

**UNIFORM PARTITION OF HEIRS' PROPERTY ACT**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: V. Lowry Snow**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill enacts the Uniform Partition of Heirs' Property Act.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ provides the applicability of the Uniform Partition of Heirs' Property Act (Act) in actions regarding the partition of property;
- ▶ requires notice of an action for the partition of property that is covered by the Act;
- ▶ provides that referees are to be impartial and not a party to an action under the Act;
- ▶ requires the court to determine the value of property being partitioned under the Act;
- ▶ provides a process for the court to allow cotenants to buy out other cotenant's interests in a property;
- ▶ allows the court to partition the property in kind and for sale under certain conditions;
- ▶ provides factors for the court to consider when determining whether property should be partitioned in kind;
- ▶ provides that the sale of property under the Act must be an open-market sale and provides the requirements for the open-market sale;
- ▶ requires a report be submitted to the court on the open-market sale of a partitioned



28 property;

29       ▶ provides that the law should be applied and construed to promote uniformity with  
30 other states that enact this uniform law; and

31       ▶ contains a provision on the Act's relation to the Electronic Signatures in Global  
32 National Commerce Act.

33 **Money Appropriated in this Bill:**

34       None

35 **Other Special Clauses:**

36       None

37 **Utah Code Sections Affected:**

38 ENACTS:

39       78B-6-1270, Utah Code Annotated 1953

40       78B-6-1271, Utah Code Annotated 1953

41       78B-6-1272, Utah Code Annotated 1953

42       78B-6-1273, Utah Code Annotated 1953

43       78B-6-1274, Utah Code Annotated 1953

44       78B-6-1275, Utah Code Annotated 1953

45       78B-6-1276, Utah Code Annotated 1953

46       78B-6-1277, Utah Code Annotated 1953

47       78B-6-1278, Utah Code Annotated 1953

48       78B-6-1279, Utah Code Annotated 1953

49       78B-6-1280, Utah Code Annotated 1953

50       78B-6-1281, Utah Code Annotated 1953

51       78B-6-1282, Utah Code Annotated 1953



53 *Be it enacted by the Legislature of the state of Utah:*

54       Section 1. Section 78B-6-1270 is enacted to read:

55                               **Part 12a. Uniform Partition of Heirs' Property Act**

56                               **78B-6-1270. Title.**

57                               This part is known as the "Uniform Partition of Heirs' Property Act."

58       Section 2. Section 78B-6-1271 is enacted to read:

59 78B-6-1271. Definitions.60 As used in this part:61 (1) "Ascendant" means an individual who precedes another individual in lineage, in the  
62 direct line of ascent from the other individual.63 (2) "Collateral" means an individual who is related to another individual under the law  
64 of intestate succession of this state but who is not the other individual's ascendant or  
65 descendant.66 (3) "Descendant" means an individual who follows another individual in lineage, in the  
67 direct line of descent from the other individual.68 (4) "Determination of value" means:69 (a) a court order determining the fair market value of heirs' property; or70 (b) adopting the valuation of the property agreed to by all the cotenants.71 (5) "Heirs' property" means real property held in tenancy in common that satisfies all of  
72 the following requirements as of the filing of a partition action:73 (a) there is no agreement in a record binding all the cotenants that governs the partition  
74 of the property;75 (b) one or more of the cotenants acquired title from a relative, whether living or  
76 deceased; and77 (c) any of the following applies:78 (i) 20% or more of the interests are held by cotenants who are relatives;79 (ii) 20% or more of the interests are held by an individual who acquired title from a  
80 relative, whether living or deceased; or81 (iii) 20% or more of the cotenants are relatives.82 (6) "Partition by sale" means a court-ordered sale of the entire heirs' property, whether  
83 by an auction, sealed bids, or an open-market sale conducted under Section [78B-6-1279](#).84 (7) "Partition in kind" means the division of heirs' property into physically distinct and  
85 separately titled parcels.86 (8) "Record" means information that is inscribed on a tangible medium or that is stored  
87 in an electronic or other medium and is retrievable in perceivable form.88 (9) "Relative" means an ascendant, a descendant, or a collateral or an individual  
89 otherwise related to another individual by blood, marriage, adoption, or a law of this state other

90 than this part.

