

**SENATE BILL No. 329**

By Committee on Judiciary

1-25

1 AN ACT concerning civil actions and civil procedure; relating to partition;  
2 enacting the uniform partition of heirs property act.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. Sections 1 through 13, and amendments thereto, may be  
6 cited as the uniform partition of heirs property act.

7 Sec. 2. As used in the uniform partition of heirs property act:

8 (a) "Ascendant" means an individual who precedes another individual  
9 in lineage, in the direct line of ascent from the other individual.

10 (b) "Collateral" means an individual who is related to another  
11 individual under the law of intestate succession of this state, but who is not  
12 the other individual's ascendant or descendant.

13 (c) "Descendant" means an individual who follows another individual  
14 in lineage, in the direct line of descent from the other individual.

15 (d) "Determination of value" means a court order determining the fair  
16 market value of heirs property under section 6 or 10, and amendments  
17 thereto, or adopting the valuation of the property agreed to by all co-  
18 tenants.

19 (e) "Heirs property" means real property held in tenancy in common  
20 that satisfies all of the following requirements as of the filing of a partition  
21 action:

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

24 (2) one or more of the co-tenants acquired title from a relative,  
25 whether living or deceased; and

26 (3) any of the following applies:

27 (A) 20% or more of the interests are held by co-tenants who are  
28 relatives;

29 (B) 20% or more of the interests are held by an individual who  
30 acquired title from a relative, whether living or deceased; or

31 (C) 20% or more of the co-tenants are relatives.

32 (f) "Partition by sale" means a court-ordered sale of the entire heirs  
33 property, whether by auction, sealed bids or open-market sale conducted  
34 under section 10, and amendments thereto.

35 (g) "Partition in kind" means the division of heirs property into  
36 physically distinct and separately titled parcels.

1 (h) "Record" means information that is inscribed on a tangible  
2 medium or that is stored in an electronic or other medium and is  
3 retrievable in perceivable form.

4 (i) "Relative" means an ascendant, descendant or collateral or an  
5 individual otherwise related to another individual by blood, marriage,  
6 adoption or law of this state other than the uniform partition of heirs  
7 property act.

8 Sec. 3. (a) The uniform partition of heirs property act applies to  
9 partition actions filed on or after July 1, 2018.

10 (b) In an action to partition real property under K.S.A. 60-1003, and  
11 amendments thereto, the court shall determine whether the property is  
12 heirs property. If the court determines that the property is heirs property,  
13 the property must be partitioned under the uniform partition of heirs  
14 property act, unless all of the co-tenants otherwise agree in a record.

15 (c) The uniform partition of heirs property act supplements K.S.A.  
16 60-1003, and amendments thereto, and, if an action is governed by the act,  
17 replaces provisions of K.S.A. 60-1003, and amendments thereto, that are  
18 inconsistent with the act.

19 Sec. 4. (a) The uniform partition of heirs property act does not limit  
20 or affect the method by which service of a complaint in a partition action  
21 may be made.

22 (b) If the plaintiff in a partition action seeks an order of notice by  
23 publication, and the court determines that the property may be heirs  
24 property, the plaintiff, not later than 10 days after the court's determination,  
25 shall post and maintain while the action is pending a conspicuous sign on  
26 the property that is the subject of the action. The sign must state that the  
27 action has commenced and identify the name and address of the court and  
28 the common designation by which the property is known. The court may  
29 require the plaintiff to publish on the sign the name of the plaintiff and the  
30 known defendants.

31 Sec. 5. If the court appoints commissioners pursuant to K.S.A. 60-  
32 1003, and amendments thereto, each commissioner, in addition to the  
33 requirements and disqualifications applicable to commissioners in K.S.A.  
34 60-1003, and amendments thereto, must be disinterested and impartial and  
35 not a party to or a participant in the action.

36 Sec. 6. (a) Except as otherwise provided in subsections (b) and (c), if  
37 the court determines that the property that is the subject of a partition  
38 action is heirs property, the court shall determine the fair market value of  
39 the property by ordering an appraisal pursuant to subsection (d).

