



## *The Judiciary, State of Hawaii*

### **Testimony to the House Committee on Judiciary**

Representative Karl Rhoads, Chair

Representative Sharon E. Har, Vice Chair

Friday, January 24, 2014, 2:00 p.m.

State Capitol, Conference Room 325

### **WRITTEN TESTIMONY ONLY**

by

Lori Okita

Chief Court Administrator, First Circuit

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**Bill No. and Title:** Senate Bill No. 499, S.D. 1, H.D. 1, Relating to Partition of Heirs Property.

**Purpose:** Adopts Uniform Partition of Heirs Property Act. Establishes procedures and remedies for use in actions for partition of real property involving heirs property (real property held in tenancy in common that meets certain requirements).

### **Judiciary's Position:**

This measure adds a new chapter to Hawaii Revised Statutes entitled the Uniform Partition of Heirs Property Act that sets forth a protocol for circuit court civil cases where partition of real property is sought.

The Judiciary takes no position on the merits of this measure. However, the Judiciary respectfully submits that it prefers the S.B. 499, S.D. 1 version of this bill, as that draft appeared to have addressed the Judiciary's concerns that the bill, as introduced, placed full responsibility on the court to provide notice of various events in the course of a proceeding involving heirs property. Generally it is the parties in a civil case who are responsible for giving notice, and the court determines whether the notice requirements have been satisfied.

The current H.D. 1 draft appears to place the responsibility for providing most of the notices on the court. The Judiciary respectfully requests that for any such provision that requires the court to send notice, the moving party be responsible for providing the court with stamped,

pre-addressed envelopes for the court to use to send such notice. Such a procedure is provided in subsection -7(e)(3) of the H.D. 1 version, which in part states:

...

Unless otherwise ordered by the court, for any notice that the court is required to give ***pursuant to this paragraph***, the movant for notice to be given to electing cotenants pursuant to this paragraph shall deliver to the chambers of the presiding judge a notice in blank to be completed by the court with sufficient copies for service on the electing cotenants along with envelopes stamped with sufficient postage and addressed to each electing cotenant. The court may direct the movant to provide notice of the value by any other means.

(emphasis added).

The Judiciary recommends that the above procedure as outlined in subsection -7(e)(3) of the current H.D. 1 draft be adopted and included in other sections of this chapter as applicable. The Judiciary further recommends that if this bill is further amended, it should be reviewed for consistency when referring to any such instances that require the court to provide the notice.

Alternatively, the Committee may wish to consider an amendment to the bill to create a “stand-alone” section of the chapter that incorporates the above procedure, but that would apply to any instances within the chapter for which the court is required to give notice.

Attachment 1, the Judiciary’s testimony on SB499 submitted in 2013, provides further detail related to the Judiciary’s position regarding notice requirements outlined in the bill, as introduced.

Thank you for the opportunity to testify on S.B. 499, S.D. 1, H.D. 1.



ATTACHMENT 1  
Judiciary Testimony  
on SB499, SD1, HD1  
JUD Hearing 1/24/14

*The Judiciary, State of Hawaii*

**Testimony to the Senate Committee on Judiciary and Labor**

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

Friday, February 15, 2013, 10:00 a.m.

State Capitol, Conference Room 016

**WRITTEN TESTIMONY ONLY**

by

Lori Okita

Chief Court Administrator, First Circuit

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**Bill No. and Title:** Senate Bill No. 499, Relating to Partition of Heirs Property.

**Purpose:** Adopts Uniform Partition of Heirs Property Act. Establishes procedures and remedies for use in actions for partition of real property involving heirs property (real property held in tenancy in common that meets certain requirements).

**Judiciary's Position:**

This measure adds a new chapter to Hawaii Revised Statutes entitled the Uniform Partition of Heirs Property Act that sets forth a protocol for circuit court civil cases where partition of real property is sought.