91 Section 3. Section **78B-6-1272** is enacted to read:

92 **78B-6-1272. Applicability -- Relation to other law.**

93 (1) This part applies to partition actions filed on or after May 12, 2020.

94 (2) (a) In an action to partition real property under Title 78B, Chapter 6, Part 12,  
95 Partition, the court shall determine whether the property is heirs' property.

96 (b) If the court determines that the property is heirs' property, the property shall be  
97 partitioned under this part, unless all of the cotenants otherwise agree in a record.

98 (3) This part supplements Title 78B, Chapter 6, Part 12, Partition, and if an action is  
99 governed by this part, replaces provisions of Title 78B, Chapter 6, Part 12, Partition, that are  
100 inconsistent with this part.

101 Section 4. Section **78B-6-1273** is enacted to read:

102 **78B-6-1273. Service -- Notice by posting.**

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

105 (2) (a) If the plaintiff in a partition action files a notice by publication and the court  
106 determines that the property may be heirs' property, the plaintiff, no later than 10 days after the  
107 day on which the court determines the property is heirs' property, shall post and maintain while  
108 the action is pending a conspicuous sign on the property that is the subject of the action.

109 (b) The sign shall:

110 (i) state that the action has commenced; and

111 (ii) identify the name and address of the court and the common designation by which  
112 the property is known.

113 (c) The court may require the plaintiff to publish on the sign the name of the plaintiff  
114 and the known defendants.

115 Section 5. Section **78B-6-1274** is enacted to read:

116 **78B-6-1274. Referees.**

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

120 Section 6. Section **78B-6-1275** is enacted to read:

121 78B-6-1275. Determination of value.

122 (1) Except as otherwise provided in Subsections (2) and (3), if the court determines  
123 that the property that is the subject of a partition action is heirs' property, the court shall  
124 determine the fair market value of the property by ordering an appraisal in accordance with  
125 Subsection (4).

126 (2) If all cotenants have agreed to the value of the property or to another method of  
127 valuation, the court shall adopt that value or the value produced by the agreed method of  
128 valuation.

129 (3) If the court determines that the evidentiary value of an appraisal is outweighed by  
130 the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market  
131 value of the property and send notice to the parties of the value.

132 (4) (a) If the court orders an appraisal, the court shall appoint a disinterested real estate  
133 appraiser licensed in this state to determine the fair market value of the property assuming sole  
134 ownership of the fee simple estate.

135 (b) On completion of the appraisal, the appraiser shall file a sworn or verified appraisal  
136 with the court.

137 (5) If an appraisal is conducted in accordance with Subsection (4), no later than 10  
138 days after the day on which the appraisal is filed, the court shall send notice to each party with  
139 a known address, stating:

140 (a) the appraised fair market value of the property;

141 (b) that the appraisal is available at the court clerk's office; and

142 (c) that a party may file with the court an objection to the appraisal no later than 30  
143 days after the day on which the notice is sent, stating the grounds for the objection.

144 (6) (a) If an appraisal is filed with the court in accordance with Subsection (4), the  
145 court shall conduct a hearing to determine the fair market value of the property no sooner than  
146 31 days after the day on which a copy of the notice of the appraisal is sent to each party under  
147 Subsection (5), whether or not an objection to the appraisal is filed under Subsection (5)(c).

148 (b) In addition to the court-ordered appraisal, the court may consider any other  
149 evidence of value offered by a party.

150 (7) After a hearing under Subsection (6), but before considering the merits of the  
151 partition action, the court shall determine the fair market value of the property and send notice

152 to the parties of the value.

