

Senate File 2175 - Enrolled

Senate File 2175

AN ACT
RELATING TO PARTITION OF PROPERTY IN KIND AND PARTITION OF
PROPERTY BY SALE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SUBCHAPTER I
DEFINITIONS

Section 1. NEW SECTION. 651.1 Definitions.

As used in this chapter, unless the context otherwise
requires:

1. "*Ascendant*" means an individual who precedes another
individual in lineage in the direct line of ascent from the
other individual.

2. "*Collateral*" means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual's ascendant or descendant.

3. "*Cotenant*" means a person holding title to real property under tenancy in common ownership.

4. "*Descendant*" means an individual who follows another individual in lineage in the direct line of descent from the other individual.

5. "*Heirs property*" means real property held in tenancy in common that satisfies all of the following requirements as of the date of the filing of a partition action:

a. There is not a recorded agreement that binds all of the cotenants that governs the partition of the property.

b. One or more of the cotenants acquired title from a living or deceased relative.

c. Any of the following apply:

(1) Twenty percent or more of the interests are held by cotenants who are relatives.

(2) Twenty percent or more of the interests are held by an individual who acquired title from a living or deceased relative.

(3) Twenty percent or more of the cotenants are relatives.

6. "*Owelty*" means an equitable remedy in a partition action used to equalize the value of the property a party receives through the payment of a sum of money from a recipient of a higher value property to the recipient of a lower value property.

7. "*Partition by sale*" means a court-ordered sale of property subject to partition.

8. "*Partition in kind*" means a court-ordered division of property subject to partition into physically distinct and separately titled parcels.

9. "*Record*" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

10. "*Relative*" means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or other law of this state.

SUBCHAPTER II
GENERAL PROVISIONS

Sec. 2. NEW SECTION. 651.2 Action for partition of property.

Property shall be partitioned by equitable proceedings. A property subject to partition shall be partitioned by sale and the proceeds from the sale divided by the owners of the property unless one or more of the property owners files a request for partition in kind and the court determines partition in kind is equitable and practicable.

Sec. 3. NEW SECTION. 651.3 Partition of real estate pending probate or administration of an estate.

If an entire interest in real estate is owned by a decedent on whose estate administration or probate is pending a partition action shall not be brought until four months after the second publication of the notice of the appointment of the personal representative. A partition action shall not be brought at any time while an application for authority to sell such real estate is pending in a probate proceeding.

Sec. 4. NEW SECTION. 651.4 Petition for partition of property.

A petition for partition of property shall describe the property and the plaintiff's interest in the property. The petition shall name all indispensable parties pursuant to section 651.5 and state the nature and extent of each interest or lien as far as each interest or lien is known by the plaintiff.

Sec. 5. NEW SECTION. 651.5 Parties to a petition for partition of property.

1. A petition for partition of property shall include as parties all persons indispensable to the partition including an owner of an undivided interest and a holder of a lien on all or part of the property.

2. A petition for partition of property may include as parties a person having an actual, apparent, claimed, or contingent interest in the property.

3. The court shall have jurisdiction over an unborn person's contingent or prospective vested interest as a cotenant of real property in a partition proceeding. The court shall appoint

a guardian ad litem for such unborn person pursuant to the rules of civil procedures. The partition in kind or partition by sale of the real property pursuant to a court decree shall have the same force and effect as to all such unborn persons, or persons claiming by, through, or under the unborn person, as though the unborn person were in being when the decree was entered and the real property or proceeds of the unborn person's interest shall be subject to the order of the court until the right fully vests.

Sec. 6. NEW SECTION. 651.6 The answer to a partition petition.

A defendant's answer to a partition petition shall state the amount and nature of the defendant's interest. A defendant may deny the interest of a plaintiff and by supplemental pleading, if necessary, may deny the interest of any other defendant.

Sec. 7. NEW SECTION. 651.7 Joinder and counterclaim.

A party may perfect or quiet title to property that is subject to a partition petition or request adjudication of a right of a party as to any matter originating from or connected to the property, including a lien between any parties. Except as permitted by this section, a joinder of any other claim to a partition petition shall not be permitted. A counterclaim to a partition petition shall not be permitted.

Sec. 8. NEW SECTION. 651.8 Partition of personal property subject to a lien.

Personal property that is subject to a lien on the whole or any part of the property shall only be partitioned by sale.

