



A Completely New Partition Law is Coming to Iowa July 1

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An entirely renovated Iowa partition law will go into effect on July 1, 2018. On April 11, 2018, Governor Reynolds signed [SF 2175](#) into law. This new law reorganizes and replaces the current Iowa Code chapter 651 and integrates many provisions from the Iowa Rules of Civil Procedure (Division XII), which currently govern partition actions in Iowa. Notably, SF 2175 creates a new partition procedure for “heirs property.” It also authorizes the equitable remedy of “owelty,” a payment of money allowed to equalize the value of property received in a partition in kind action. The new Iowa Code chapter 651 means that a tenant not wanting to sell the family farm will likely not be forced to do so. For many of these properties, a buyout or a partition in kind will now be the favored disposition if another cotenant seeks a partition by sale.

Background

Iowa’s partition law, as it applies to family farms, has been in the spotlight since the end of 2016, when the Iowa Supreme Court decided [Newhall v. Roll, 888 N.W.2d 636 \(Iowa 2016\)](#). This opinion illustrated that it’s very hard to get a partition in kind in Iowa. Unlike most other states, Iowa is “unequivocal in favoring partition by sale.” *Id.* at 640. The *Newhall* case involved two siblings who inherited family land as tenants in common. The land included two separate tracts in separate counties. One 315-acre tract included the “home place” and the other comprised 163 acres of farmland. The brother sought a partition by sale of both tracts, and the sister—arguing a sentimental attachment to the “home place”—requested a partition in kind. The Iowa Supreme Court agreed with the district court that the sister was unable to show that a physical division of the properties would be “equitable and practicable.” The tax bases of the properties were different, and the “home place” tract was worth more than the other tract. The Court found that Iowa law does not allow for “owelty,” a cash payment to make a partition in kind division fairer. As such, the Court ruled that the property could not be equitably divided. In January of this year, the Court again disallowed a partition in kind of a family farm in [Wihlm v. Campbell, No. 15-0011 \(Iowa 2018\)](#). In *Wihlm*, the court of appeals had allowed the partition in kind. The Supreme Court, however, reinstated the district court opinion which had held that the sister failed to prove that the partition in kind would be “equitable and practicable” because “the volatile nature of farmland as affected by the crop prices has made a partition in kind merely guesswork when factoring in the nature and qualities of the land.”

The stage was set for legislative action.



General Provisions (Subchapter II)

The new law begins with the same premise as today's law: Partition is to be an equitable proceeding, and partition by sale is to be the default unless a court determines (in response to a request by one of the parties) that partition in kind is "equitable and practicable." Iowa Code § 651.2 (similar to current Iowa R. Civ. P. 1.1201(1),(2)). Many other provisions track the language of the current rules as well. These include provisions governing partitions pending probate, parties to a partition, partition petitions and answers, and the prohibition of counterclaims and joinder of claims. The law, however, does contain significant departures from the current law, even with respect to its general provisions. The following new provisions apply to all partition actions:

- The new law specifies that "personal property that is subject to a lien" shall only be partitioned by sale.
- The new law requires the appointment of one referee for all partitions actions, unless all owners agree upon a larger number. The new law also requires an appraisal to be completed using three disinterested persons with knowledge of property valuation, unless the parties agree to a different method. Iowa Code § 651.16(4). Current law requires three referees for a partition in kind, and courts are not required to order an appraisal for those actions.
- The new law requires the referee to file a report with the court in all partition actions. It also formalizes the approval process for a partition by sale.
- The new law for the first time allows for "owelty" payments in partition in kind proceedings. Referees may recommend owelty payments as part of their recommendations. Iowa Code § 651.16(4). "Owelty" is defined as an "equitable remedy" "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." Iowa Code § 651.1(6). If owelty payments are approved by the court (after a hearing), the partition in kind cannot be completed until the owelty payments are made.
- As with current law, all costs for the partition action shall be advanced by the plaintiff with these costs ultimately paid by all parties, in proportion to their respective interests. Costs created by contests shall be taxed against the losing contestant, unless otherwise ordered by the court. Likewise, in a partition of real property, the court is to fix a reasonable attorney fee for the plaintiff's attorney, to be taxed as costs. Unlike current law, the new law provides that if the plaintiff loses a contest arising from any partition action, the attorney fees relating to that contest shall not be taxed as costs.

Iowa Code § 651 Subchapter III

Although SF 2175 is an overhaul of Iowa partition law, by far the biggest change to the law is its creation of **Subchapter III**. Subchapter III will apply whenever a cotenant requests a partition in kind in an action to partition "heirs property." This section is based upon the Uniform Partition of Heirs Property Act.

"Heirs property" is defined as:

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:

1. There is not a recorded agreement that binds all of the cotenants that governs the partition of the property.
2. One or more of the cotenants acquired title from a living or deceased relative.
3. Any of the following apply:
 - Twenty percent or more of the interests are held by cotenants who are relatives.
 - Twenty percent or more of the interests are held by an individual who acquired title from a living or deceased relative.
 - Twenty percent or more of the cotenants are relatives.

Iowa Code § 651.1(5). The law defines “relative” broadly, include any “ascendant,” “descendant” or “collateral,” or an individual “otherwise related to another individual by blood, marriage, adoption, or other law of this state.” Iowa Code § 651.1(10). “Collateral” means someone who is related under the law of intestate succession, but is not a parent or child. Iowa Code § 651.1(2). This would include distant cousins related to the owners through common great-grandparents.

In other words, as long as there is not a *recorded* agreement governing a partition of the property, real property held in tenancy in common will be classified as “**heirs property**” if at least one of the owners received the property from a relative and (1) at least 20 percent of the interests are held by relatives, (2) at least twenty percent of the interests are held by an individual who acquired title from a relative, or (3) at least 20 percent or more of the cotenants are relatives. It appears that a large number of Iowa tenancies in common owning farmland will be classified as heirs property.