153 Section 7. Section **78B-6-1276** is enacted to read:

154 **78B-6-1276. Cotenant buyout.**

155 (1) If any cotenant requests a partition by sale, after the determination of value under  
156 Section [78B-6-1275](#), the court shall send notice to the parties that any cotenant, except a  
157 cotenant that requested the partition by sale, may buy all the interests of the cotenants that  
158 requested partition by sale.

159 (2) No later than 45 days after on the day on which the notice is sent under Subsection  
160 (1), any cotenant, except a cotenant that requested partition by sale, may give notice to the  
161 court that the cotenant elects to buy all the interests of the cotenants that requested partition by  
162 sale.

163 (3) The purchase price for each of the interests of a cotenant that requested partition by  
164 sale is the value of the entire parcel determined under Section [78B-6-1275](#) multiplied by the  
165 cotenant's fractional ownership of the entire parcel.

166 (4) After expiration of the 45-day period described in Subsection (2):

167 (a) if only one cotenant elects to buy all the interests of the cotenants that requested  
168 partition by sale, the court shall notify all the parties of the fact that the one cotenant seeks to  
169 buy all the interests of the other cotenants;

170 (b) if more than one cotenant elects to buy all the interests of the cotenants that  
171 requested partition by sale, the court shall:

172 (i) allocate the right to buy all the interests of the cotenants among the electing  
173 cotenants based on each electing cotenant's existing fractional ownership of the entire parcel  
174 divided by the total existing fractional ownership of all cotenants electing to buy; and

175 (ii) send notice to all the parties of that fact and of the price to be paid by each electing  
176 cotenant; or

177 (c) if no cotenant elects to buy all the interests of the cotenants that requested partition  
178 by sale, the court shall send notice to all the parties that no cotenant elects to buy all the  
179 interests of the cotenants and resolve the partition action under Subsections [78B-6-1277](#)(1) and  
180 (2).

181 (5) (a) If the court sends notice to the parties under Subsection (4)(a) or (b), the court  
182 shall set a date, no sooner than 60 days after the day on which the notice was sent, by which

183 electing cotenants shall pay each cotenant's apportioned price into the court.

184 (b) After the day described in Subsection (5)(a):

185 (i) if all electing cotenants timely pay each cotenant's apportioned price to court, the  
186 court shall issue an order reallocating all the interests of the cotenants and disburse the amounts  
187 held by the court to the persons entitled to the amounts;

188 (ii) if no electing cotenant timely pays each cotenant's apportioned price, the court shall  
189 resolve the partition action under Subsections 78B-6-1277(1) and (2) as if the interests of the  
190 cotenants that requested partition by sale were not purchased; or

191 (iii) if one or more but not all of the electing cotenants fail to pay a cotenant's  
192 apportioned price on time, the court, upon a motion, shall give notice to the electing cotenants  
193 that paid the cotenant's apportioned price of the interest remaining and the price for all that  
194 interest.

195 (6) (a) No later than 20 days after the day on which the court gives notice in accordance  
196 with Subsection (5)(a), any cotenant that paid may elect to purchase all of the remaining  
197 interest by paying the entire price into the court.

198 (b) After the 20-day period described in Subsection (6)(a):

199 (i) if only one cotenant pays the entire price for the remaining interest, the court shall:

200 (A) issue an order reallocating the remaining interest to that cotenant;

201 (B) issue an order promptly reallocating the interests of all of the cotenants; and

202 (C) disburse the amounts held by the court to the persons entitled to the amounts;

203 (ii) if no cotenant pays the entire price for the remaining interest, the court shall resolve  
204 the partition action under Subsections 78B-6-1277(1) and (2) as if the interests of the cotenants  
205 that requested partition by sale were not purchased; or

206 (iii) if more than one cotenant pays the entire price for the remaining interest, the court  
207 shall:

208 (A) reapportion the remaining interest among the paying cotenants, based on each  
209 paying cotenant's original fractional ownership of the entire parcel divided by the total original  
210 fractional ownership of all cotenants that paid the entire price for the remaining interest;

211 (B) issue an order promptly reallocating all of the cotenants' interests;

212 (C) disburse the amounts held by the court to the persons entitled to the amounts; and

213 (D) promptly refund any excess payment held by the court.