The Judiciary takes no position on the merits of this measure, but has concerns with the costs of uniquely placing the responsibility on the courts to give notice. Generally, the parties in a civil case are responsible for giving notice and the court will determine whether the notice requirement has been satisfied. Notice requires postage, staffing and other resources.

Within the new chapter, under § -6 Determination of value, unless all cotenants agree to the value of the property or agree to a method of valuation other than appraisal, the court must order an appraisal to determine the fair market value of heirs property, unless the court determines that the cost of an appraisal outweighs its evidentiary value.



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If the court orders an appraisal to be conducted, the appraiser must file the appraisal with the court. Thereafter, a *notice must be sent to each party with a known address*, stating 1) the appraised fair market value of the property; 2) that the appraisal is available at the clerk of the court's office; and 3) that a party may object to the appraisal. Not earlier than thirty days after a copy of the notice of appraisal is sent to each party, the court conducts a hearing to determine the fair market value of the property, whether or not an objection to the appraisal is filed. After the hearing, the court determines the fair market value of the property, and *notice of the value must be sent to the parties*.

If the court determines that the cost of an appraisal outweighs its evidentiary value, the court determines fair market value after an evidentiary hearing without an appraisal. After the hearing, the court determines the fair market value of the property, and *notice of the value must be sent to the parties*.

Within the new chapter, under § -7, Cotenant buyout, if, after the court determines fair market value, any cotenant requests partition by sale, *notice must be sent to the parties* that any cotenant (other than a cotenant or cotenants who requested partition by sale) may buy the interest of the cotenant(s) who requested partition by sale.

If no cotenant elects to buy all the interests of the cotenants who requested partition by sale, *all the parties must be notified* of the fact that no cotenant elects to buy all the interests of the cotenants who requested partition by sale.

If only one cotenant elects to buy all the interests of the cotenants who requested partition by sale, *all the parties must be notified* of the fact that only one cotenant elected to buy the interests of the cotenants who requested partition by sale. If more than one cotenant elects to buy all the interests of the cotenants who requested partition by sale, *all of the parties must be notified* of the fact that the court allocates the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy, and must be notified of the price to be paid by each electing cotenant. If one or more cotenants elects to buy all the interests of the cotenants who requested partition by sale, the court sets a date by which electing cotenants must pay their apportioned price into the court. After this date, if one or more but not all the electing cotenants fail to timely pay their apportioned price, on motion to the court, *notice of the interest remaining and the price of all of that interest must be given to the electing cotenants who paid their apportioned price*.



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This measure places full responsibility on the court to provide notice of appraisal (S.B. 499, page 6, line 1, “court shall send notice to each party with a known address”); notice of fair market value (S.B. 499, page 5, lines 10-13, and page 6, lines 18-20 (“court shall . . . send notice to the parties”)); notice that any cotenant except a cotenant that requested partition by sale may buy the interest of any cotenant that requested partition by sale (S.B. 499, page 7, lines 1-4 (“court shall send notice to the parties”)); notice as to the number of cotenants electing to buy interests of cotenants who requested partition by sale (S.B. 499, page 7, lines 16-18 (“court shall notify all the parties,” page 7, line 21 to page 8, line 4 and page 8 lines 6-8 “court shall send notice to all the parties”)); notice of the price to be paid by all cotenants electing to buy (S.B. 499, page 7, line 21 to page 8, line 5 (“court shall send notice to all the parties”)); and notice to electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest, if one or more but not all electing cotenants fail to timely pay the apportioned price (S.B. 499, page 9, lines 4-8 (court, on motion, shall give notice to the electing cotenants.”)).

As noted above, generally in Circuit Court civil cases, responsibility for giving notice rests with the parties. Even where notices are issued by court staff, as, for example, a Notice of Entry of Judgment to be issued by the Court Clerk, it is the responsibility of the party to present the Notice to the court, with stamped addressed envelopes for mailing.

Thank you for the opportunity to testify on S.B. 499.