

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 580

INTRODUCER: Community Affairs Committee; Judiciary Committee; and Senator Bracy

SUBJECT: Uniform Partition of Heirs Property Act

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
3.	<u>Elsesser</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 580 adopts the Uniform Partition of Heirs Property Act by the Uniform Law Commission. The bill provides special procedures for the partition of “heirs property,” which generally includes inherited real property owned by relatives as tenants in common. A partition involves a legal action by a cotenant to force the sale or division of real property.

The bill essentially provides a right of first refusal, allowing heirs property cotenants to purchase the property interests of cotenants seeking partition before the property is divided or sold. The bill requires a court to determine the fair market value of the property, either through court-ordered appraisal or based on the agreement of the parties before the court proceeds to partition. The bill generally requires partitions by sale to be made in an open-market sale by a court-appointed real estate broker, instead of an auction as the statutes currently require.

II. Present Situation:

In Florida, when a person dies intestate, i.e., without a will, and the decedent has no surviving spouse, the decedent’s real property is distributed per stripes to heirs in the following order: to the decedent’s descendants (typically children or grandchildren); if no descendants, then to the decedent’s parents; if no surviving parents, then to any siblings.¹ When multiple people receive property in this manner, they own the property as tenants in common.² “[T]he distinguishing

¹ Sections 732.102-104, F.S.

² See s. 689.15, F.S. (stating that transfers of property create tenancies in common absent an instrument stating otherwise).

feature of a tenancy in common is unity of possession,”³ and as such, “[t]enants in common each own a proportional undivided interest in the property rather than the whole.”⁴

Tenants in common do not have a right to survivorship, i.e., when a tenant in common dies, his or her property interest does not transfer to the other tenants in common but rather transfers to the deceased tenants’ heirs (by will or through intestate succession).⁵ Therefore, as heirs beget heirs, the number of tenants in common can increase.⁶

The interests of the decedent’s property can be spread further, as a tenant in common “may freely transfer or encumber his or her undivided [...] interest without transferring or encumbering the undivided one-half interest owned by the other.”⁷ A tenant in common’s interest “is like any other asset that a person owns as far as the person’s creditors is concerned,” i.e., a “creditor may levy and execute on the interest. Similarly, a judgment lien will attach to the undivided interest of one tenant in common without attaching to the undivided interest of the other tenant in common.”⁸ Additionally, a developer may acquire properties owing back taxes through tax deed sales.⁹

A single heir can sell his or her fractional interest or lose it to a creditor; the purchaser or creditor then becomes a tenant in common and can petition the court for a partition sale to receive their fractional interest: “As a general rule tenants in common are entitled to partition as a matter of right.”¹⁰

A cotenant seeking partition of property must, in a complaint, describe the property to be partitioned and name all interested parties “to the best knowledge and belief of [the] plaintiff.”¹¹ If the names of any interested parties are unknown, “the action may proceed as though such unknown persons were named in the complaint.”¹²

A court may order partition “if it appears that the parties are entitled to it.”¹³ If the court determines a plaintiff’s interest in the property, it can order a partition of that interest, “leaving for future adjustment in the same action the interest of any other defendants” whose interests were not determined in the legal action.¹⁴

³ *In re Estate of Cleaves*, 509 So. 2d 1256, 1259 (Fla. 2d DCA 1987).

⁴ *In re Willoughby*, 212 B.R. 1011, 1015 (Bankr. M.D. Fla. 1997).

⁵ *See, e.g., In re Suggs Estate*, 405 So. 2d 1360, 1361 (Fla. 5th DCA 1981).

⁶ *See* The Florida Bar Journal, *The Disproportionate Impact of Heirs Property in Florida’s Low Income Communities of Color* (available at <https://www.floridabar.org/the-florida-bar-journal/the-disproportionate-impact-of-heirs-property-in-floridas-low-income-communities-of-color/>, last visited December 12, 2019).

⁷ *Willoughby*, 212 B.R. 1011, 1015.

⁸ *Id.* at 1015-16.

⁹ Sections 197.502 and 197.542, F.S.

