181 (3) The purchase price for each of the interests of a
182 cotenant that requested partition by sale is the value of the
183 entire parcel determined under s. 64.206 multiplied by the
184 cotenant's fractional ownership of the entire parcel.

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

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

190 (b) If more than one cotenant elects to buy all the
191 interests of the cotenants that requested partition by sale, the
192 court shall allocate the right to buy those interests among the
193 electing cotenants based on each electing cotenant's existing
194 fractional ownership of the entire parcel divided by the total
195 existing fractional ownership of all cotenants electing to buy
196 and send notice to all the parties of that fact and of the price
197 to be paid by each electing cotenant.

198 (c) If no cotenant elects to buy all the interests of the
199 cotenants that requested partition by sale, the court shall send
200 notice to all the parties of that fact and resolve the partition

201 action under s. 64.208(1) and (2).

202 (5) If the court sends notice to the parties under
203 paragraph (4) (a) or paragraph (4) (b), the court shall set a
204 date, not sooner than 60 days after the date the notice was
205 sent, by which electing cotenants must pay their apportioned
206 price into the court. After this date, the following rules
207 apply:

208 (a) If all electing cotenants timely pay their apportioned
209 price into the court, the court shall issue a judgment of
210 partition reallocating all the interests of the cotenants,
211 disburse the amounts held by the court to the persons entitled
212 to them, and direct the clerk of the court to record the
213 judgment in the official records of the county where the
214 property is located.

215 (b) If no electing cotenant timely pays its apportioned
216 price, the court shall resolve the partition action under s.
217 64.208(1) and (2) as if the interests of the cotenants that
218 requested partition by sale were not purchased.

219 (c) If one or more but not all of the electing cotenants
220 fail to pay their apportioned price on time, the court shall
221 give notice to the electing cotenants that paid their
222 apportioned price of the interest remaining and the price for
223 all that interest.

224 (6) Not later than 20 days after the court gives notice
225 pursuant to paragraph (5) (c), any cotenant that paid may elect

226 to purchase all of the remaining interest by paying the entire
227 price into the court. After the 20-day period, the following
228 rules apply:

229 (a) If only one cotenant pays the entire price for the
230 remaining interest, the court shall issue a judgment of
231 partition reallocating the remaining interest to that cotenant
232 and reallocating the interests of all of the cotenants. The
233 court shall also disburse the amounts held by the court to the
234 persons entitled to them and direct the clerk of the court to
235 record such judgment in the official records of the county where
236 the property is located.

237 (b) If no cotenant pays the entire price for the remaining
238 interest, the court shall resolve the partition action under s.
239 64.208(1) and (2) as if the interests of the cotenants that
240 requested partition by sale were not purchased.

241 (c) If more than one cotenant pays the entire price for
242 the remaining interest, the court shall reapportion the
243 remaining interest among those paying cotenants, based on each
244 paying cotenant's original fractional ownership of the entire
245 parcel divided by the total original fractional ownership of all
246 cotenants that paid the entire price for the remaining interest.
247 The court shall issue promptly a judgment of partition
248 reallocating all of the cotenants' interests, disburse the
249 amounts held by the court to the persons entitled to them,
250 promptly refund any excess payment held by the court, and direct

251 the clerk of the court to record the judgment in the official
 252 records of the county where the property is located.

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

259 (8) If the court receives a timely request under
 260 subsection (7), the court, after hearing, may deny the request
 261 or authorize the requested additional sale on such terms as the
 262 court determines are fair and reasonable, provided the court
 263 ensures the due process rights of the nonappearing cotenants,
 264 subject to the following limitations:

265 (a) A sale authorized under this subsection may occur only
 266 after the purchase prices for all interests subject to sale
 267 under subsections (1) through (6) have been paid into court and
 268 those interests have been reallocated among the cotenants as
 269 provided in those subsections.

270 (b) The purchase price for the interest of a nonappearing
 271 cotenant is based on the court's determination of value under s.
 272 64.206.

