

**78B-6-1213 Duties and powers of referees -- Procedure.**

- (1) In making the partition the referees must divide the property among the respective parties as determined by the court pursuant to the provisions of this part.
- (2) The referees may designate the portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them.
- (3) In all cases the court shall direct the referees making the partition to:
  - (a) allot the share of each of the parties owning an interest; and
  - (b) locate the share of each cotenant, including, if possible, the improvements made by the cotenant upon the property.
- (4) The value of the improvements made by tenants in common shall be excluded from the valuation in making allotments if it can be done without material injury to the rights and interests of the other tenants in common.
- (5) If the action is for partition of a mining claim, the court shall order the division of the claim by the referees not less than 20 nor more than 40 days from the date of the order, except by consent of all the parties in interest who have appeared in the action.
- (6) On the day designated in the order the referees shall go to the property to be divided and proceed to divide the property. If the division requires more than one day to complete, the referees shall continue from day to day until the division is completed.
- (7) Two or more of the tenants in common, joint tenants, copartners, or parceners may unite for the purposes of the division. The parties shall give the referees written notice of any unions before the referees begin the division. All who do not unite or give notice of separate action, shall, for the purposes of division, be considered to have united.
- (8) The referees shall recognize:
  - (a) those named in the court order, their agents and attorneys;
  - (b) a guardian of a minor; and
  - (c) a guardian entitled to the custody and the management of the estate of an incompetent or incapacitated person.
- (9) At the time and place of division one of the referees shall be selected to conduct the proceedings in the manner of public auction. The privilege of selecting first shall be offered to the party who agrees to take the smallest portion of the claim in proportion to that party's interest in the claim. Once the bids are closed, the referees shall measure and mark off, by distinct metes and bounds, the portion of the claim designated by the lowest bidder.
- (10) Once the referees have marked off and set apart the interest of the lowest bidder, they shall offer to the remaining parties the privilege of selection as provided, and shall upon closing the bids, proceed in the same manner to locate and mark off the portion of the lowest bidder.
- (11) The bidding shall continue and the interest of the lowest bidder marked off until only one party in interest remains. The party remaining shall become the owner of the remainder of the claim not marked off and set apart for the other parties.

Renumbered and Amended by Chapter 3, 2008 General Session