

**NEW IOWA PARTITION LAW
IOWA CODE CHAPTER 651
(EFFECTIVE ON JULY 1, 2018)**

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**I. LEGAL AND HISTORICAL BACKGROUND
OF PARTITION LAW¹**

- A. Partition law has developed over several centuries to address the issue of joint and co-ownership of properties.
- B. Starting in the 16th century, English courts began permitting tenants in common to physically divide property among owners through partition in kind.
- C. Colonies afforded these same rights to co-owners.
- D. In the mid-nineteenth century, several states began to authorize courts to order partition by sale, allowing just one co-tenant to force the sale of an entire property.
- E. Early courts stated that this was “an extraordinary and dangerous power” that should only be exercised in limited circumstances.
- F. Some jurisdictions continue to hold that a partition by sale is disfavored and should only be used as a remedy of last resort.

¹ See Thomas W. Mitchell, *Restoring Hope for Heirs Property Owners: The Uniform Partition of Heirs Property Act*, American Bar Association, State & Local Law News, Vol. 40, No. 1 (Fall 2016))

- G. In the past few decades, the preference for partition in kind has been challenged and reversed by several jurisdictions, including Iowa.

II. *NEWHALL v. ROLL*

- A. In *Newhall v. Roll*, 888 N.W.2d 636 (Iowa 2016), the Iowa Supreme Court addressed the partition of an Iowa family farm. One of the family heirs desired a partition in kind, and another family heir desired a partition by sale. The Court ordered partition by sale. The Court declared that partition by sale is favored by Iowa law, and that partition in kind is not appropriate where separate parcels depreciate the aggregate value.
- B. The *Newhall* decision adopted an economic-based analysis of partitions, showing that the whole of a property is often worth more than individual pieces. The economic-based standard used in *Newhall* assigns little or no value or significance to intangible characteristics, such as family history or emotional attachment to a farm that has been owned and operated by a particular family for generations.
- C. Throughout Iowa's history, family farms have been the social and economic backbone of Iowa's rural communities. Family farms may have unusual sentimental, cultural or historic value to members of the family. A partition by sale may have the effect of forcing family members off land that has special value to them.
- D. Today, persons over 65 years of age own more than half of Iowa farmland, which will result in many ownership changes in the near future. In the coming

years, large amounts of land will pass to multiple siblings, increasing the frequency of partition actions.

III. 2018 ENACTMENT OF SF2175

- A. Effective on July 1, 2018, the Iowa Legislature enacted SF2175, a comprehensive revision of Iowa partition law that included a preference for partition in kind with regard to specific types of “heirs property.”
- B. By its enactment of SF 2175, the Legislature recognized that family farms often present special circumstances where non-economic factors favoring partition in kind should be given fair consideration by the court.
- C. The new law requires that the trial court must apply a multi-factored test that requires overall evaluation of non-economic factors, and not just economic factors, in making the determination to order a partition in kind or a partition by sale.
- D. Prior to the bill enactment, Iowa Code chapter 651 was the only Iowa partition statute. However, chapter 651 previously contained very few provisions, and most of the substantive procedures for partitions were contained within Division XII of the Iowa Rules of Civil Procedure, containing Rules 1.1201 through 1.1228 inclusive.
- E. The new bill places all the partition procedures in chapter 651. The sections in chapter 651 are entirely reorganized and renumbered.
- F. Effective on July 1, 2018, Division XII of the Rules was repealed in its entirety.

IV. ORGANIZATION OF AMENDED CHAPTER 651

- A. The new bill divides chapter 651 procedures into three divisions.

1. Division I (section 651.1) provides definitions.
2. Division II (sections 651.2 through 651.26) provides general provisions applicable to all partitions.
3. Division III (sections 651.27 through 651.32) provides special provisions that apply only in situations where real estate defined as “heirs property,” is partitioned.

V. PETITION (SECTION 651.4)

- A. New section 651.4 provides: “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.”
- B. New section 651.7 provides: “A party may perfect or quiet title to property in a partition action 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.” It would be prudent to include in the petition a prayer for a quiet title decree or for adjudication of any rights in the property.
- C. New section 651.7 prohibits joinder of other claims and counterclaims in partition actions.
- D. Particularly if parties disagree over whether property should be partitioned by sale or in kind, the attorney for the plaintiff who files the petition may be of strategic importance. The plaintiff’s attorney will be in control of the partition proceedings and may be in a position to have more impact on the proceedings than attorneys for other parties.