214 (7) No later than 45 days after the day on which the court sends notice to the parties in  
215 accordance with Subsection (1), any cotenant entitled to buy an interest under this section may  
216 request the court to authorize the sale, as part of the pending action, of the interests of  
217 cotenants named as defendants and served with the complaint but that did not appear in the  
218 action.

219 (8) If the court receives a timely request under Subsection (7), the court, after a  
220 hearing, may deny the request or authorize the requested additional sale on such terms as the  
221 court determines are fair and reasonable if:

222 (a) a sale authorized under this Subsection (8) occurs only after the purchase prices for  
223 all interests subject to sale under Subsections (1) through (6) have been paid to court and those  
224 interests have been reallocated among the cotenants as provided in Subsections (1) through (6);  
225 and

226 (b) the purchase price for the interest of a nonappearing cotenant is based on the court's  
227 determination of value of the property under Section [78B-6-1275](#).

228 Section 8. Section **78B-6-1277** is enacted to read:

229 **78B-6-1277. Partition alternatives.**

230 (1) (a) Except as provided in Subsection (1)(b), a court shall order partition in kind if:

231 (i) all the interests of all cotenants that requested partition by sale are not purchased by  
232 other cotenants in accordance with Section [78B-6-1276](#); or

233 (ii) after conclusion of the buyout under Section [78B-6-1276](#), a cotenant remains that  
234 has requested partition in kind.

235 (b) A court may not order a partition in kind if the court finds that partition in kind will  
236 result in great prejudice to the cotenants as a group after consideration of the factors listed in  
237 Section [78B-6-1278](#).

238 (c) In considering whether to order partition in kind under Subsection (1)(a), the court  
239 shall approve a request by two or more parties to have their individual interests aggregated.

240 (2) If the court does not order partition in kind under Subsection (1), the court shall  
241 order partition by sale in accordance with Section [78B-6-1279](#), or the court shall dismiss the  
242 action if no cotenant requested partition by sale.

243 (3) If the court orders partition in kind in accordance with Subsection (1), the court  
244 may require that one or more cotenants pay one or more other cotenants amounts so that the



245 payments, taken together with the value of the in-kind distributions to the cotenants, will make  
246 the partition in kind just and proportionate in value to the fractional interests held.

247 (4) (a) If the court orders partition in kind, the court shall allocate to the cotenants that  
248 are unknown, unlocatable, or the subject of a default judgment, if the cotenants' interests were  
249 not bought out in accordance with Section 78B-6-1276, a part of the property representing the  
250 combined interests of these cotenants as determined by the court.

251 (b) The part of the property allocated in accordance with Subsection (4)(a) shall remain  
252 undivided.

253 Section 9. Section **78B-6-1278** is enacted to read:

254 **78B-6-1278. Considerations for partition in kind.**

255 (1) In determining under Subsection 78B-6-1277(1) whether partition in kind would  
256 result in great prejudice to the cotenants as a group, the court shall consider:

257 (a) whether the heirs' property practicably can be divided among the cotenants;

258 (b) whether partition in kind would apportion the property in such a way that the  
259 aggregate fair market value of the parcels resulting from the division would be materially less  
260 than the value of the property if it were sold as a whole, taking into account the condition under  
261 which a court-ordered sale likely would occur;

262 (c) evidence of the collective duration of ownership or possession of the property by a  
263 cotenant and one or more predecessors in title or predecessors in possession to the cotenant  
264 who are or were relatives of the cotenant or each other;

265 (d) a cotenant's sentimental attachment to the property, including any attachment  
266 arising because the property has ancestral or other unique or special value to the cotenant;

267 (e) the lawful use being made of the property by a cotenant and the degree to which the  
268 cotenant would be harmed if the cotenant could not continue the same use of the property;

269 (f) the degree to which the cotenants have contributed:

270 (i) the cotenants' pro rata share of the property taxes, insurance, and other expenses  
271 associated with maintaining ownership of the property; or

272 (ii) to the physical improvement, maintenance, or upkeep of the property; and

273 (g) any other relevant factor.