Sec. 9. NEW SECTION. 651.9 Partition of real and personal property in the same action.

Real and personal property owned by the same person may be partitioned in the same action. A referee appointed by the court may act as to both the real and the personal property.

Sec. 10. NEW SECTION. 651.10 Jurisdiction of property partitioned in kind or of proceeds from a partition by sale.

Property that has been partitioned in kind or the proceeds from a property that has been partitioned by sale shall be subject to the order of the court until the disposition of the rights in the property become fully vested.

Sec. 11. NEW SECTION. 651.11 Property partitioned by sale

and partitioned in kind in the same action.

If all parts of a property cannot be partitioned in kind, parts of the property may be partitioned in kind and other parts of the property may be partitioned by sale as provided in this chapter.

Sec. 12. NEW SECTION. 651.12 Initial court decree and appointment of referee.

The court shall file an initial decree establishing the shares and interests of all owners in a property subject to a partition petition. One referee shall be appointed in the decree unless all owners of the property agree upon a larger number of referees. The decree shall order an appraisal or estimation of the valuation of the property and may direct either a public or private sale of the property. Unless all owners of the property agree to an alternative method for conducting the appraisal or of estimating the valuation of the property, the decree shall appoint three disinterested persons with knowledge of property valuation to appraise the property. The decree shall direct the referee to file a report with the court setting forth the referee's recommendations for completing the partition of the property. All other contested issues related to the partition petition, including liens, may be determined by the initial decree or by a supplemental decree or decrees.

Sec. 13. NEW SECTION. 651.13 Abstract, plats, and surveys.

The court may order the filing of a complete abstract covering real property involved in a partition action. The court may order a party to the partition action to produce any abstract in the party's possession or control. The court may order a plaintiff to obtain an abstract if a complete abstract is unavailable. The expense for such abstract shall be taxed as costs. The abstract shall be available to the court or any party to the partition action during the partition proceedings. The court may also order a plaintiff to obtain a plat or survey and the expense for such shall be taxed as costs.

Sec. 14. NEW SECTION. 651.14 Adjudication of liens on a property subject to partition.

The court shall decide the nature, extent, priority, or validity of a party's lien not previously determined and any

other issues as the court directs. The referee appointed by the court shall provide notice of the court hearing to decide such matters to the interested parties. Adjudication of liens shall precede a partition in kind. A partition by sale and the distribution of proceeds from such sale to any party not affected by a lien may proceed prior to adjudication of liens on the property.

Sec. 15. NEW SECTION. 651.15 Referee possession of property and court preservation of property.

The court may order a referee to lease or to take possession of a property subject to partition. The court may issue an injunction to preserve a property subject to partition or issue an order providing for the care and custody of such property. Any expenses incurred under this section as allowed by the court shall be taxed as costs.

Sec. 16. NEW SECTION. 651.16 The 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.

Sec. 17. NEW SECTION. 651.17 Referee's report to the court of inability to make a partition in kind.

A referee shall file a report with the court if the referee is not able to make a partition in kind on a property subject to partition. Upon receipt of the report, the court shall take the following actions:

1. If the partition involves personal property, the court shall order a sale of the personal property without further notice.
2. If the partition involves real property, the court shall

set a hearing as provided under section 651.16. After such hearing the court may order a sale or other disposition of the real property, as the court deems appropriate.

Sec. 18. NEW SECTION. 651.18 Procedure for partition by sale.

1. A referee appointed by the court to partition property by sale shall qualify by taking an oath. A bond shall not be required before the referee conveys real property unless the referee is required to do any of the following:

- a. Sell personal property.
- b. Take possession of real property.
- c. Receive a payment on the sale before conveyance of the real property.

2. Before conveying real property, the referee shall give bond in the amount of one hundred twenty-five percent of the total sale price of the real property, payable to the parties entitled to the proceeds from the sale, and conditioned on the faithful discharge of the referee's duties.

3. The referee shall file a report with the court that provides all of the following:

- a. A recommendation for the appropriate public or private sale process to offer the property for sale, including but not limited to a public auction or private listing.
- b. A copy of any appraisal for the property to be partitioned if required by the court.

4. The court shall promptly set a time and place for a hearing on the referee's report. The referee shall provide notice of the hearing to all interested parties.

5. After the hearing the court may approve, modify, or disapprove the referee's report. If the court orders the property to be partitioned by sale, the referee shall offer the property for sale pursuant to the court order.

