

Effective 5/4/2022

Part 12a
Uniform Partition of Heirs' Property Act

78B-6-1270 Definitions.

As used in this part:

- (1) "Ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.
- (2) "Collateral" means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual's ascendant or descendant.
- (3) "Descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual.
- (4) "Determination of value" means a court order:
 - (a) determining the fair market value of heirs' property under Section 78B-6-1274 or 78B-6-1278; or
 - (b) adopting the valuation of the property agreed to by all the cotenants.
- (5) "Heirs' property" means real property held in tenancy in common that satisfies all of the following requirements as of the filing of a partition action:
 - (a) there is no agreement in a record binding all the cotenants that governs the partition of the property;
 - (b) one or more of the cotenants acquired title from a relative, whether living or deceased; and
 - (c) any of the following applies:
 - (i) 20% or more of the interests are held by cotenants who are relatives;
 - (ii) 20% or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or
 - (iii) 20% or more of the cotenants are relatives.
- (6) "Partition by sale" means a court-ordered sale of the entire heirs' property, whether by an auction, sealed bids, or an open-market sale conducted under Section 78B-6-1278.
- (7) "Partition in kind" means the division of heirs' property into physically distinct and separately titled parcels.
- (8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (9) "Relative" means an ascendant, a descendant, a collateral, or an individual otherwise related to another individual by blood, marriage, adoption, or a law of this state other than this part.

Enacted by Chapter 304, 2022 General Session

78B-6-1271 Applicability -- Relation to other law.

- (1) This part applies to partition actions filed on or after May 4, 2022.
- (2)
 - (a) In an action to partition real property under Title 78B, Chapter 6, Part 12, Partition, the court shall determine whether the property is heirs' property.
 - (b) If the court determines that the property is heirs' property, the property shall be partitioned under this part, unless all of the cotenants otherwise agree in a record.
- (3) This part supplements Title 78B, Chapter 6, Part 12, Partition, and if an action is governed by this part, replaces provisions of Title 78B, Chapter 6, Part 12, Partition, that are inconsistent with this part.

Enacted by Chapter 304, 2022 General Session

78B-6-1272 Service -- Notice by posting.

- (1) This part does not limit or affect the method by which service of a complaint in a partition action may be made.
- (2)
 - (a) If the plaintiff in a partition action files a notice by publication and the court determines that the property is heirs' property, the plaintiff, no later than 10 days after the day on which the court determines the property is heirs' property, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action.
 - (b) The sign shall:
 - (i) state that the action has commenced; and
 - (ii) identify the name and address of the court and the common designation by which the property is known.
 - (c) The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

Enacted by Chapter 304, 2022 General Session

78B-6-1273 Referees.

If the court appoints referees, each referee, in addition to the requirements and disqualifications applicable to referees in Title 78B, Chapter 6, Part 12, Partition, shall be disinterested and impartial and not a party to or a participant in the action.

Enacted by Chapter 304, 2022 General Session

78B-6-1274 Determination of value.

- (1) Except as otherwise provided in Subsections (2) and (3), if the court determines that the property that is the subject of a partition action is heirs' property, the court shall determine the fair market value of the property by ordering an appraisal in accordance with Subsection (4).
- (2) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.
- (3) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.
- (4)
 - (a) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this state to determine the fair market value of the property assuming sole ownership of the fee simple estate.
 - (b) On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.
- (5) If an appraisal is conducted in accordance with Subsection (4), no later than 10 days after the day on which the appraisal is filed, the court shall send notice to each party with a known address, stating:
 - (a) the appraised fair market value of the property;
 - (b) that the appraisal is available at the court clerk's office; and

- (c) that a party may file with the court an objection to the appraisal no later than 30 days after the day on which the notice is sent, stating the grounds for the objection.
- (6)
 - (a) If an appraisal is filed with the court in accordance with Subsection (4), the court shall conduct a hearing to determine the fair market value of the property no sooner than 31 days after the day on which a copy of the notice of the appraisal is sent to each party under Subsection (5), whether or not an objection to the appraisal is filed under Subsection (5)(c).
 - (b) In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.
- (7) After a hearing under Subsection (6), but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

Enacted by Chapter 304, 2022 General Session

78B-6-1275 Cotenant buyout.

