

Effective 5/4/2022

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