273 64.208 Partition alternatives.-

274 (1) If any cotenant requested partition in kind, or if all
 275 the interests of all cotenants that requested partition by sale

276 are not purchased by other cotenants pursuant to s. 64.207, or,
277 if after conclusion of the buyout under s. 64.207, a cotenant
278 remains that has requested partition in kind, the court shall
279 enter a judgment of partition in kind unless the court is
280 satisfied that commissioners appointed pursuant to s. 64.061
281 have considered the factors listed in s. 64.209 and found that
282 partition in kind will result in prejudice to the cotenants as a
283 group. In considering whether to order partition in kind, the
284 court shall approve a request by two or more parties to have
285 their individual interests aggregated. Such judgment of
286 partition must include the legal description of the real
287 property before partition, the legal description of each new
288 parcel, and the name of each parcel's owner and shall be
289 recorded by the clerk of the court in the official records of
290 the county where the property is located.

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

295 (3) If the court orders partition in kind pursuant to
296 subsection (1), the court may require that one or more cotenants
297 pay one or more other cotenants amounts so that the payments,
298 taken together with the value of the in-kind distributions to
299 the cotenants, will make the partition in kind just and
300 proportionate in value to the fractional interests held.

301 (4) If the court orders partition in kind, the court shall
302 allocate to the cotenants that are unknown, unlocatable, or the
303 subject of a default judgment, if their interests were not
304 bought out pursuant to s. 64.207, a part of the property
305 representing the combined interests of these cotenants as
306 determined by the court and this part of the property shall
307 remain undivided.

308 64.209 Considerations for partition in kind.—

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

312 (a) Whether the heirs property practicably can be divided
313 among the cotenants.

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

320 (c) Evidence of the collective duration of ownership or
321 possession of the property by a cotenant and one or more
322 predecessors in title or predecessors in possession to the
323 cotenant who are or were relatives of the cotenant or each
324 other.

325 (d) A cotenant's sentimental attachment to the property,

326 including any attachment arising because the property has
327 ancestral or other unique or special value to the cotenant.

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

331 (f) The degree to which the cotenants have contributed
332 their pro rata share of the property taxes, insurance, and other
333 expenses associated with maintaining ownership of the property
334 or have contributed to the physical improvement, maintenance, or
335 upkeep of the property.

336 (g) Any other relevant factor.

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

340 64.210 Open-market sale, sealed bids, or auction.—

341 (1) If the court orders a sale of heirs property, the sale
342 must be an open-market sale unless the court finds that a sale
343 by sealed bids or an auction would be more economically
344 advantageous and in the best interest of the cotenants as a
345 group.

346 (2) If the court orders an open-market sale and the
347 parties, not later than 10 days after the entry of the order,
348 agree on a real estate broker licensed in this state to offer
349 the property for sale, the court shall appoint the broker and
350 establish a reasonable commission. If the parties do not agree

351 on a broker, the court shall appoint a disinterested real estate
352 broker licensed in this state to offer the property for sale and
353 shall establish a reasonable commission. The broker shall offer
354 the property for sale in a commercially reasonable manner at a
355 price no lower than the determination of value and on the terms
356 and conditions established by the court.

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

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

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

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

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

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

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

373 (5) If the court orders a sale by sealed bids or an
374 auction, the court shall set terms and conditions of the sale.
375 If the court orders an auction, the auction must be conducted

376 under part I of this chapter.

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

381 64.211 Report of open-market sale.—

382 (1) Unless required to do so within a shorter time by part
383 I of this chapter, a broker appointed under s. 64.210(2) to
384 offer heirs property for open-market sale shall file a report
385 with the court not later than 7 days after receiving an offer to
386 purchase the property for at least the value determined under s.
387 64.206 or s. 64.210.

388 (2) The report required by subsection (1) must contain the
389 following information:

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

392 (b) The name of each buyer.

393 (c) The proposed purchase price.

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

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

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

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

400 64.212 Uniformity of application and construction.—In

401 applying and construing this uniform act, consideration must be
402 given to the need to promote uniformity of the law with respect
403 to its subject matter among states that enact it.

404 64.213 Relation to Electronic Signatures in Global and
405 National Commerce Act.—This part modifies, limits, and
406 supersedes the Electronic Signatures in Global and National
407 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
408 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
409 or authorize electronic delivery of any of the notices described
410 in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

411 64.214 Access for all residents.—Notwithstanding any
412 provision to the contrary in this part, cotenants owning real
413 property that is not heirs property may agree to partition such
414 real property under this part. All of the cotenants must jointly
415 notify the court of such agreement.

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