- (1) If any cotenant requests a partition by sale, after the determination of value under Section 78B-6-1274, the court shall send notice to the parties that any cotenant, except a cotenant that requested the partition by sale, may buy all the interests of the cotenants that requested partition by sale.
- (2) No later than 45 days after on the day on which the notice is sent under Subsection (1), any cotenant, except a cotenant that requested partition by sale, may give notice to the court that the cotenant elects to buy all the interests of the cotenants that requested partition by sale.
- (3) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined under Section 78B-6-1274 multiplied by the cotenant's fractional ownership of the entire parcel.
- (4) After expiration of the 45-day period described in Subsection (2):
 - (a) if only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all the parties of the fact that the one cotenant seeks to buy all the interests of the other cotenants;
 - (b) if more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall:
 - (i) allocate the right to buy all the interests of the cotenants among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy; and
 - (ii) send notice to all the parties of that fact and of the price to be paid by each electing cotenant; or
 - (c) if no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall send notice to all the parties that no cotenant elects to buy all the interests of the cotenants and resolve the partition action under Subsections 78B-6-1276(1) and (2).
- (5)
 - (a) If the court sends notice to the parties under Subsection (4)(a) or (b), the court shall set a date, no sooner than 60 days after the day on which the notice was sent, by which electing cotenants shall pay each cotenant's apportioned price to the court.
 - (b) After the day described in Subsection (5)(a):
 - (i) if all electing cotenants timely pay each cotenant's apportioned price to the court, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to the amounts;

- (ii) if no electing cotenant timely pays each cotenant's apportioned price, the court shall resolve the partition action under Subsections 78B-6-1276(1) and (2) as if the interests of the cotenants that requested partition by sale were not purchased; or
 - (iii) if one or more but not all of the electing cotenants fail to pay a cotenant's apportioned price on time, the court, upon a motion, shall give notice to the electing cotenants that paid the cotenant's apportioned price of the interest remaining and the price for all that interest.
- (6)
 - (a) No later than 20 days after the day on which the court gives notice in accordance with Subsection (5)(b)(iii), any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price to the court.
 - (b) After the 20-day period described in Subsection (6)(a):
 - (i) if only one cotenant pays the entire price for the remaining interest, the court shall:
 - (A) issue an order reallocating the remaining interest to that cotenant;
 - (B) issue an order promptly reallocating the interests of all of the cotenants; and
 - (C) disburse the amounts held by the court to the persons entitled to the amounts;
 - (ii) if no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under Subsections 78B-6-1276(1) and (2) as if the interests of the cotenants that requested partition by sale were not purchased; or
 - (iii) if more than one cotenant pays the entire price for the remaining interest, the court shall:
 - (A) reapportion the remaining interest among the paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest;
 - (B) issue an order promptly reallocating all of the cotenants' interests;
 - (C) disburse the amounts held by the court to the persons entitled to the amounts; and
 - (D) promptly refund any excess payment held by the court.
- (7) No later than 45 days after the day on which the court sends notice to the parties in accordance with Subsection (1), any cotenant entitled to buy an interest under this section may request the court to authorize the sale, as part of the pending action, of the interests of cotenants named as defendants and served with the complaint but that did not appear in the action.
- (8) If the court receives a timely request under Subsection (7), the court, after a hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable if:
 - (a) a sale authorized under this Subsection (8) occurs only after the purchase prices for all interests subject to sale under Subsections (1) through (6) have been paid to the court and those interests have been reallocated among the cotenants as provided in Subsections (1) through (6); and
 - (b) the purchase price for the interest of a nonappearing cotenant is based on the court's determination of value of the property under Section 78B-6-1274.

Enacted by Chapter 304, 2022 General Session

78B-6-1276 Partition alternatives.

- (1)
 - (a) Except as provided in Subsection (1)(b), a court shall order partition in kind if:
 - (i) all the interests of all cotenants that requested partition by sale are not purchased by other cotenants in accordance with Section 78B-6-1275; or
 - (ii) after conclusion of the buyout under Section 78B-6-1275, a cotenant remains that has requested partition in kind.

