

CHAPTER 64

PARTITION OF PROPERTY

- 64.011 Partition of property; jurisdiction.
 64.022 Partition of property; venue.
 64.031 Partition of property; parties.
 64.041 Partition of property; complaint.
 64.051 Partition of property; judgment.
 64.061 Partition of property; commissioners; master.
 64.071 Partition of property; sale where nondivisible.
 64.081 Partition of property; costs; taxes; attorneys' fees.
 64.091 Partition of property; personalty.

64.011 Partition of property; jurisdiction.—All actions for partition are in chancery.

History.—s. 1, Mar. 14, 1844; RS 1490; GS 1939; RGS 3202; CGL 4994; s. 2, ch. 29737, 1955; s. 19, ch. 67-254.

Note.—Former s. 66.01.

64.022 Partition of property; venue.—Partition shall be brought in any county where the lands or any part thereof lie which are the subject matter of the action.

History.—s. 1, Mar. 14, 1844; RS 1491; GS 1940; RGS 3203; CGL 4995; s. 19, ch. 67-254.

Note.—Former s. 66.02.

64.031 Partition of property; parties.—The action may be filed by any one or more of several joint tenants, tenants in common, or coparceners, against their cotenants, coparceners, or others interested in the lands to be divided.

History.—s. 2, Mar. 14, 1844; RS 1492; GS 1941; RGS 3204; CGL 4996; s. 19, ch. 67-254.

Note.—Former s. 66.03.

64.041 Partition of property; complaint.—The complaint shall allege a description of the lands of which partition is demanded, the names and places of residence of the owners, joint tenants, tenants in common, coparceners, or other persons interested in the lands according to the best knowledge and belief of plaintiff, the quantity held by each, and such other matters, if any, as are necessary to enable the court to adjudicate the rights and interests of the party. If the names, residence or quantity of interest of any owner or claimant is unknown to plaintiff, this shall be stated. If the name is unknown, the action may proceed as though such unknown persons were named in the complaint.

History.—s. 2, Mar. 14, 1844; RS 1493; GS 1942; RGS 3205; CGL 4997; s. 11, ch. 29737, 1955; s. 19, ch. 67-254.

Note.—Former s. 66.04.

64.051 Partition of property; judgment.—The court shall adjudge the rights and interests of the parties, and that partition be made if it appears that the parties are entitled to it. When the rights and interests of plaintiffs are established or are undisputed, the court may order partition to be made, and the interest of plaintiffs and such of the defendants as have established their interest to be allotted to them, leaving for future adjustment in the same action the interest of any other defendants.

History.—s. 4, Mar. 14, 1844; RS 1494; GS 1943; RGS 3206; CGL 4998; s. 19, ch. 67-254.

Note.—Former s. 66.05.

64.061 Partition of property; commissioners; master.—

(1) **APPOINTMENT AND REMOVAL.**—When a judgment of partition is made, the court shall appoint three suitable persons as commissioners to make the partition. They shall be selected by the court unless agreed on by the parties. They may be removed by the court for good cause and others appointed in their places.

(2) **POWERS, DUTIES, COMPENSATION AND REPORT OF COMMISSIONERS.**—The commissioners shall be sworn to execute the trust imposed in them faithfully and impartially before entering on their duties; have power to employ a surveyor, if necessary, for the purpose of making partition; be allowed such sum as is reasonable for their services; to make partition of the lands in question according to the court's order and report it in writing to the court without delay.

(3) **EXCEPTIONS TO REPORT AND FINAL JUDGMENT.**—Any party may file objections to the report of the commissioners within 10 days after it is served. If no objections are filed or if the court is satisfied on hearing any such objections that they are not well-founded, the report shall be confirmed, and a final judgment entered vesting in the parties the title to the parcels of the lands allotted to them respectively, and giving each of them the possession of and quieting title to their respective shares as against the other parties to the action or those claiming through or under them.

(4) **APPOINTMENT OF MASTER WHERE PROPERTY NOT SUBJECT TO PARTITION.**—On an uncontested allegation in a pleading that the property sought to be partitioned is indivisible and is not subject to partition without prejudice to the owners of it or if a judgment of partition is entered and the court is satisfied that the allegation is correct, on motion of any party and notice to the others the court may appoint a special master or the clerk to make sale of the property either at private sale or as provided by s. 64.071.

History.—ss. 5, 6, 7, 8, Mar. 14, 1844; RS 1495; GS 1944; RGS 3207; CGL 4999; s. 1, ch. 28200, 1953; s. 1, chs. 29685, 29928, 1955; s. 19, ch. 67-254.

Note.—Former s. 66.06.

64.071 Partition of property; sale where nondivisible.—

(1) **ORDER OF SALE.**—If the commissioners report that the lands of which partition is directed are so situated that partition cannot be made without prejudice to the owners and if the court is satisfied that such report is correct, the court may order the land to be sold at public auction to the highest bidder by the commissioners or the clerk and the money arising from such sale paid into the court to be divided among the parties in proportion to their interest.

(2) **CONDITIONS OF SALE.**—For good cause the court may order the sale made on reasonable credit for part or all of the purchase money, but at least one-third of the purchase money shall be paid down unless all parties consent to credit otherwise. The purchase money not paid down shall be secured by a mortgage on the land and such other security as the court directs.

(3) **CONFIRMATION OF SALE AND CONVEYANCE.**—The sale shall be reported to the court, unless sold by

the clerk under s. 45.031, and the money arising therefrom paid into court and the sale approved by the court and a conveyance ordered before any conveyance pursuant to the sale is made.

History.—ss. 8, 9, 10, Mar. 14, 1844; RS 1496; GS 1945; RGS 3208; CGL 5000; s. 19, ch. 67-254.

Note.—Former s. 66.07.

64.081 Partition of property; costs; taxes; attorneys' fees.—Every party shall be bound by the judgment to pay a share of the costs, including attorneys' fees to plaintiff's or defendant's attorneys or to each of them commensurate with their services rendered and of benefit to the partition, to be determined on equitable principles in proportion to the party's interest. Such judgment is binding on all his or her goods and chattels,

lands, or tenements. In case of sale the court may order the costs and fees to be paid or retained out of the moneys arising from the sale and due to the parties who ought to pay the same. All taxes, state, county, and municipal, due thereon at the time of the sale, shall be paid out of the purchase money.

History.—s. 11, Mar. 14, 1844; RS 1497; s. 1, ch. 4545, 1897; GS 1946; RGS 3209; CGL 5001; s. 1, ch. 57-130; s. 19, ch. 67-254; s. 344, ch. 95-147.

Note.—Former s. 66.08.

64.091 Partition of property; personalty.—The laws applicable to partition and sale for partition of real estate are applicable to the partition and sale for partition of personal property and the proceedings therefor, as far as the nature of the property permits.

History.—RS 1498; GS 1947; RGS 3210; CGL 5002; s. 19, ch. 67-254.

Note.—Former s. 66.09.