



520502

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/12/2019	.	
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The Committee on Judiciary (Bracy) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

Section 2. Part II of chapter 64, Florida Statutes, consisting of sections 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,



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12 and 64.214, is created to read:

13 PART II

14 UNIFORM PARTITION OF HEIRS PROPERTY ACT

15 64.201 Short title.—This part may be cited as the “Uniform
16 Partition of Heirs Property Act”.

17 64.202 Definitions.—As used in this part, the term:

18 (1) “Ascendant” means an individual who precedes another
19 individual in lineage, in the direct line of ascent from the
20 other individual.

21 (2) “Collateral” means an individual who is related to
22 another individual under the law of intestate succession of this
23 state but who is not the other individual’s ascendant or
24 descendant.

25 (3) “Descendant” means an individual who follows another
26 individual in lineage, in the direct line of descent from the
27 other individual.

28 (4) “Determination of value” means a court order
29 determining the fair market value of heirs property under s.
30 64.206 or s. 64.210 or adopting the valuation of the property
31 agreed to by all cotenants.

32 (5) “Equitable accounting” means considering contributions
33 and adjustments of accounts between cotenants which are related
34 to the real property and are based upon such contributions and
35 adjustments, s. 64.081, and common law.

36 (6) “Heirs property” means real property held in tenancy in
37 common which satisfies all of the following requirements as of
38 the filing of a partition action:

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



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

43 (c) Any of the following applies:

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

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

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

50 (7) "Partition by sale" means a court-ordered sale of the
51 entire heirs property, whether by open-market sale, sealed bids,
52 or auction conducted under s. 64.210.

53 (8) "Partition in kind" means the division of heirs
54 property into physically distinct and separately titled parcels.

55 (9) "Record" means information that is inscribed on a
56 tangible medium or that is stored in an electronic or other
57 medium and is retrievable in perceivable form.

58 (10) "Relative" means an ascendant, descendant, or
59 collateral or an individual otherwise related to another
60 individual by blood, marriage, adoption, or law of this state
61 other than this part.

62 64.203 Applicability; relation to other law.—

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

65 (2) Provided that a partition action is otherwise available
66 under part I of this chapter, the court shall determine whether
67 the property is heirs property. If the court determines that the
68 property is heirs property, the property must be partitioned
69 under this part unless all of the cotenants otherwise agree in a



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70 record.

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

74 64.204 Service; notice by posting.-

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

77 (2) If the plaintiff in a partition action seeks notice by
78 publication, the court shall order the clerk of the court to
79 issue a notice of action to the plaintiff in the form set forth
80 in s. 49.08 and the plaintiff must, not later than 10 days after
81 receipt, post the notice of action on the property that is the
82 subject of the action.

83 64.205 Commissioners.-If the court appoints commissioners
84 pursuant to s. 64.061, each commissioner, in addition to the
85 requirements and disqualifications applicable to commissioners
86 in part I of this chapter, must be disinterested and impartial
87 and not a party to or a participant in the action.

88 64.206 Determination of value.-

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

94 (2) If all cotenants have agreed to the value of the
95 property or to another method of valuation, the court shall
96 adopt that value or the value produced by the agreed method of
97 valuation.

98 (3) If the court determines that the evidentiary value of



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99 an appraisal is outweighed by the cost of the appraisal, the
100 court, after an evidentiary hearing, shall determine the fair
101 market value of the property and send notice to the parties of
102 the value.

103 (4) If the court orders an appraisal, the court shall
104 appoint a disinterested real estate appraiser licensed in this
105 state to determine the fair market value of the property
106 assuming sole ownership of the fee simple estate. On completion
107 of the appraisal, the appraiser shall file a sworn or verified
108 appraisal with the court.

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

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

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

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

118 (6) If an appraisal is filed with the court pursuant to
119 subsection (4), the court shall conduct a hearing to determine
120 the fair market value of the property not sooner than 31 days
121 after a copy of the notice of the appraisal is sent to each
122 party under subsection (5), whether or not an objection to the
123 appraisal is filed under paragraph (5)(c). In addition to the
124 court-ordered appraisal, the court may consider any other
125 evidence of value offered by a party.