- (b) A court may not order a partition in kind if the court finds that partition in kind will result in great prejudice to the cotenants as a group after consideration of the factors listed in Section 78B-6-1277.
- (c) In considering whether to order partition in kind under Subsection (1)(a), the court shall approve a request by two or more parties to have their individual interests aggregated.
- (2) If the court does not order partition in kind under Subsection (1), the court shall order partition by sale in accordance with Section 78B-6-1278, or the court shall dismiss the action if no cotenant requested partition by sale.
- (3) If the court orders partition in kind in accordance with Subsection (1), the court may require that one or more cotenants pay one or more other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.
- (4)
 - (a) If the court orders partition in kind, the court shall allocate to the cotenants that are unknown, unlocatable, or the subject of a default judgment, if the cotenants' interests were not bought out in accordance with Section 78B-6-1275, a part of the property representing the combined interests of these cotenants as determined by the court.
 - (b) The part of the property allocated in accordance with Subsection (4)(a) shall remain undivided.

Enacted by Chapter 304, 2022 General Session

78B-6-1277 Considerations for partition in kind.

- (1) In determining under Subsection 78B-6-1276(1) whether partition in kind would result in great prejudice to the cotenants as a group, the court shall consider:
 - (a) whether the heirs' property practicably can be divided among the cotenants;
 - (b) whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;
 - (c) evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;
 - (d) a cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;
 - (e) the lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;
 - (f) the degree to which the cotenants have contributed:
 - (i) the cotenants' pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property; or
 - (ii) to the physical improvement, maintenance, or upkeep of the property; and
 - (g) any other relevant factor.
- (2) The court may not consider any one factor in Subsection (1) to be dispositive without weighing the totality of all relevant factors and circumstances.

Enacted by Chapter 304, 2022 General Session

78B-6-1278 Open-market sale, sealed bids, or auction.

- (1) If the court orders a sale of heirs' property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group.
- (2)
 - (a) If the court orders an open-market sale and the parties agree on a real estate broker licensed in this state to offer the property for sale no later than 10 days after the day on which the court entered the order, the court shall appoint the broker and establish a reasonable commission.
 - (b) If the parties do not agree on a broker during the 10-day period described in Subsection (2) (a), the court shall appoint a disinterested real estate broker licensed in this state to offer the property for sale and shall establish a reasonable commission.
 - (c) The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value of the property and on the terms and conditions established by the court.
- (3) If the broker appointed under Subsection (2) obtains within a reasonable time an offer to purchase the property for at least the determination of value:
 - (a) the broker shall comply with the reporting requirements in Section 78B-6-1279; and
 - (b) the sale may be completed in accordance with state law other than this part.
- (4) If the broker appointed under Subsection (2) does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after a hearing, may:
 - (a) approve the highest outstanding offer if there is an outstanding offer;
 - (b) redetermine the value of the property and order that the property continue to be offered for an additional time; or
 - (c) order that the property be sold by sealed bids or at an auction.
- (5)
 - (a) If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale.
 - (b) If the court orders an auction, the auction shall be conducted in accordance with Section 78B-6-1224.
- (6) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

Enacted by Chapter 304, 2022 General Session

78B-6-1279 Report of open-market sale.

- (1) Unless required to do so within a shorter time by Title 78B, Chapter 6, Part 12, Partition, a broker appointed under Subsection 78B-6-1278(2) to offer heirs' property for open-market sale shall file a report with the court no later than seven days after the day on which the broker receives an offer to purchase the property for at least the determination of value under Section 78B-6-1274 or 78B-6-1278.
- (2) The report required by Subsection (1) shall contain the following information:
 - (a) a description of the property to be sold to each buyer;
 - (b) the name of each buyer;
 - (c) the proposed purchase price;
 - (d) the terms and conditions of the proposed sale, including the terms of any owner financing;
 - (e) the amounts to be paid to lienholders;
 - (f) a statement of contractual or other arrangements or conditions of the broker's commission; and
 - (g) any other material fact relevant to the sale.

Enacted by Chapter 304, 2022 General Session

78B-6-1280 Uniformity of application and construction.

In applying and construing this part, consideration shall be given to the need to promote uniformity of this uniform law with respect to the subject matter of the uniform law among states that enact this uniform law.

Enacted by Chapter 304, 2022 General Session

78B-6-1281 Relation to Electronic Signatures in Global and National Commerce Act.

This part modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

Enacted by Chapter 304, 2022 General Session