40 (b) If all co-tenants have agreed to the value of the property or to  
41 another method of valuation, the court shall adopt that value or the value  
42 produced by the agreed method of valuation.

43 (c) If the court determines that the evidentiary value of an appraisal is

1 outweighed by the cost of the appraisal, the court, after an evidentiary  
2 hearing, shall determine the fair market value of the property and send  
3 notice to the parties of the value.

4 (d) If the court orders an appraisal, the court shall appoint a  
5 disinterested real estate appraiser licensed in this state to determine the fair  
6 market value of the property assuming sole ownership of the fee simple  
7 estate. On completion of the appraisal, the appraiser shall file a sworn or  
8 verified appraisal with the court.

9 (e) If an appraisal is conducted pursuant to subsection (d), not later  
10 than 10 days after the appraisal is filed, the court shall send notice to each  
11 party with a known address, stating:

12 (1) The appraised fair market value of the property;

13 (2) that the appraisal is available at the clerk's office; and

14 (3) that a party may file with the court an objection to the appraisal,  
15 not later than 30 days after the notice is sent, stating the grounds for the  
16 objection.

17 (f) If an appraisal is filed with the court pursuant to subsection (d),  
18 the court shall conduct a hearing to determine the fair market value of the  
19 property not sooner than 30 days after a copy of the notice of the appraisal  
20 is sent to each party under subsection (e), whether or not an objection to  
21 the appraisal is filed under subsection (e)(3). In addition to the court-  
22 ordered appraisal, the court may consider any other evidence of value  
23 offered by a party.

24 (g) After a hearing under subsection (f), but before considering the  
25 merits of the partition action, the court shall determine the fair market  
26 value of the property and send notice to the parties of the value.

27 Sec. 7. (a) If any co-tenant requested partition by sale, after the  
28 determination of value under section 6, and amendments thereto, the court  
29 shall send notice to the parties that any co-tenant, except a co-tenant that  
30 requested partition by sale, may buy all the interests of the co-tenants that  
31 requested partition by sale.

32 (b) Not later than 45 days after the notice is sent under subsection (a),  
33 any co-tenant, except a co-tenant that requested partition by sale, may give  
34 notice to the court that it elects to buy all the interests of the co-tenants that  
35 requested partition by sale.

36 (c) The purchase price for each of the interests of a co-tenant that  
37 requested partition by sale is the value of the entire parcel determined  
38 under section 6, and amendments thereto, multiplied by the co-tenant's  
39 fractional ownership of the entire parcel.

40 (d) After expiration of the period in subsection (b), the following  
41 rules apply:

42 (1) If only one co-tenant elects to buy all the interests of the co-  
43 tenants that requested partition by sale, the court shall notify all the parties

1 of that fact.

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

9 (3) If no co-tenant elects to buy all the interests of the co-tenants that  
10 requested partition by sale, the court shall send notice to all the parties of  
11 that fact and resolve the partition action under section 8(a) and (b), and  
12 amendments thereto.

13 (e) If the court sends notice to the parties under subsection (d)(1) or  
14 (2), the court shall set a date, not sooner than 60 days after the date the  
15 notice was sent, by which electing co-tenants must pay their apportioned  
16 price into the court. After this date, the following rules apply:

17 (1) If all electing co-tenants timely pay their apportioned price into  
18 court, the court shall issue an order reallocating all the interests of the co-  
19 tenants and disburse the amounts held by the court to the persons entitled  
20 to them.

21 (2) If no electing co-tenant timely pays its apportioned price, the  
22 court shall resolve the partition action under section 8(a) and (b), and  
23 amendments thereto, as if the interests of the co-tenants that requested  
24 partition by sale were not purchased.

25 (3) If one or more, but not all of the electing co-tenants, fail to pay  
26 their apportioned price on time, the court, on motion, shall give notice to  
27 the electing co-tenants that paid their apportioned price of the interest  
28 remaining and the price for all that interest.