274 (2) The court may not consider any one factor in Subsection (1) to be dispositive  
275 without weighing the totality of all relevant factors and circumstances.

276 Section 10. Section **78B-6-1279** is enacted to read:

277 **78B-6-1279. Open-market sale, sealed bids, or auction.**

278 (1) If the court orders a sale of heirs' property, the sale must be an open-market sale  
279 unless the court finds that a sale by sealed bids or an auction would be more economically  
280 advantageous and in the best interest of the cotenants as a group.

281 (2) (a) If the court orders an open-market sale and the parties agree on a real estate  
282 broker licensed in this state to offer the property for sale no later than 10 days after the day on  
283 which the court entered the order, the court shall appoint the broker and establish a reasonable  
284 commission.

285 (b) If the parties do not agree on a broker during the 10-day period described in  
286 Subsection (2)(a), the court shall appoint a disinterested real estate broker licensed in this state  
287 to offer the property for sale and shall establish a reasonable commission.

288 (c) The broker shall offer the property for sale in a commercially reasonable manner at  
289 a price no lower than the determination of value of the property and on the terms and  
290 conditions established by the court.

291 (3) If the broker appointed under Subsection (2) obtains within a reasonable time an  
292 offer to purchase the property for at least the determination of value:

293 (a) the broker shall comply with the reporting requirements in Section [78B-6-1280](#); and

294 (b) the sale may be completed in accordance with state law other than this part.

295 (4) If the broker appointed under Subsection (2) does not obtain within a reasonable  
296 time an offer to purchase the property for at least the determination of value, the court, after a  
297 hearing, may:

298 (a) approve the highest outstanding offer if there is an outstanding offer;

299 (b) redetermine the value of the property and order that the property continue to be  
300 offered for an additional time; or

301 (c) order that the property be sold by sealed bids or at an auction.

302 (5) (a) If the court orders a sale by sealed bids or an auction, the court shall set terms  
303 and conditions of the sale.

304 (b) If the court orders an auction, the auction shall be conducted in accordance with  
305 Section [78B-6-1224](#).

306 (6) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is

307 entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

308 Section 11. Section **78B-6-1280** is enacted to read:

309 **78B-6-1280. Report of open-market sale.**

310 (1) Unless required to do so within a shorter time by Title 78B, Chapter 6, Part 12,  
311 Partition, a broker appointed under Subsection [78B-6-1279](#)(2) to offer heirs' property for  
312 open-market sale shall file a report with the court no later than seven days after the day on  
313 which the broker receives an offer to purchase the property for at least the determination of  
314 value under Section [78B-6-1275](#) or [78B-6-1279](#).

315 (2) The report required by Subsection (1) shall contain the following information:

316 (a) a description of the property to be sold to each buyer;

317 (b) the name of each buyer;

318 (c) the proposed purchase price;

319 (d) the terms and conditions of the proposed sale, including the terms of any owner  
320 financing;

321 (e) the amounts to be paid to lienholders;

322 (f) a statement of contractual or other arrangements or conditions of the broker's  
323 commission; and

324 (g) any other material fact relevant to the sale.

325 Section 12. Section **78B-6-1281** is enacted to read:

326 **78B-6-1281. Uniformity of application and construction.**

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

330 Section 13. Section **78B-6-1282** is enacted to read:

331 **78B-6-1282. Relation to Electronic Signatures in Global and National Commerce**  
332 **Act.**

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