

By the Committee on Judiciary; and 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 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

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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, 64.051,
38 64.061, 64.071, 64.081, and 64.091, Florida Statutes, are
39 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

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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 in
69 common which satisfies all of the following requirements as of
70 the filing of a partition action:

71 (a) There is no agreement in a record binding all the
72 cotenants 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

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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 available
98 under part I of this chapter, the court shall determine whether
99 the property is heirs property. If the court determines that the
100 property is heirs property, the property must be partitioned
101 under this part unless all of the cotenants otherwise agree in a
102 record.

103 (3) This part supplements part I of this chapter and, if an
104 action is governed by this part, replaces provisions of part I
105 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, the court shall order the clerk of the court to
111 issue a notice of action to the plaintiff in the form set forth
112 in s. 49.08 and the plaintiff must, not later than 10 days after
113 receipt, post the notice of action on the property that is the
114 subject of the action.

115 64.205 Commissioners.-If the court appoints commissioners
116 pursuant to s. 64.061, each commissioner, in addition to the

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117 requirements and disqualifications applicable to commissioners
118 in part I of this chapter, must be disinterested and impartial
119 and not a party to or a participant in the action.

120 64.206 Determination of value.—

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

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

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

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

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

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

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

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

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

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

162
163 In addition to a determination of value under this section, the
164 court shall determine the amount of the equitable accounting
165 upon the request of any cotenant and shall appropriately adjust
166 any price, purchase price, apportioned price, buyout, judgment,
167 or partition granted under this part based on the results of the
168 equitable accounting.

169 64.207 Cotenant buyout.—

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

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

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

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

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

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

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

201 (5) If the court sends notice to the parties under
202 paragraph (4) (a) or paragraph (4) (b), the court shall set a
203 date, not sooner than 60 days after the date the notice was

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204 sent, by which electing cotenants must pay their apportioned
205 price into the court. After this date, the following rules
206 apply:

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

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

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

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

228 (a) If only one cotenant pays the entire price for the
229 remaining interest, the court shall issue a judgment of
230 partition reallocating the remaining interest to that cotenant
231 and reallocating the interests of all of the cotenants. The
232 court shall also disburse the amounts held by the court to the

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233 persons entitled to them and direct the clerk of the court to
234 record such judgment in the official records of the county where
235 the property is located.

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

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

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

258 (8) If the court receives a timely request under subsection
259 (7), the court, after hearing, may deny the request or authorize
260 the requested additional sale on such terms as the court
261 determines are fair and reasonable, provided the court ensures

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262 the due process rights of the nonappearing cotenants, subject to
263 the following limitations:

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

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

272 64.208 Partition alternatives.—

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

289 (2) If the court does not order partition in kind under
290 subsection (1), the court shall order partition by sale pursuant

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291 to s. 64.210 or, if no cotenant requested partition by sale, the
292 court shall dismiss the action.

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

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

306 64.209 Considerations for partition in kind.—

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

310 (a) Whether the heirs property practicably can be divided
311 among the cotenants.

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

318 (c) Evidence of the collective duration of ownership or
319 possession of the property by a cotenant and one or more

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320 predecessors in title or predecessors in possession to the
321 cotenant who are or were relatives of the cotenant or each
322 other.

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

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

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

334 (g) Any other relevant factor.

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

338 64.210 Open-market sale, sealed bids, or auction.—

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

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

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

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

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

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

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

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

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

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

371 (5) If the court orders a sale by sealed bids or an
372 auction, the court shall set terms and conditions of the sale.
373 If the court orders an auction, the auction must be conducted
374 under part I of this chapter.

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

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378 proceeds.

379 64.211 Report of open-market sale.—

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

386 (2) The report required by subsection (1) must contain the
387 following information:

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

389 (b) The name of each buyer.

390 (c) The proposed purchase price.

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

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

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

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

397 64.212 Uniformity of application and construction.—In
398 applying and construing this uniform act, consideration must be
399 given to the need to promote uniformity of the law with respect
400 to its subject matter among states that enact it.

401 64.213 Relation to Electronic Signatures in Global and
402 National Commerce Act.—This part modifies, limits, and
403 supersedes the Electronic Signatures in Global and National
404 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
405 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
406 or authorize electronic delivery of any of the notices described

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

408 64.214 Access for all residents.-Notwithstanding any
409 provision to the contrary in this part, cotenants owning real
410 property that is not heirs property may agree to partition such
411 real property under this part. All of the cotenants must jointly
412 notify the court of such agreement.

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