126 (7) After a hearing under subsection (6), but before
127 considering the merits of the partition action, the court shall



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128 determine the fair market value of the property and send notice
129 to the parties of the value.

130
131 In addition to a determination of value under this section, the
132 court shall determine the amount of the equitable accounting
133 upon the request of any cotenant and shall appropriately adjust
134 any price, purchase price, apportioned price, buyout, judgment,
135 or partition granted under this part based on the results of the
136 equitable accounting.

137 64.207 Cotenant buyout.—

138 (1) If any cotenant requested partition by sale, after the
139 determination of value under s. 64.206, the court shall send
140 notice to the parties that any cotenant except a cotenant that
141 requested partition by sale may buy all the interests of the
142 cotenants that requested partition by sale.

143 (2) Not later than 45 days after the notice is sent under
144 subsection (1), any cotenant, except a cotenant that requested
145 partition by sale, may give notice to the court that it elects
146 to buy all the interests of the cotenants that requested
147 partition by sale.

148 (3) The purchase price for each of the interests of a
149 cotenant that requested partition by sale is the value of the
150 entire parcel determined under s. 64.206 multiplied by the
151 cotenant's fractional ownership of the entire parcel.

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

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



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157 (b) If more than one cotenant elects to buy all the
158 interests of the cotenants that requested partition by sale, the
159 court shall allocate the right to buy those interests among the
160 electing cotenants based on each electing cotenant's existing
161 fractional ownership of the entire parcel divided by the total
162 existing fractional ownership of all cotenants electing to buy
163 and send notice to all the parties of that fact and of the price
164 to be paid by each electing cotenant.

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

169 (5) If the court sends notice to the parties under
170 paragraph (4) (a) or paragraph (4) (b), the court shall set a
171 date, not sooner than 60 days after the date the notice was
172 sent, by which electing cotenants must pay their apportioned
173 price into the court. After this date, the following rules
174 apply:

175 (a) If all electing cotenants timely pay their apportioned
176 price into the court, the court shall issue a judgment of
177 partition reallocating all the interests of the cotenants,
178 disburse the amounts held by the court to the persons entitled
179 to them, and direct the clerk of the court to record the
180 judgment in the official records of the county where the
181 property is located.

182 (b) If no electing cotenant timely pays its apportioned
183 price, the court shall resolve the partition action under s.
184 64.208(1) and (2) as if the interests of the cotenants that
185 requested partition by sale were not purchased.



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186 (c) If one or more but not all of the electing cotenants
187 fail to pay their apportioned price on time, the court shall
188 give notice to the electing cotenants that paid their
189 apportioned price of the interest remaining and the price for
190 all that interest.

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

196 (a) If only one cotenant pays the entire price for the
197 remaining interest, the court shall issue a judgment of
198 partition reallocating the remaining interest to that cotenant
199 and reallocating the interests of all of the cotenants. The
200 court shall also disburse the amounts held by the court to the
201 persons entitled to them and direct the clerk of the court to
202 record such judgment in the official records of the county where
203 the property is located.

204 (b) If no cotenant pays the entire price for the remaining
205 interest, the court shall resolve the partition action under s.
206 64.208(1) and (2) as if the interests of the cotenants that
207 requested partition by sale were not purchased.

208 (c) If more than one cotenant pays the entire price for the
209 remaining interest, the court shall reapportion the remaining
210 interest among those paying cotenants, based on each paying
211 cotenant's original fractional ownership of the entire parcel
212 divided by the total original fractional ownership of all
213 cotenants that paid the entire price for the remaining interest.
214 The court shall issue promptly a judgment of partition



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215 reallocating all of the cotenants' interests, disburse the
216 amounts held by the court to the persons entitled to them,
217 promptly refund any excess payment held by the court, and direct
218 the clerk of the court to record the judgment in the official
219 records of the county where the property is located.

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

226 (8) If the court receives a timely request under subsection
227 (7), the court, after hearing, may deny the request or authorize
228 the requested additional sale on such terms as the court
229 determines are fair and reasonable, provided the court ensures
230 the due process rights of the nonappearing cotenants, subject to
231 the following limitations:

232 (a) A sale authorized under this subsection may occur only
233 after the purchase prices for all interests subject to sale
234 under subsections (1) through (6) have been paid into court and
235 those interests have been reallocated among the cotenants as
236 provided in those subsections.

