

IN THE SENATE

SENATE BILL NO. 1090

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE UNIFORM PARTITION OF HEIRS PROPERTY ACT; AMENDING TITLE 15,  
2 IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 16, TITLE 15, IDAHO CODE,  
3 TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR APPLICABILITY  
4 AND RELATION TO OTHER LAW, TO PROVIDE FOR SERVICE AND NOTICE BY POSTING,  
5 TO PROVIDE FOR APPOINTMENT OF REFEREES, TO PROVIDE FOR DETERMINATION OF  
6 VALUE, TO PROVIDE FOR CO-TENANT BUYOUT, TO PROVIDE FOR PARTITION ALTER-  
7 NATIVES, TO PROVIDE FOR CONSIDERATIONS FOR PARTITION IN KIND, TO PRO-  
8 VIDE FOR AN OPEN-MARKET SALE, SEALED BIDS, AND AN AUCTION, TO PROVIDE  
9 FOR A REPORT OF AN OPEN-MARKET SALE, TO PROVIDE FOR UNIFORMITY OF APPLI-  
10 CATION AND CONSTRUCTION, AND TO PROVIDE FOR RELATION TO THE ELECTRONIC  
11 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT; AND DECLARING AN EMER-  
12 GENCY AND PROVIDING AN EFFECTIVE DATE.  
13

14 Be It Enacted by the Legislature of the State of Idaho:

15 SECTION 1. That Title 15, Idaho Code, be, and the same is hereby amended  
16 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
17 ter 16, Title 15, Idaho Code, and to read as follows:

18 CHAPTER 16  
19 UNIFORM PARTITION OF HEIRS PROPERTY ACT

20 PART 1  
21 UNIFORM PARTITION OF HEIRS PROPERTY ACT

22 15-16-101. SHORT TITLE. This chapter shall be known and may be cited as  
23 the "Uniform Partition of Heirs Property Act."

24 15-16-102. DEFINITIONS. As used in this chapter:

25 (1) "Ascendant" means an individual who precedes another individual in  
26 lineage, in the direct line of ascent from the other individual.

27 (2) "Collateral" means an individual who is related to another individ-  
28 ual under the law of intestate succession of this state but who is not the  
29 other individual's ascendant or descendant.

30 (3) "Descendant" means an individual who follows another individual in  
31 lineage, in the direct line of descent from the other individual.

32 (4) "Determination of value" means a court order determining the fair  
33 market value of heirs property under section 15-16-106 or 15-16-110, Idaho  
34 Code, or adopting the valuation of the property agreed to by all co-tenants.

35 (5) "Heirs property" means real property held in tenancy in common that  
36 satisfies all of the following requirements as of the filing of a partition  
37 action:

38 (a) There is no agreement in a record binding all the co-tenants that  
39 governs the partition of the property;

1 (b) One (1) or more of the co-tenants acquired title from a relative,  
2 whether living or deceased; and

3 (c) Any of the following applies:

4 (i) Twenty percent (20%) or more of the interests are held by  
5 co-tenants who are relatives;

6 (ii) Twenty percent (20%) or more of the interests are held by an  
7 individual who acquired title from a relative, whether living or  
8 deceased; or

9 (iii) Twenty percent (20%) or more of the co-tenants are rela-  
10 tives.

11 (6) "Partition by sale" means a court-ordered sale of the entire heirs  
12 property, whether by auction, sealed bids, or open-market sale conducted un-  
13 der section 15-16-110, Idaho Code.

14 (7) "Partition in kind" means the division of heirs property into phys-  
15 ically distinct and separately titled parcels.

16 (8) "Record" means information that is inscribed on a tangible medium  
17 or that is stored in an electronic or other medium and is retrievable in per-  
18 ceivable form.

19 (9) "Relative" means an ascendant, descendant, or collateral or an in-  
20 dividual otherwise related to another individual by blood, marriage, adop-  
21 tion, or law of this state other than this chapter.

22 15-16-103. APPLICABILITY -- RELATION TO OTHER LAW. (1) The provisions  
23 of this chapter apply to partition actions filed on or after July 1, 2023.

24 (2) In an action to partition real property under chapter 5, title 6,  
25 Idaho Code, the court shall determine whether the property is heirs prop-  
26 erty. If the court determines that the property is heirs property, the prop-  
27 erty must be partitioned under this chapter unless all of the co-tenants oth-  
28 erwise agree in a record.

29 (3) The provisions of this chapter supplement chapter 5, title 6, Idaho  
30 Code, and, if an action is governed by this chapter, replace provisions of  
31 chapter 5, title 6, Idaho Code, that are inconsistent with this chapter.

32 15-16-104. SERVICE -- NOTICE BY POSTING. (1) The provisions of this  
33 chapter do not limit or affect the method by which service of a complaint in a  
34 partition action may be made.