6. The referee shall give notice of the time and place of a public sale of the property by two separate publications, at least six days apart, in a newspaper of general circulation in the county where the public sale of the property is to be held. The last publication shall be at least seven days prior to a public sale of real estate and at least four days prior to a public sale of personal property. If authorized by the court,

the referee may advertise the sale beyond the required notice and may employ an auctioneer or assistant to assist the referee with the sale of the property. If allowed by the court, the expense of such shall be taxed as costs.

7. The referee shall report all proposed sales to the court. The court shall promptly set a time and place for a hearing and the referee shall give notice to all interested parties. Notice of the hearing shall also be given to any party who files a request with the clerk of court, with the party's name and the address where notice is to be sent, before the referee's report is approved by the court. The clerk shall docket the request and transmit a copy to the referee.

8. After the hearing the court may approve or disapprove the sale of the property. The court may expressly order a private sale of the property for less than the appraised value of the property.

9. Real property shall not be conveyed to a buyer until a partition by sale is approved by court order. Real property shall not be conveyed to a buyer until the sale price for such property has been paid in full.

10. If the court disapproves the partition by sale of a property, all moneys paid or securities given shall be returned to the persons entitled to such.

11. The court may require a party entitled to sale proceeds from a property partitioned by sale to give satisfactory security to refund any proceeds received, with interest, before such party receives proceeds arising from the sale in the event the court later rules such party is not entitled to the proceeds.

Sec. 19. NEW SECTION. 651.19 Validity of referee's deed.

Upon court approval of a sale of property to be partitioned by sale, the referee shall file a referee's deed that shall be recorded in the county where the real estate is located. The recorded referee's deed shall be valid against all subsequent purchasers and against all persons who are parties to the partition by sale proceeding.

Sec. 20. NEW SECTION. 651.20 Partition by sale — liens on property.

Personal property shall be partitioned by sale free of all

liens. Real property shall be partitioned by sale free of all liens except liens held against the entire real property.

Sec. 21. NEW SECTION. 651.21 Proceeds of property partitioned by sale.

1. After a property has been partitioned by sale, a party, including a holder of a lien from which the property has been freed by the sale, shall have the same rights or interests in the proceeds as the party had in the property sold, subject to a prior charge for costs.

2. The court shall appoint a trustee, or order other suitable provisions, for the proceeds of a share held for life or years in the remainder. The ascertained share of any absent owner shall be retained, or the proceeds invested for the owner's benefit, under an order of the court.

Sec. 22. NEW SECTION. 651.22 Costs of a partition action.

All costs related to a partition action shall be advanced by the plaintiff with such costs paid by all parties to the action proportionately to each party's respective interest. A cost created by a contest arising from the partition action shall be taxed against the losing contestant unless otherwise ordered by the court. If partition is in kind, costs shall be adjudged and may be collected as provided in section 651.16, subsection 5. If partition is by sale, the costs shall be paid from the proceeds and deducted from the shares of the parties against whom the costs are taxed. Such remedies for collecting costs shall be cumulative of other remedies.

Sec. 23. NEW SECTION. 651.23 Plaintiff's attorney fees.

1. On partition of real property, but not of personal property, the court shall order a reasonable fee in favor of the plaintiff's attorney. The fee shall be taxed as costs.

2. If the plaintiff is the losing contestant in a contest arising from any partition action, any of the plaintiff's attorney fees relating to such contest shall not be taxed as costs.

Sec. 24. NEW SECTION. 651.24 Other fees taxed as costs.

Appraisers, referees, and attorneys appointed by a referee with court approval shall receive reasonable compensation as approved by the court and such compensation shall be part of the costs.

Sec. 25. NEW SECTION. 651.25 Referee's final report.

Unless waived in writing by all interested parties, the court shall fix a time and a place for a hearing on the referee's final report. The referee shall give notice of the hearing to all interested parties.

Sec. 26. NEW SECTION. 651.26 Payment of proceeds less than ten thousand dollars to a minor.

If a minor for whom no conservator has been appointed is entitled to proceeds from a partition of property by sale in an amount not exceeding ten thousand dollars, the court may order the proceeds paid to the minor's parent, guardian, or an adult with whom the minor resides, for the use of the minor. After such person files a written receipt for the proceeds with the court, the referee shall be discharged of all liability for the proceeds.