VI. ANSWER (SECTION 651.6)

- A. New section 651.6 provides: “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.”
- B. It may be prudent to include in the answer a prayer for a quiet title decree or for adjudication of any rights in the property.

VII. REQUEST FOR PARTITION IN KIND (SECTION 651.2)

- A. New section 651.2 provides that property “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.”
- B. A request for partition in kind may be made in the petition, an answer, or in a later filed instrument. A party filing a request for partition in kind should file the request before or during the hearing before the court on the matter of the initial decree required by new section 651.12. This is because there will be different matters to address in the initial decree, if there is the possibility of partition in kind.

VIII. INITIAL DECREE (SECTION 651.12)

- C. New section 651.12 provides that the court shall file an initial decree addressing the following matters:
 - 1. The shares and interests of the owners in the property must be established.

2. One referee is required to be appointed, unless all the owners of the property agree upon a larger number.
 - a. This amendment changes prior law.
 - b. Prior Rule 1.1210 provided that, for a partition in kind, the court must appoint three referees, unless the parties agree upon a smaller number; and that, for a partition by sale, the court must appoint one or more referees.
 - c. The appointment of more than one referee often is needlessly redundant and expensive. The new statute is more flexible and leaves the decision to the parties in each particular case.

3. An appraisal is required to be ordered.
 - a. The amendment changes prior law.
 - b. In the case of a partition in kind, prior Rule 1.1210 did not require the court to order an appraisal.
 - b. In case of a partition by sale, prior Rule 1.1210 provided that the appraisal must be conducted by three “disinterested freeholders.”
 - c. The bill requires the court to order an appraisal in all partitions, whether in kind or by sale.
 - d. The court is given the discretion to direct the manner of appraisal, so that the appraisal could be conducted by three appointed “disinterested persons with knowledge of property valuation,” or by “a different method for conducting the appraisal or estimating

the valuation of the property,” pursuant to agreement of all the owners of the property.

4. The decree is required to direct the referee to file a report setting forth the referee’s recommendations for completing the partition. Prior Rule 1.1210 did not set forth this specific requirement.
5. “All other contested issues relating to the partition petition, including liens, may be determined by the initial decree or by a supplemental decree or decrees.”

IX. PARTITION IN KIND PROCEDURES (SECTION 651.16)

- A. New section 651.16 sets forth the procedures specifically applicable to partitions in kind.
- B. The provisions of the prior Rules governing partitions in kind were presented in an uncoordinated manner. Placing the related procedures in one section promotes efficiency and reduces confusion.
- C. Subsection 4 of section 651.16 requires the referee to file a report with the court detailing the referee’s proposed division of the property. If real property is part of the partition, a plat must be filed with the report.
- D. Subsection 4 specifically authorizes the referee to “recommend owelty payments as part of the referee’s recommendation for the partition in kind.”
 1. The term “owelty” is defined in new subsection 6 of section 651.1 to mean “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.”

2. In *Newhall v. Roll*, the Supreme Court declined to rule on the issue of whether owelty is available as a remedy under current law and left the issue for future resolution.
 3. To avoid the uncertainty after *Newhall*, the new statute specifically authorizes owelty as an acceptable remedy that may be imposed by a court under appropriate circumstances.
- E. Subsection 5 of section 651.16 provides for a court hearing on the report of the referee, after which the court shall enter an order approving, modifying or disapproving the report. If the court orders a partition in kind, it must order that the partition shall not be completed until all owelty payments have been made. On approving a partition in kind after all owelty payments have been made, the court is required to file a decree describing the partitioned property in its entirety, describing each parcel allocated to each property owner, and entering judgment against each property owner for the owner’s apportioned costs. Such costs are a lien on the owner’s allocated parcel.
- F. Subsection 6 of section 651.16 requires the clerk of court to file a certified copy of the decree with the county recorder and provide a copy to the county auditor. The auditor is required to record a transfer in the deed records and index each parcel as a conveyance with the name of the owner as the grantee and the names of all other parties to the partition as grantors.