237 (b) The purchase price for the interest of a nonappearing
238 cotenant is based on the court's determination of value under s.
239 64.206.

240 64.208 Partition alternatives.—

241 (1) If any cotenant requested partition in kind, or if all
242 the interests of all cotenants that requested partition by sale
243 are not purchased by other cotenants pursuant to s. 64.207, or,



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244 if after conclusion of the buyout under s. 64.207, a cotenant
245 remains that has requested partition in kind, the court shall
246 enter a judgment of partition in kind unless the court is
247 satisfied that commissioners appointed pursuant to s. 64.061
248 have considered the factors listed in s. 64.209 and found that
249 partition in kind will result in prejudice to the cotenants as a
250 group. In considering whether to order partition in kind, the
251 court shall approve a request by two or more parties to have
252 their individual interests aggregated. Such judgment of
253 partition must include the legal description of the real
254 property before partition, the legal description of each new
255 parcel, and the name of each parcel's owner and shall be
256 recorded by the clerk of the court.

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



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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 prejudice to the cotenants as a group, the
277 commissioners 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 cotenant
295 and the degree to which the cotenant would be harmed if the
296 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.



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302 (g) Any other relevant factor.
303 (2) The commissioners 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 requirements
327 in s. 64.211; and
328 (b) The sale may be completed in accordance with the laws
329 of this state other than this part.
330 (4) If the broker appointed under subsection (2) does not



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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 an
338 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 buyer.

357 (b) The name of each buyer.

358 (c) The proposed purchase price.

359 (d) The terms and conditions of the proposed sale,



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360 including the terms of any owner financing.

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

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

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

365 64.212 Uniformity of application and construction.—In
366 applying and construing this uniform act, consideration must be
367 given to the need to promote uniformity of the law with respect
368 to its subject matter among states that enact it.

369 64.213 Relation to Electronic Signatures in Global and
370 National Commerce Act.—This part modifies, limits, and
371 supersedes the Electronic Signatures in Global and National
372 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
373 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
374 or authorize electronic delivery of any of the notices described
375 in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

376 64.214 Access for all residents.—Notwithstanding any
377 provision to the contrary in this part, cotenants owning real
378 property that is not heirs property may agree to partition such
379 real property under this part. All of the cotenants must jointly
380 notify the court of such agreement.

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

382
383 ===== T I T L E A M E N D M E N T =====

384 And the title is amended as follows:

385 Delete everything before the enacting clause
386 and insert:

387 A bill to be entitled
388 An act relating to the Uniform Partition of Heirs



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389 Property Act; designating part I of ch. 64, F.S.,
390 entitled "General Provisions"; creating part II of ch.
391 64, F.S., entitled "Uniform Partition of Heirs
392 Property Act"; creating s. 64.201, F.S.; providing a
393 short title; creating s. 64.202, F.S.; defining terms;
394 creating s. 64.203, F.S.; providing applicability;
395 providing requirements relating to the court
396 determination of heirs property; specifying the
397 relation of the act to other law; creating s. 64.204,
398 F.S.; providing construction; providing for service
399 and notice; creating s. 64.205, F.S.; providing for
400 appointment and qualifications of commissioners;
401 creating s. 64.206, F.S.; providing for the
402 determination of property value; creating s. 64.207,
403 F.S.; providing for buyout of cotenants; creating s.
404 64.208, F.S.; providing for alternatives to partition;
405 creating s. 64.209, F.S.; providing factors to be
406 considered in determining whether partition in kind
407 may be ordered; creating s. 64.210, F.S.; providing
408 for sale of property through open-market sale, sealed
409 bids, or auction; creating s. 64.211, F.S.; providing
410 requirements for reporting of an open-market sale of
411 property; creating s. 64.212, F.S.; providing for
412 uniformity of application and construction; creating
413 s. 64.213, F.S.; specifying the relation of the act to
414 the Electronic Signatures in Global and National
415 Commerce Act; creating s. 64.214, F.S.; authorizing
416 certain cotenants to agree to certain partitions of
417 real property; requiring such cotenants to jointly



418 notify the court of such agreement; providing an
419 effective date.