SUBCHAPTER III

SPECIAL PROVISIONS FOR PARTITION OF HEIRS PROPERTY

Sec. 27. NEW SECTION. 651.27 Applicability of special provisions of heirs property.

If a cotenant requests a partition in kind in an action to partition heirs property, the partition action shall proceed under the special provisions for partition of heirs property under this subchapter. The provisions of this subchapter shall control in the event of a conflict with a provision of subchapter II.

Sec. 28. NEW SECTION. 651.28 Initial decree.

1. If the court determines that a property subject to a partition action is heirs property, and a cotenant requests a partition in kind of such property, the court shall file an initial decree pursuant to section 651.12 ordering the partition action to proceed under this subchapter. The court shall appoint a referee and direct the referee to obtain an appraisal as provided in section 651.12. The referee shall file the appraisal with the court.

2. Within ten calendar days after the referee files the appraisal with the court, the court shall send notice to the referee and to each party to the partition action. The notice shall provide all of the following information:

a. The appraised fair market value of the heirs property.

b. The address of the clerk's office where the appraisal is available for review.

c. Advise that a party may file an objection to the appraisal with the court no later than thirty calendar days after the date of notice by the court. An objection must state the grounds for the objection.

3. No sooner than thirty calendar days after the date of notice by the court and regardless of whether an objection to the appraisal is filed, the court shall conduct a hearing to determine the fair market value of the heirs property. The court shall set a time and place for the hearing and give notice to the referee and all parties to the partition action. At the hearing, in addition to the court-ordered appraisal, the court may consider any other evidence offered by the referee or by a party to the partition action.

4. After the hearing the court shall file an order that determines the fair market value of the heirs property and provide notice of the determination to the referee and all parties to the partition action.

Sec. 29. NEW SECTION. 651.29 Cotenant buyout.

1. If a cotenant requests partition by sale of the heirs property after receiving notice of the court's determination of the fair market value of the heirs property pursuant to section 651.28, the court shall send notice to all parties advising of all of the following:

a. That a cotenant, except a cotenant that has requested partition by sale of the heirs property, may elect to buy all of the interests of a cotenant that has requested partition by sale of the heirs property.

b. That a cotenant, except a cotenant that has requested partition by sale of the heirs property, shall give notice to the court no later than forty-five days after the date the court sends notice pursuant to section 651.28, subsection 4, of such cotenant's election to buy all of the interests of a cotenant that has requested partition by sale of the heirs property.

2. The sale price for the interest of a cotenant that has requested a partition by sale of the heirs property shall be the value of the entire heirs property as determined by the

court under section 651.28, multiplied by such cotenant's fractional ownership of the entire heirs property.

3. If more than forty-five days have passed since the date the court sent notice pursuant to section 651.28, subsection 4, all of the following shall apply:

a. If only one cotenant elects to buy all of the interests of a cotenant that has requested partition by sale of the heirs property, the court shall provide notice of such to all interested parties.

b. If more than one cotenant elects to buy all of the interests of a cotenant that has requested partition by sale of the heirs property, the court shall allocate the right to buy such interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire heirs property divided by the total existing fractional ownership of all cotenants electing to buy such interests. The court shall send notice to all interested parties of the calculation used to determine the interest that can be purchased by each electing cotenant and the price to be paid for such interest by each electing cotenant.

c. If no cotenant elects to buy all of the interests of a cotenant that has requested partition by sale of the heirs property, the court shall send notice to all interested parties and resolve the partition action pursuant to section 651.30.

4. If the court sends notice to the parties pursuant to subsection 3, paragraph "a" or "b", the court shall set a date no sooner than sixty calendar days after the date that such notice is sent by which the electing cotenants shall pay their apportioned price to the court. The court shall give notice of such date to all interested parties. After such date has passed, all of the following shall apply:

a. If all electing cotenants have timely paid their apportioned price to the court, the court shall issue an order reallocating all of the interests of the cotenants in the partitioned heirs property and disburse the amounts held by the court to the persons entitled to such disbursements.

b. If none of the electing cotenants has timely paid their apportioned price to the court, the court shall resolve the heirs partition action under section 651.30 as if the interest

of the cotenant that has requested partition by sale of the heirs property has not been purchased.

c. If one or more but not all of the electing cotenants fail to timely pay their apportioned price to the court, the court on motion shall give notice to the electing cotenants that have timely paid their apportioned price of the interest remaining and the price for which the remaining interest may be purchased.