29 (f) Not later than 20 days after the court gives notice pursuant to  
30 subsection (e)(3), any co-tenant that paid may elect to purchase all of the  
31 remaining interests by paying the entire price into the court. After the 20-  
32 day period, the following rules apply:

33 (1) If only one co-tenant pays the entire price for the remaining  
34 interests, the court shall issue an order reallocating the remaining interests  
35 to that co-tenant. The court shall issue promptly an order reallocating the  
36 interests of all of the co-tenants and disburse the amounts held by it to the  
37 persons entitled to them.

38 (2) If no co-tenant pays the entire price for the remaining interests,  
39 the court shall resolve the partition action under section 8(a) and (b), and  
40 amendments thereto, as if the interests of the co-tenants that requested  
41 partition by sale were not purchased.

42 (3) If more than one co-tenant pays the entire price for the remaining  
43 interests, the court shall reapportion the remaining interests among those

1 paying co-tenants, based on each paying co-tenant's original fractional  
2 ownership of the entire parcel divided by the total original fractional  
3 ownership of all co-tenants that paid the entire price for the remaining  
4 interests. The court shall issue promptly an order reallocating all of the co-  
5 tenants' interests, disburse the amounts held by it to the persons entitled to  
6 them and promptly refund any excess payment held by the court.

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

12 (h) If the court receives a timely request under subsection (g), the  
13 court, after hearing, may deny the request or authorize the requested  
14 additional sale on such terms as the court determines are fair and  
15 reasonable, subject to the following limitations:

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

20 (2) the purchase price for the interest of a nonappearing co-tenant is  
21 based on the court's determination of value under section 6, and  
22 amendments thereto.

23 Sec. 8. (a) If all the interests of all co-tenants that requested partition  
24 by sale are not purchased by other co-tenants pursuant to section 7, and  
25 amendments thereto, or if after conclusion of the buyout under section 7,  
26 and amendments thereto, a co-tenant remains that has requested partition  
27 in kind, the court shall order partition in kind, unless the court, after  
28 consideration of the factors listed in section 9, and amendments thereto,  
29 finds that partition in kind will result in manifest prejudice to the co-  
30 tenants as a group. In considering whether to order partition in kind, the  
31 court shall approve a request by two or more parties to have their  
32 individual interests aggregated.

33 (b) If the court does not order partition in kind under subsection (a),  
34 the court shall order partition by sale pursuant to section 10, and  
35 amendments thereto, or, if no co-tenant requested partition by sale, the  
36 court shall dismiss the action.

37 (c) If the court orders partition in kind pursuant to subsection (a), the  
38 court may require that one or more co-tenants pay one or more other co-  
39 tenants amounts so that the payments, taken together with the value of the  
40 in-kind distributions to the co-tenants, will make the partition in kind just  
41 and proportionate in value to the fractional interests held.

42 (d) If the court orders partition in kind, the court shall allocate to the  
43 co-tenants that are unknown, unlocatable, or the subject of a default

1 judgment, if their interests were not bought out pursuant to section 7, and  
2 amendments thereto, a part of the property representing the combined  
3 interests of these co-tenants as determined by the court and this part of the  
4 property shall remain undivided.

5 Sec. 9. (a) In determining under section 8(a), and amendments  
6 thereto, whether partition in kind would result in manifest prejudice to the  
7 co-tenants as a group, the court shall consider the following:

8 (1) Whether the heirs property practicably can be divided among the  
9 co-tenants;

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

15 (3) evidence of the collective duration of ownership or possession of  
16 the property by a co-tenant and one or more predecessors in title or  
17 predecessors in possession to the co-tenant who are or were relatives of the  
18 co-tenant or each other;

19 (4) a co-tenant's sentimental attachment to the property, including any  
20 attachment arising because the property has ancestral or other unique or  
21 special value to the co-tenant;

22 (5) the lawful use being made of the property by a co-tenant and the  
23 degree to which the co-tenant would be harmed if the co-tenant could not  
24 continue the same use of the property;

25 (6) the degree to which the co-tenants have contributed their pro rata  
26 share of the property taxes, insurance and other expenses associated with  
27 maintaining ownership of the property or have contributed to the physical  
28 improvement, maintenance or upkeep of the property; and

29 (7) any other relevant factor.