35 (2) If the plaintiff in a partition action seeks notice by publication  
36 and the court determines that the property may be heirs property, the plain-  
37 tiff, not later than ten (10) days after the court's determination, shall  
38 post a conspicuous sign on the property that is the subject of the action.  
39 The sign must state that the action has commenced and identify the name and  
40 address of the court and the common designation by which the property is  
41 known. The court may require the plaintiff to publish on the sign the name of  
42 the plaintiff and the known defendants.

43 15-16-105. REFEREES. If the court appoints referees pursuant to chap-  
44 ter 5, title 6, Idaho Code, each referee, in addition to the requirements and  
45 disqualifications applicable to referees in chapter 5, title 6, Idaho Code,  
46 must be disinterested and impartial and not a party to or a participant in the  
47 action.

1           15-16-106. DETERMINATION OF VALUE. (1) Except as otherwise provided  
2 in subsections (2) and (3) of this section, if the court determines that the  
3 property that is the subject of a partition action is heirs property, the  
4 court shall determine the fair market value of the property by ordering an  
5 appraisal pursuant to subsection (4) of this section.

6           (2) If all co-tenants have agreed to the value of the property or to an-  
7 other method of valuation, the court shall adopt that value or the value pro-  
8 duced by the agreed method of valuation.

9           (3) If the court determines that the evidentiary value of an appraisal  
10 is outweighed by the cost of the appraisal, the court, after an evidentiary  
11 hearing, shall determine the fair market value of the property and send no-  
12 tice to the parties of the value.

13           (4) If the court orders an appraisal, the court shall appoint a disin-  
14 terested real estate appraiser licensed in this state to determine the fair  
15 market value of the property assuming sole ownership of the fee simple es-  
16 tate. On completion of the appraisal, the appraiser shall file a sworn or  
17 verified appraisal with the court.

18           (5) If an appraisal is conducted pursuant to subsection (4) of this sec-  
19 tion, not later than ten (10) days after the appraisal is filed, the court  
20 shall send notice to each party with a known address, stating:

21           (a) The appraised fair market value of the property;

22           (b) That the appraisal is available at the clerk's office; and

23           (c) That a party may file with the court an objection to the appraisal  
24 not later than thirty (30) days after the notice is sent, stating the  
25 grounds for the objection.

26           (6) If an appraisal is filed with the court pursuant to subsection (4)  
27 of this section, the court shall conduct a hearing to determine the fair mar-  
28 ket value of the property not sooner than thirty (30) days after a copy of the  
29 notice of the appraisal is sent to each party under subsection (5) of this  
30 section, whether or not an objection to the appraisal is filed under subsec-  
31 tion (5) (c) of this section. In addition to the court-ordered appraisal, the  
32 court may consider any other evidence of value offered by a party.

33           (7) After a hearing under subsection (6) of this section, but before  
34 considering the merits of the partition action, the court shall determine  
35 the fair market value of the property and send notice to the parties of the  
36 value.

37           15-16-107. CO-TENANT BUYOUT. (1) If any co-tenant requested partition  
38 by sale, after the determination of value under section 15-16-106, Idaho  
39 Code, the court shall send notice to the parties that any co-tenant, except a  
40 co-tenant that requested partition by sale, may buy all the interests of the  
41 co-tenants that requested partition by sale.

42           (2) Not later than forty-five (45) days after the notice is sent under  
43 subsection (1) of this section, any co-tenant except a co-tenant that re-  
44 quested partition by sale may give notice to the court that it elects to buy  
45 all the interests of the co-tenants that requested partition by sale.

46           (3) The purchase price for each of the interests of a co-tenant that re-  
47 quested partition by sale is the value of the entire parcel determined un-  
48 der section 15-16-106, Idaho Code, multiplied by the co-tenant's fractional  
49 ownership of the entire parcel.

1 (4) After expiration of the period in subsection (2) of this section,  
2 the following rules apply:

3 (a) If only one (1) co-tenant elects to buy all the interests of the  
4 co-tenants that requested partition by sale, the court shall notify all  
5 the parties of that fact.

6 (b) If more than one (1) co-tenant elects to buy all the interests of the  
7 co-tenants that requested partition by sale, the court shall allocate  
8 the right to buy those interests among the electing co-tenants based  
9 on each electing co-tenant's existing fractional ownership of the en-  
10 tire parcel divided by the total existing fractional ownership of all  
11 co-tenants electing to buy and send notice to all the parties of that  
12 fact and of the price to be paid by each electing co-tenant.

13 (c) If no co-tenant elects to buy all the interests of the co-tenants  
14 that requested partition by sale, the court shall send notice to all  
15 the parties of that fact and resolve the partition action under section  
16 15-16-108(1) and (2), Idaho Code.