- G. New section 651.17 provides: “A referee shall file a report with the court if the referee is not able to make a partition in kind.” Upon receipt of the report, the court must order sale of any personal property without further notice, and set a hearing for the purpose of ordering a sale or other disposition of any real estate.

**X. PARTITION BY SALE PROCEDURES
(SECTIONS 651.18 AND .23)**

- A. New section 651.18 sets forth the procedures specifically applicable to partitions by sale.
- B. The provisions of the prior Rules governing partitions by sale are presented in an uncoordinated manner. Placing the related procedures in one section promotes efficiency and reduces confusion.
- C. Subsection 3 of section 651.18 requires the referee to file a report with the court containing a copy of the appraisal and recommending public or private sale procedures, including but not limited to a public auction or a private listing.
- D. Subsection 4 requires the court to set a hearing on the referee’s report.
- E. Subsection 5 requires the court to approve, modify or disapprove the referee’s report. If the court approves partition by sale, the court is required to order appropriate sale procedures.
- F. Subsection 6 provides requirements for publication and advertisement of proposed sale by the referee.
- G. Subsection 7 requires the referee to report a proposed sale to the court, and the court is required to set a time of hearing after notice to all interested parties.
- H. Subsection 8 requires the court, after the hearing, to approve or disapprove the sale.

- I. New section 651.23 provides: “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.”

XI. LIENS (SECTIONS 651.12, .14 AND .20)

- A. New section 651.20 provides: “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 property.”
- B. New section 651.14 provides that the court shall adjudicate matters relating to liens, stating: “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.”
- C. New section 651.12 provides that contested issues relating to liens “may be determined by the initial decree or by a supplemental decree or decrees.”

XII. COSTS (SECTIONS 651.16, .22, .23 AND .24)

- A. New section 651.22 provides: “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.”
- B. New section 651.23 provides that the plaintiff’s attorney fees are included within the taxed costs, and further provides: “If the plaintiff is the losing contestant in a contest arising from any partition, any of the plaintiff’s attorney fees relating to such contest shall not be taxed as costs.”

- C. New section 651.24 provides: “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.”
- D. New section 651.16 provides that the costs of making and recording a certified copy of the decree for a partition in kind are to be taxed as costs.

XIII. REFEREE’S FINAL REPORT (SECTION 651.25)

- A. New section 651.25 provides: “Unless waived in writing by all interested parties, the court shall fix a time and place for a hearing on the referee’s final report. The referee shall give notice of the hearing to all interested parties.”

XIV. HEIRS PROPERTY (SECTIONS 651.27 THROUGH 651.31)

- A. New Division III, sections 651.27 through 651.31, provide for special procedures relating to partition of “heirs property,” as defined in section 651.1, subsection 6.
- B. The provisions of Division III are required to control in the event of any conflict with any provisions of Division II, sections 651.1 through 651.26.
- C. Subsection 6 of section 651.1 defines “heirs property” to mean “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 applies:

- (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.”
- D. Pursuant to section 651.27, the special heirs property procedures are applicable only “if a cotenant requests a partition in kind in an action to partition heirs property.” If all cotenants agree to partition by sale, none of the provisions of Division III are applicable to the partition.
- E. Section 651.28 requires the court to file an initial decree appointing a referee and ordering an appraisal. Upon receipt of the appraisal, the court is required to hold a hearing and make a determination of the fair market value of the property.
- F. Section 651.29 provides that, in cases where a cotenant requests partition sale, the cotenants that did not seek a sale have the right to buy out the petitioning cotenant at a price that represents the value of the petitioning cotenant’s fractional ownership interest.
- G. After the conclusion of the buyout under section 651.29, section 651.30 requires the court to make a determination whether to order partition in kind or partition by sale.
- H. The court is required to order a partition in kind, unless the court determines that partition in kind would result in “great prejudice to the cotenants as a group.”

- I. In making this determination, the court is required to first give consideration to all of the numerous factors listed in subsection 1 of section 651.31, the exact text of which is as follows:
 - 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.

J. Subsection 2 of section 651.31 provides: “The court shall weigh the totality of all relevant factors and circumstances and not consider any one factor in subsection 1 to be dispositive.”