Initiating the Subchapter III Procedures and Determining the FMV

Once a party requests a partition in kind, either as an original request or in response to an action for a partition by sale, the court must determine whether the property is heirs property. If it so finds, the court will enter an initial decree directing that the action proceed under Subchapter III. The court will then appoint a referee to obtain an appraisal using three disinterested persons, as directed by Iowa Code § 651.12. The referee will file the appraisal with the court. Within 10 days of the filing of the appraisal report, the court will send notice to the parties and the referee stating:

- The appraised fair market value (FMV) of the heirs property
- The address of the clerk’s office where the appraisal is available for review, and
- That each party has 30 days from the date of the notice to object to the appraisal.

Once the 30-day objection period has passed, the court will conduct a hearing to determine the FMV of the property (even if no objection has been filed). Additional evidence may be considered at the hearing. Once the court has made the FMV determination, it will send notice of that value to all parties and the referee.

Buyout Options

If a partition in kind is requested and not all cotenants are on board, the new law first aims to facilitate a buyout of the cotenant(s) wanting the sale.

If a cotenant requests partition by sale after receiving notice of the FMV determination of the heirs property, the court will send another notice to all of the parties. This notice will advise the parties that any cotenant who has not requested a partition by sale may elect to buy all of the interests of any cotenants who have requested partition by sale. Any cotenant electing to buy must give notice of that intent to the court within 45 days of receiving the FMV notice. **The sale price for the interest of any cotenant that has requested a partition by sale is the FMV of the property determined by the court multiplied by the cotenant’s fractional share of the entire heirs property.**

Once 45 days has passed, several possibilities exist:

- If only one cotenant has elected to buy all of the interests of a cotenant that has requested partition by sale, the court will provide notice of that election to all parties.
- If more than one cotenant elects to buy all of the interests of a cotenant that has requested partition by sale, the court shall allocate the right to buy such interests among the electing cotenants based upon their fractional ownership in the entire heirs property divided by the total existing fractional ownership of all cotenants electing to buy such interests. The court will then send notice to all parties informing them 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.
- **If no cotenant elects to buy the interests of a cotenant that has requested a partition by sale, the court will send a notice to all of the parties and resolve the case pursuant to Iowa Code § 651.30, detailed below.**

If cotenants have elected to buy all of the interests of those cotenants requesting a partition by sale (meeting the conditions of one of the the first two bullet points above), the court will set a date at least 60 days after the notice of election directing the buying cotenants to pay the purchase price to the court. The court will send notice of this date to all parties. Once this payment deadline has passed, the

court will determine whether the price was paid. If it was, the court will issue its order reallocating the interests of the property and disbursing the payments to the cotenants requesting the partition by sale.

If none of the cotenants who have requested the buyout have paid their money to the court, the court will resolve the case pursuant to Iowa Code § 651.30, detailed below.

If one or more, but not all, of the electing cotenants has timely paid their price, the court *on motion* shall send to those cotenants who paid their price a notice of the interest remaining and the price for which that remaining interest may be purchased. Within 20 days of receiving that notice, the noticed cotenant may elect to purchase all of the remaining interest by paying the entire price for the remaining interest to the court. If one cotenant pays this additional price, the court will enter an order reallocating the remaining interest to that cotenant. **If none of the cotenants pay the additional price, the court will resolve the partition action under Iowa Code § 651.30, detailed below, as if the interest of the cotenant that had requested partition by sale has not been purchased.**

If more than one cotenant pays the full price for the remaining interest, the court will reapportion the remaining interest among the buying cotenants based upon each cotenant's original fractional ownership in the entire parcel divided by the total fractional ownership of all cotenants who paid the additional price. The court will then enter an order reallocating the cotenants interests, disbursing the payments to those cotenants who requested the partition by sale, and refunding excess payments held by the court to the cotenants opting to pay the additional price.

The law provides a procedure by which the court may authorize the sale of property held by cotenants who did not appear in the action. It also clarifies that it does not prevent cotenants from entering into agreements with other cotenants to change ownership of their respective interests in the heirs property.

No Buyout: Iowa Code § 651.30's "Great Prejudice" Analysis

If the property of the cotenant who wishes to have a partition by sale is not purchased through the buyout procedures detailed above, the court will order the heirs property to nonetheless be partitioned in kind **unless it determines that partition in kind will result in great prejudice to the cotenants as a group**. The factors to be considered by a court in making this determination include the following:

- Whether the heirs property can be practicably divided among the cotenants.
- 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.
- 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.
- 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.
- 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.
- 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.
- Tax consequences.
- Any other factors the court deems relevant

The law states that the court shall weigh the totality of all relevant factors and circumstances and not consider any one factor to be dispositive.

If, upon analysis, the court determines that no great prejudice will result to the cotenants as a group as a result of a partition in kind, the court will follow the procedures for completing a partition in kind set forth in Iowa Code § 651.16 (subsection II). These procedures include the possibility of owelty being paid to a cotenant receiving a less valuable parcel.

If the court finds that great prejudice would result to the group as a result of a partition in kind, it will then order a partition by sale. The procedures for the partition by sale will be governed by Iowa Code § 651.18 (subsection II).

Conclusion

This extensive rewrite of Iowa partition law will certainly change the way family property is divided in Iowa. It should also result in more settlements and fewer court proceedings regarding heirs property once parties understand that a partition by sale is unlikely. There will no doubt be some bumps as the law is implemented, but this change appears welcome for those wanting to keep the farm in the family.

In such cases, however, careful transition planning (rather than relying on a statutory remedy) remains the best option for establishing long-term property ownership and avoiding future litigation.

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