17 (5) If the court sends notice to the parties under subsection (4) (a) or  
18 (b) of this section, the court shall set a date, not sooner than sixty (60)  
19 days after the date the notice was sent, by which electing co-tenants must  
20 pay their apportioned price into the court. After this date, the following  
21 rules apply:

22 (a) If all electing co-tenants timely pay their apportioned price into  
23 court, the court shall issue an order reallocating all the interests of  
24 the co-tenants and disburse the amounts held by the court to the persons  
25 entitled to them.

26 (b) If no electing co-tenant timely pays its apportioned price, the  
27 court shall resolve the partition action under section 15-16-108(1) and  
28 (2), Idaho Code, as if the interests of the co-tenants that requested  
29 partition by sale were not purchased.

30 (c) If one (1) or more but not all of the electing co-tenants fail to  
31 pay their apportioned price on time, the court, on motion, shall give  
32 notice to the electing co-tenants that paid their apportioned price of  
33 the interest remaining and the price for all that interest.

34 (6) Not later than twenty (20) days after the court gives notice pur-  
35 suant to subsection (5) (c) of this section, any co-tenant that paid may elect  
36 to purchase all of the remaining interest by paying the entire price into the  
37 court. After the twenty (20) day period, the following rules apply:

38 (a) If only one (1) co-tenant pays the entire price for the remaining  
39 interest, the court shall issue an order reallocating the remaining in-  
40 terest to that co-tenant. The court shall issue promptly an order real-  
41 locating the interests of all of the co-tenants and disburse the amounts  
42 held by it to the persons entitled to them.

43 (b) If no co-tenant pays the entire price for the remaining interest,  
44 the court shall resolve the partition action under section 15-16-108(1)  
45 and (2), Idaho Code, as if the interests of the co-tenants that re-  
46 quested partition by sale were not purchased.

47 (c) If more than one (1) co-tenant pays the entire price for the re-  
48 maining interest, the court shall reapportion the remaining interest  
49 among those paying co-tenants, based on each paying co-tenant's origi-  
50 nal fractional ownership of the entire parcel divided by the total orig-

1           inal fractional ownership of all co-tenants that paid the entire price  
2           for the remaining interest. The court shall issue promptly an order re-  
3           allocating all of the co-tenants' interests, disburse the amounts held  
4           by it to the persons entitled to them, and promptly refund any excess  
5           payment held by the court.

6           (7) Not later than forty-five (45) days after the court sends notice to  
7           the parties pursuant to subsection (1) of this section, any co-tenant enti-  
8           tled to buy an interest under this section may request the court to authorize  
9           the sale as part of the pending action of the interests of co-tenants named  
10          as defendants and served with the complaint but that did not appear in the ac-  
11          tion.

12          (8) If the court receives a timely request under subsection (7) of this  
13          section, the court, after hearing, may deny the request or authorize the re-  
14          quested additional sale on such terms as the court determines are fair and  
15          reasonable, subject to the following limitations:

16          (a) A sale authorized under this subsection may occur only after the  
17          purchase prices for all interests subject to sale under subsections (1)  
18          through (6) of this section have been paid into court and those inter-  
19          ests have been reallocated among the co-tenants as provided in those  
20          subsections; and

21          (b) The purchase price for the interest of a nonappearing co-tenant is  
22          based on the court's determination of value under section 15-16-106,  
23          Idaho Code.

24          15-16-108. PARTITION ALTERNATIVES. (1) If all the interests of all  
25          co-tenants that requested partition by sale are not purchased by other  
26          co-tenants pursuant to section 15-16-107, Idaho Code, or if after conclu-  
27          sion of the buyout under section 15-16-107, Idaho Code, a co-tenant remains  
28          that has requested partition in kind, the court shall order partition in  
29          kind unless the court, after consideration of the factors listed in section  
30          15-16-109, Idaho Code, finds that partition in kind will result in great  
31          prejudice to the co-tenants as a group. In considering whether to order par-  
32          tition in kind, the court shall approve a request by two (2) or more parties  
33          to have their individual interests aggregated.

34          (2) If the court does not order partition in kind under subsection (1)  
35          of this section, the court shall order partition by sale pursuant to section  
36          15-16-110, Idaho Code, or, if no co-tenant requested partition by sale, the  
37          court shall dismiss the action.

38          (3) If the court orders partition in kind pursuant to subsection (1) of  
39          this section, the court may require that one (1) or more co-tenants pay one  
40          (1) or more other co-tenants amounts so that the payments, taken together  
41          with the value of the in-kind distributions to the co-tenants, will make the  
42          partition in kind just and proportionate in value to the fractional inter-  
43          ests held.

44          (4) If the court orders partition in kind, the court shall allocate  
45          to the co-tenants that are unknown, unlocatable, or the subject of a de-  
46          fault judgment, if their interests were not bought out pursuant to section  
47          15-16-107, a part of the property representing the combined interests of  
48          these co-tenants as determined by the court, and this part of the property  
49          shall remain undivided.

