

1 **UNIFORM PARTITION OF HEIRS' PROPERTY ACT**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: V. Lowry Snow**

5 Senate Sponsor: _____

6

LONG TITLE

7 **General Description:**

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

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ defines terms;
- 12 ▶ provides the applicability of the Uniform Partition of Heirs' Property Act (Act) in
- 13 actions regarding the partition of property;
- 14 ▶ requires notice of an action for the partition of property that is covered by the Act;
- 15 ▶ provides that referees are to be impartial and not a party to an action under the Act;
- 16 ▶ requires the court to determine the value of property being partitioned under the
- 17 Act;
- 18 ▶ provides a process for the court to allow cotenants to buy out other cotenants'
- 19 interests in a property;
- 20 ▶ allows the court to partition the property in kind and for sale under certain
- 21 conditions;
- 22 ▶ provides factors for the court to consider when determining whether property should
- 23 be partitioned in kind;
- 24 ▶ provides that the sale of property under the Act must be an open-market sale and
- 25 provides the requirements for the open-market sale;
- 26 ▶ requires a report be submitted to the court on the open-market sale of a partitioned
- 27



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 a court order:69 (a) determining the fair market value of heirs' property under Section [78B-6-1275](#) or
70 [78B-6-1279](#); or71 (b) adopting the valuation of the property agreed to by all the cotenants.72 (5) "Heirs' property" means real property held in tenancy in common that satisfies all of
73 the following requirements as of the filing of a partition action:74 (a) there is no agreement in a record binding all the cotenants that governs the partition
75 of the property;76 (b) one or more of the cotenants acquired title from a relative, whether living or
77 deceased; and78 (c) any of the following applies:79 (i) 20% or more of the interests are held by cotenants who are relatives;80 (ii) 20% or more of the interests are held by an individual who acquired title from a
81 relative, whether living or deceased; or82 (iii) 20% or more of the cotenants are relatives.83 (6) "Partition by sale" means a court-ordered sale of the entire heirs' property, whether
84 by an auction, sealed bids, or an open-market sale conducted under Section [78B-6-1279](#).85 (7) "Partition in kind" means the division of heirs' property into physically distinct and
86 separately titled parcels.87 (8) "Record" means information that is inscribed on a tangible medium or that is stored
88 in an electronic or other medium and is retrievable in perceivable form.89 (9) "Relative" means an ascendant, a descendant, a collateral, or an individual

90 otherwise related to another individual by blood, marriage, adoption, or a law of this state other
91 than this part.

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

93 **78B-6-1272. Applicability -- Relation to other law.**

94 (1) This part applies to partition actions filed on or after May 5, 2021.

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

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

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

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

103 **78B-6-1273. Service -- Notice by posting.**

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

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

110 (b) The sign shall:

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

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

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

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

117 **78B-6-1274. Referees.**

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

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

122 **78B-6-1275. Determination of value.**

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

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

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

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

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

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

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

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

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

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

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

151 (7) After a hearing under Subsection (6), but before considering the merits of the

152 partition action, the court shall determine the fair market value of the property and send notice
153 to the parties of the value.

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

155 **78B-6-1276. Cotenant buyout.**

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

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

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

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

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

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

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

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

178 (c) if no cotenant elects to buy all the interests of the cotenants that requested partition
179 by sale, the court shall send notice to all the parties that no cotenant elects to buy all the
180 interests of the cotenants and resolve the partition action under Subsections [78B-6-1277](#)(1) and
181 (2).

182 (5) (a) If the court sends notice to the parties under Subsection (4)(a) or (b), the court

183 shall set a date, no sooner than 60 days after the day on which the notice was sent, by which
184 electing cotenants shall pay each cotenant's apportioned price into the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

230 **78B-6-1277. Partition alternatives.**

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

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

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

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

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

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

244 (3) If the court orders partition in kind in accordance with Subsection (1), the court

245 may require that one or more cotenants pay one or more other cotenants amounts so that the
246 payments, taken together with the value of the in-kind distributions to the cotenants, will make
247 the partition in kind just and proportionate in value to the fractional interests held.

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

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

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

255 **78B-6-1278. Considerations for partition in kind.**

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

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

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

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

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

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

270 (f) the degree to which the tenants have contributed:

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

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

274 (g) any other relevant factor.

275 (2) The court may not consider any one factor in Subsection (1) to be dispositive

276 without weighing the totality of all relevant factors and circumstances.

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

278 **78B-6-1279. Open-market sale, sealed bids, or auction.**

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

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

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

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

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

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

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

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

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

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

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

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

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

307 (6) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is
308 entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

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

310 **78B-6-1280. Report of open-market sale.**

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

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

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

318 (b) the name of each buyer;

319 (c) the proposed purchase price;

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

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

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

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

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

327 **78B-6-1281. Uniformity of application and construction.**

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

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

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

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