¹⁰ *Condrey v. Condrey*, 92 So. 2d 423, 427 (Fla. 1957); Section 64.031, F.S. However, the right of a tenant in common to partition of realty may be waived by the tenant in common, or he may be estopped to enforce the right by agreement not to partition, either express or implied. *Id.*

¹¹ Section 64.041, F.S.

¹² *Id.*

¹³ Section 64.051, F.S.

¹⁴ *Id.*

If the court orders partition, it must appoint three commissioners to make the partition.¹⁵ If the commissioners determine that the property is indivisible and cannot be divided without prejudice to one or more of the owners, and the court “is satisfied” that the determination is correct, “the court may order the land to be sold at public auction to the highest bidder by the commissioners or the clerk and the money arising from such sale paid into the court to be divided among the parties in proportion to their interest.”¹⁶ Every party is required to pay the costs of the process, including attorneys’ fees, proportionate to each party’s interest in the property.¹⁷ The court may order these costs and fees be paid out of the proceeds of the property sale.¹⁸

III. Effect of Proposed Changes:

This bill provides procedures for the partition of “heirs property.” Heirs property is real property held by tenants in common where there is no existing agreement governing the partition of the property, one or more of the cotenants acquired his or her property interest from a relative, and either (1) twenty percent of the property is owned by cotenants who are relatives (or twenty percent of the owners are relatives) or (2) twenty percent of the property is owned by cotenants who received their interests from a relative.

Under the bill, if a cotenant seeks partition of property, the court must determine whether the property is heirs property. If the court determines the property is heirs property, and the plaintiff seeks to provide notice by publication, the plaintiff must post a notice of action issued under s. 49.08, F.S., on the property. This notice contains the names of known defendants to the action, a description of unknown defendants claiming any interest in the action, the nature of the action, the name of the court in which the action was brought, and a description of the property.

If the court determines that the property is heirs property, it shall order an appraisal of the property, unless the cotenants have agreed to the property’s value or the court determines that the cost of an appraisal would outweigh the appraisal’s “evidentiary value.”

If the court orders an appraisal, it must appoint a disinterested licensed appraiser to determine the property’s fair market value and file a sworn or verified appraisal with the court. In addition to the appraisal, the court must consider “equitable accounting,” i.e., contributions to the property made by individual cotenants, including property taxes. The court must adjust the purchase cotenants’ purchase prices based on this accounting. After the appraisal is filed, the court must notify all known parties as to the property’s value and inform the parties that the appraisal is available for review and that each party may object to the appraisal within 30 days after the notice.

If an appraisal is filed, the court must conduct a hearing to determine the value of the property not sooner than 30 days after the notice has been sent to the interested parties. The court must

¹⁵ Section 64.061, F.S.

¹⁶ Section 64.071, F.S.

¹⁷ Section 64.081, F.S.

¹⁸ *Id.*

determine the value of the property before proceeding to the partition action. The court must give notice to the parties of the market value.¹⁹

If any cotenant requested partition by sale, the bill essentially grants a right of first refusal to the other cotenants, requiring that the court notice any other cotenants who did not request the sale, informing them that they may buy all of the interest of the cotenant who requested the sale. The value of each tenant's interest is proportional to his or her fractional interest in the property. Within 45 days after the notice of the requested partition by sale, the other cotenants may give notice that they elect to purchase the interest of the cotenant seeking the sale. The court shall notify the parties if only one other cotenant gives notice that he or she wishes to purchase the interest of the party seeking a sale. If multiple cotenants give notice that they wish to purchase the interest of the party seeking partition by sale, the court must allocate the right to purchase that interest proportional to each cotenant's existing fractional ownership of the property. If one or more cotenants give notice of their desire to purchase the interest of a party seeking partition by sale, the court must set a payment due date at least 60 days after the date that the court gave notice of the desire to purchase.