1 15-16-109. CONSIDERATION FOR PARTITION IN KIND. (1) In determining  
2 under section 15-16-108(1), Idaho Code, whether partition in kind would  
3 result in great prejudice to the co-tenants as a group, the court shall con-  
4 sider the following:

5 (a) Whether the heirs property practicably can be divided among the  
6 co-tenants;

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

12 (c) Evidence of the collective duration of ownership or possession of  
13 the property by a co-tenant and one (1) or more predecessors in title or  
14 predecessors in possession to the co-tenant who are or were relatives of  
15 the co-tenant or each other;

16 (d) A co-tenant's sentimental attachment to the property, including  
17 any attachment arising because the property has ancestral or other  
18 unique or special value to the co-tenant;

19 (e) The lawful use being made of the property by a co-tenant and the de-  
20 gree to which the co-tenant would be harmed if the co-tenant could not  
21 continue the same use of the property;

22 (f) The degree to which the co-tenants have contributed their pro rata  
23 share of the property taxes, insurance, and other expenses associated  
24 with maintaining ownership of the property or have contributed to the  
25 physical improvement, maintenance, or upkeep of the property; and

26 (g) Any other relevant factor.

27 (2) The court may not consider any one factor in subsection (1) of this  
28 section to be dispositive without weighing the totality of all relevant fac-  
29 tors and circumstances.

30 15-16-110. OPEN-MARKET SALE, SEALED BIDS, OR AUCTION. (1) If the court  
31 orders a sale of heirs property, the sale must be an open-market sale unless  
32 the court finds that a sale by sealed bids or an auction would be more econom-  
33 ically advantageous and in the best interest of the co-tenants as a group.

34 (2) If the court orders an open-market sale and the parties, not later  
35 than ten (10) days after the entry of the order, agree on a real estate bro-  
36 ker licensed in this state to offer the property for sale, the court shall  
37 appoint the broker and establish a reasonable commission. If the parties do  
38 not agree on a broker, the court shall appoint a disinterested real estate  
39 broker licensed in this state to offer the property for sale and shall estab-  
40 lish a reasonable commission. The broker shall offer the property for sale  
41 in a commercially reasonable manner at a price no lower than the determina-  
42 tion of value and on the terms and conditions established by the court.

43 (3) If the broker appointed under subsection (2) of this section ob-  
44 tains within a reasonable time an offer to purchase the property for at least  
45 the determination of value:

46 (a) The broker shall comply with the reporting requirements in section  
47 15-16-111, Idaho Code; and

48 (b) The sale may be completed in accordance with state law other than  
49 this chapter.

1 (4) If the broker appointed under subsection (2) of this section does  
2 not obtain within a reasonable time an offer to purchase the property for at  
3 least the determination of value, the court, after hearing, may:

4 (a) Approve the highest outstanding offer, if any;

5 (b) Redetermine the value of the property and order that the property  
6 continue to be offered for an additional time; or

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

8 (5) If the court orders a sale by sealed bids or at an auction, the court  
9 shall set terms and conditions of the sale. If the court orders an auction,  
10 the auction must be conducted under the provisions of chapter 5, title 6,  
11 Idaho Code.

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

15 15-16-111. REPORT OF OPEN-MARKET SALE. (1) Unless required to do so  
16 within a shorter time by chapter 5, title 6, Idaho Code, a broker appointed  
17 under section 15-16-110(2), Idaho Code, to offer heirs property for open-  
18 market sale shall file a report with the court not later than seven (7) days  
19 after receiving an offer to purchase the property for at least the value de-  
20 termined under section 15-16-106 or 15-16-110, Idaho Code.

21 (2) The report required by subsection (1) of this section must contain  
22 the following information:

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

24 (b) The name of each buyer;

25 (c) The proposed purchase price;

26 (d) The terms and conditions of the proposed sale, including the terms  
27 of any owner financing;

28 (e) The amounts to be paid to lienholders;

29 (f) A statement of contractual or other arrangements or conditions of  
30 the broker's commission; and

31 (g) Other material facts relevant to the sale.

32 15-16-112. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying  
33 and construing this uniform act, consideration must be given to the need to  
34 promote uniformity of the law with respect to its subject matter among states  
35 that enact it.

36 15-16-113. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL  
37 COMMERCE ACT. This chapter modifies, limits, or supersedes the electronic  
38 signatures in global and national commerce act, 15 U.S.C. 7001 et seq., but  
39 does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C.  
40 7001(c), or authorize electronic delivery of any of the notices described in  
41 section 103(b) of that act, 15 U.S.C. 7003(b).

42 SECTION 2. An emergency existing therefor, which emergency is hereby  
43 declared to exist, this act shall be in full force and effect on and after  
44 July 1, 2023.