651.16 Procedure for partition in kind.

1. A court-appointed referee authorized to partition a property in kind shall qualify by taking an oath. A bond shall not be required.

2. The referee shall designate each proposed parcel of the partitioned property by visible monuments. If allowed by the court, the referee may employ a surveyor or assistants to aid the referee and the expenses for such shall be taxed as costs.

3. For good reasons shown the court may order a referee making a partition in kind to allot a particular parcel or a particular article of personal property to a specific party.

4. The referee shall file a report with the court that details the referee's proposed division of the property subject to partition in kind. The report shall describe with reasonable particularity the respective shares and the specific property allotted to each property owner. If real property is part of the partition, a plat shall be filed with the report. The referee may recommend owelty payments as part of the referee's recommendation for the partition in kind. The court shall promptly set a time and place for a hearing on the referee's report. The referee shall give notice of such hearing to all interested parties as ordered by the court.

5. After the hearing the court may approve, modify, or disapprove the referee's report, or order the property partitioned by sale. If the court approves partition in kind subject to owelty payments as recommended by the referee, the court shall order that the partition in kind shall not be completed until all owelty payments have been made. If all owelty payments are not made as ordered, the court shall make further orders as appropriate. On approving a partition in kind after all owelty payments have been made, the court shall file a decree that includes all of the following:

a. Describes the property partitioned in kind in its entirety.

b. Describes each partitioned parcel or article of personal property allotted to each property owner.

c. Enters judgment against each property owner for each property owner's apportioned costs. Such costs shall be a lien on each owner's respective allotted parcel or article and for which special execution may issue on demand of any interested person.

6. Upon completion of a partition in kind of real property pursuant to a court decree, the clerk of court shall file a certified copy of the decree with the county recorder and provide a copy to the county auditor of each county where any of the partitioned property is located. The county auditor shall record a transfer in the deed records and index each parcel as a conveyance with the name of the owner of each parcel as the grantee and the names of all other parties to the partition petition as grantors. The costs of making and recording the certified copy of the decree shall be taxed as costs in the case.

2018 Acts, ch 1108, §16
Referred to in §651.17, 651.22