

By the Committees on Community Affairs; and 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 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 co-tenants 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, 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

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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:

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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

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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 of  
188 the cotenants that requested partition by sale, the court shall  
189 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

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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



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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 the  
242 remaining interest, the court shall reapportion the remaining  
243 interest among those paying cotenants, based on each paying  
244 cotenant's original fractional ownership of the entire parcel  
245 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 subsection  
260 (7), the court, after hearing, may deny the request or authorize  
261 the requested additional sale on such terms as the court

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262 determines are fair and reasonable, provided the court ensures  
263 the due process rights of the nonappearing cotenants, subject to  
264 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.

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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.

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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 cotenant  
329 and the degree to which the cotenant would be harmed if the  
330 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

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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 requirements  
361 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 an  
372 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

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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 buyer.

391 (b) The name of each buyer.

392 (c) The proposed purchase price.

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

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

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

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

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

403 64.213 Relation to Electronic Signatures in Global and  
404 National Commerce Act.—This part modifies, limits, and  
405 supersedes the Electronic Signatures in Global and National  
406 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,

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407 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),  
408 or authorize electronic delivery of any of the notices described  
409 in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

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

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