The court must reallocate the property interests if the parties pay their apportioned price within the time limit set by the court; if one or more of the parties do not pay within that timeframe, the court must notify the other cotenants of the price of the remaining interests not purchased, and those other cotenants have 20 days to purchase the remaining interest. If none of the parties pay within the timeframe set by the court, the court must proceed with the partition action as if none of the interests were purchased.

Within 45 days after the initial complaint requesting partition by sale, any cotenant entitled to purchase an interest may request that the court authorize the sale of the interests of any defendants named in the complaint who did not file an appearance to the action. The court may grant the request if the court has determined the fair market value of the non-appearing party's interest under the procedures outlined by the bill.

If the interests of the cotenants who requested partition are not purchased or if there remain one or more parties who request partition in kind after the buyout outlined in the bill, the court must order a partition in kind unless the commissioners described in s. 64.061, F.S., find that a partition in kind will result in manifest injustice, considering a list of factors including whether physical division is practicable, whether the division would result in inequitably valued parcels, a party's sentimental attachment to the property, the degree to which parties have contributed their pro-rated share of property taxes, and any other relevant factors. If the court does not order partition in kind, it may order a partition by sale or dismiss the partition action.

A court ordering partition must enter a judgment of partition to be recorded in the official records of the county where the property is located. This judgment of partition must include a legal description of the property before partition, a description of each parcel of partitioned property, and the names of the owners of each parcel. The court clerk must record the judgment.

¹⁹ The bill does not set a timeline for the notice of the fair market value determination as it does for the notice of appraised value.

If the court orders a sale of a property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or auction would be in the best interests of the tenants. The court must appoint a licensed real estate broker within 10 days to sell the property in a commercially reasonable manner. For an open-market sale, the broker must report an offer at the court-determined property value within 7 days after receiving the offer.

The bill also provides that cotenants owning real property that does not meet the definition of “heirs property” may agree to partition their property under the procedures described in the bill, jointly notifying the court of such agreement.

The bill adds a requirement for commissioners appointed under s. 64.061, F.S., requiring that they be “disinterested and impartial and not a party or a participant in the action.”

The bill does not contain an attorney fee provision, so parties are still responsible for their costs and fees proportional to their interest in the property, per s. 64.081, F.S.

Under the federal Agricultural Improvement Act of 2018, entities in states having adopted the Uniform Partition of Heirs Property Act are given preference in receiving loans from the U.S. Secretary of Agriculture to assist in the resolution of interests on farmland with multiple owners.²⁰ Additionally, farm operators in states having adopted the Uniform Partition of Heirs Property Act are eligible to receive a “farm number,” a prerequisite to participate in certain programs provided by the Secretary of Agriculture under the Agricultural Improvement Act.²¹

The bill takes effect on July 1, 2020, and applies prospectively.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

²⁰ Agricultural Improvement Act, Pub. Law 115-334, 132 Stat. 4670.

²¹ *Id.* at 5015.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill requires a court to determine the market value of heirs property before commencing partition proceedings and requires partition by sale to be conducted on the open market by a licensed real estate broker, rather than at auction (unless a court determines that auction or sealed bids would be more economically advantageous). This change in the procedure may affect the sale price of heirs property partitioned by sale.

C. Government Sector Impact:

The new procedures for the partition of heirs property appear likely to result in a slight increase in judicial workloads.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 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.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Community Affairs on January 13, 2020:**

The committee substitute incorporates technical, clarifying changes into the bill.

CS by Judiciary on December 10, 2019:

The committee substitute made the following changes to the underlying bill:

- Provides that cotenants owning real property that does not meet the definition of “heirs property” may agree to partition their property under the procedures described in the bill, jointly notifying the court of the agreement.
- Revises procedures for providing notice by publication.
- Requires a court to consider “equitable accounting,” including contributions to the property made by cotenants, in determining the fair purchase price for each cotenant.

- Requires a court ordering partition to enter a “judgment of partition,” which must be recorded in the official records of the county.
- Provides that the commissioners described s. 64.061, F.S., and not the court, make the determination as to whether partition in kind would prejudice any of the cotenants.
- Clarifies that the bill establishes a preference for partitions in kind over partition sales.

B. Amendments:

None.