5. Not later than twenty calendar days after the court gives notice pursuant to subsection 4, paragraph "c", a noticed cotenant may elect to purchase all of the remaining interest by paying the entire price for the remaining interest to the court. After the twenty-calendar-day period has expired, all of the following shall apply:

a. If only one cotenant has paid the entire price for the remaining interest in the partitioned heirs property, the court shall issue an order reallocating the remaining interest to that cotenant. The court shall promptly issue an order reallocating the interests of all the cotenants and disburse the amounts held by the court to the persons entitled to such disbursements.

b. If none of the cotenants has paid the entire price for the remaining interest in the heirs property, the court shall resolve the partition action under section 651.30 as if the interest of the cotenant that had requested partition by sale of the heirs property has not been purchased.

c. If more than one cotenant have paid the entire price for the remaining interest in the heirs property, the court shall reapportion the remaining interest among such cotenants based on each cotenant's original fractional ownership of the entire heirs property divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest. The court shall promptly issue an order reallocating all cotenants' interests, disburse the amounts held by the court to the persons entitled to such disbursements, and promptly refund any excess payments held by the court to the appropriate persons.

6. Not later than forty-five days after the court sends notice to the parties pursuant to subsection 1, a cotenant

entitled to buy an interest under this section may request that the court authorize the sale, as part of the pending action, of the interests of any cotenant named as a defendant and served with original notice who did not appear in the action. If the court receives a timely request, the court, after a hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to all of the following limitations:

a. A sale authorized under this subsection shall occur only after the purchase price for all interests subject to sale under this section has been paid to the court and such interests have been reallocated among the cotenants as provided in this section.

b. The purchase price for the interest of a nonappearing cotenant shall be based on the court's determination of the value of such interest under this section.

7. This section shall not be construed to prohibit a cotenant from entering into an agreement with another cotenant to change ownership of their respective interests in the heirs property.

Sec. 30. NEW SECTION. 651.30 Alternatives to partition in kind.

At the conclusion of a cotenant buyout as provided in section 651.29, the court shall order the heirs property to be partitioned in kind unless the court, after consideration of all factors pursuant to section 651.31, finds that partition in kind will result in great prejudice to the cotenants as a group. In considering whether to order the heirs property to be partitioned in kind, the court shall approve a request by two or more cotenants to aggregate their individual interests in the heirs property.

Sec. 31. NEW SECTION. 651.31 Factors the court shall consider in determining if partition in kind will result in great prejudice.

1. The court shall consider all of the following factors in determining if partition in kind of heirs property will result in great prejudice to the cotenants of such property as a group:

a. Whether the heirs property can be practicably divided

among the cotenants.

b. Whether a partition in kind will apportion the heirs property in such a way that the aggregate fair market value of the parcels resulting from the division will be materially less than the value of the heirs property if the heirs property is sold as a whole, taking into account the condition under which a court-ordered sale likely will occur.

c. Evidence of the collective duration of ownership or possession of the heirs 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 heirs property, including any attachment arising due to the heirs property having ancestral or other unique or special value to the cotenant.

e. The lawful use being made of the heirs property by a cotenant and the degree to which the cotenant will be harmed if the cotenant cannot continue the same use of the heirs property.

f. The degree to which a cotenant has contributed the cotenant's pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the heirs property, or has contributed to the physical improvement, maintenance, or upkeep of the heirs property.

g. Tax consequences.

h. Any other factors the court deems relevant.

2. The court shall weigh the totality of all relevant factors and circumstances and not consider any one factor in subsection 1 to be dispositive.

Sec. 32. NEW SECTION. 651.32 Applicability of subchapter II provisions.

1. If the court orders the heirs property partitioned in kind, the proceedings shall be governed by the procedures set forth in subchapter II that are applicable to a partition in kind.

2. If the court orders the heirs property partitioned by sale, the proceedings shall be governed by the procedures set

forth in subchapter II applicable to a partition by sale.

Sec. 33. REPEAL. Chapter 651, Code 2018, is repealed.

CHARLES SCHNEIDER
President of the Senate

LINDA UPMAYER
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2175, Eighty-seventh General Assembly.

W. CHARLES SMITHSON
Secretary of the Senate

Approved _____, 2018

KIM REYNOLDS
Governor