30 (b) The court may not consider any one factor in subsection (a) to be  
31 dispositive without weighing the totality of all relevant factors and  
32 circumstances.

33 Sec. 10. (a) If the court orders a sale of heirs property, the sale must  
34 be an open-market sale unless the court finds that a sale by sealed bids or  
35 an auction would be more economically advantageous and in the best  
36 interest of the co-tenants as a group.

37 (b) If the court orders an open-market sale and the parties, not later  
38 than 10 days after the entry of the order, agree on a real estate broker  
39 licensed in this state to offer the property for sale, the court shall appoint  
40 the broker and establish a reasonable commission. If the parties do not  
41 agree on a broker, the court shall appoint a disinterested real estate broker  
42 licensed in this state to offer the property for sale and shall establish a  
43 reasonable commission. The broker shall offer the property for sale in a

1 commercially reasonable manner at a price no lower than the  
2 determination of value and on the terms and conditions established by the  
3 court.

4 (c) If the broker appointed under subsection (b) obtains within a  
5 reasonable time an offer to purchase the property for at least the  
6 determination of value:

7 (1) The broker shall comply with the reporting requirements in  
8 section 11, and amendments thereto; and

9 (2) the sale may be completed in accordance with state law other than  
10 the uniform partition of heirs property act.

11 (d) If the broker appointed under subsection (b) does not obtain  
12 within a reasonable time an offer to purchase the property for at least the  
13 determination of value, the court, after hearing, may:

14 (1) Approve the highest outstanding offer, if any;

15 (2) redetermine the value of the property and order that the property  
16 continue to be offered for an additional time; or

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

18 (e) If the court orders a sale by sealed bids or an auction, the court  
19 shall set terms and conditions of the sale. If the court orders an auction, the  
20 auction must be conducted under K.S.A. 60-1003, and amendments  
21 thereto.

22 (f) If a purchaser is entitled to a share of the proceeds of the sale, the  
23 purchaser is entitled to a credit against the price in an amount equal to the  
24 purchaser's share of the proceeds.

25 Sec. 11. (a) Unless required to do so within a shorter time by K.S.A.  
26 60-1003, and amendments thereto, a broker appointed under section 10(b),  
27 and amendments thereto, to offer heirs property for open-market sale shall  
28 file a report with the court not later than seven days after receiving an offer  
29 to purchase the property for at least the value determined under section 6  
30 or 10, and amendments thereto.

31 (b) The report required by subsection (a) must contain the following  
32 information:

33 (1) A description of the property to be sold to each buyer;

34 (2) the name of each buyer;

35 (3) the proposed purchase price;

36 (4) the terms and conditions of the proposed sale, including the terms  
37 of any owner financing;

38 (5) the amounts to be paid to lienholders;

39 (6) a statement of contractual or other arrangements or conditions of  
40 the broker's commission; and

41 (7) other material facts relevant to the sale.

42 Sec. 12. In applying and construing this uniform act, consideration  
43 must be given to the need to promote uniformity of the law with respect to

1 its subject matter among states that enact it.

2       Sec. 13. The uniform partition of heirs property act modifies, limits  
3 and supersedes the electronic signatures in global and national commerce  
4 act, 15 U.S.C. § 7001 et seq., but does not modify, limit or supersede  
5 section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic  
6 delivery of any of the notices described in section 103(b) of that act, 15  
7 U.S.C. § 7003(b).

8       Sec. 14. This act shall take effect and be in force from and after its  
9 publication in the statute book.