

CHAPTER 1  
RULES OF CIVIL PROCEDURE

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CLERK SUPREME COURT

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DIVISION XII  
PARTITION OF REAL AND PERSONAL PROPERTY

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**DIVISION XII**  
**PARTITION OF REAL AND PERSONAL PROPERTY**

Rules 1.1201 to 1.1300     Reserved.

COMMENT: Division XII Rules 1.1201 through 1.1228, Partition of Real and Personal Property, are rescinded effective July 1, 2018. Beginning July 1, 2018, all partition procedures are contained in Iowa Code chapter 651, 2018 Iowa Acts, ch 1108 (Senate File 2175).

**Rule 1.1201—The action.**

~~1.1201(1) Real or personal property may be partitioned by equitable proceedings.~~

~~1.1201(2) Property shall be partitioned by sale and division of the proceeds, unless a party prays for partition in kind by its division into parcels, and shows that such partition is equitable and practicable. But personalty which is subject to any lien on the whole or any part can be partitioned only by sale.~~

~~1.1201(3) When partition can be conveniently made of part of the premises but not of all, one portion may be partitioned and the other sold, as provided in the rules in this division.~~

~~1.1201(4) Real and personal property owned by the same persons may be partitioned in the same action. The same referee may act as to both real and personal property.~~

~~[Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]~~

**Rule 1.1202—Pending probate.** Where the entire interest in real estate is owned by a decedent on whose estate administration or probate is pending, the action cannot be brought until four months after the second publication of the notice of the appointment of the personal representative, or at any time while an application for authority to sell such real estate is pending in the probate proceeding.  
~~[Report October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]~~

**Rule 1.1203—Petition and answer.**

~~1.1203(1) The petition shall describe the property and plaintiff's interest in it. It shall name all indispensable parties as defined in rule 1.1205(1), and state the nature and extent of each interest or lien, all so far as is known.~~

~~1.1203(2) The answers of the defendants must state the amount and nature of their respective interests. They may deny the interest of any plaintiff, and by supplemental pleading, if necessary, may deny the interest of any other defendant.~~

~~[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]~~

**Rule 1.1204—Abstracts, plats, and surveys.** The court may order the filing of a complete abstract covering any real estate involved. The court may require any party to produce any abstract in the party's possession or control, and plaintiff to complete the same or supply the whole if no part is available. The expense shall be taxed as costs. The abstracts shall be available for use of the court or any party during the proceedings. A like order may be made as to plats and surveys.  
~~[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]~~

**Rule 1.1205—Parties.**

~~1.1205(1) *Indispensable parties.* All owners of undivided interests, and all holders of liens against less than the entire property are indispensable parties to any partition. All holders of any liens on personal property are indispensable to its partition.~~

~~1.1205(2) *Optional parties.* Other persons having actual, apparent, claimed or contingent interests, and holders of liens on the entire real estate may be made parties.~~

~~1.1205(3) *Interests of unborn persons.* The court shall have jurisdiction over an unborn person's contingent or a prospective vested interest as a cotenant of real estate. The court shall appoint a suitable guardian ad litem to act for such person in the partition proceeding. Rules 1.210 through 1.212 shall apply in such cases. The decree of partition and the division or sale thereunder shall have the same force and effect as to all such persons, or persons claiming by, through or under them, as though they were in being when the decree was entered, and the property or proceeds of the person's interest shall be subject to the order of the court until the right fully vests.~~

~~[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]~~

**Rule 1.1206—Early hearing for partition of personal property.** Upon application after a petition for partition of personal property only is filed, the court may set the petition for hearing at any specified time and place in the judicial district on not less than five days' personal service of original notice on all defendants.

~~[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]~~

**Rule 1.1207 Joinder and counterclaim.** Except as permitted by this rule there shall be no joinder of any other claim and no counterclaim. Any party may perfect or quiet title to the property, or have an adjudication of the rights of any or all parties as to any or all matters growing out of or connected with the property, including liens between them.

[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1208 Jurisdiction of property or proceeds.** The property or its proceeds shall be subject to the order of the court until the right becomes fully vested.

[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1209 Proceeds of sale.** After a sale, all parties, including holders of liens from which the property has been freed by the sale, shall have the same rights or interests in the proceeds as they had in the property sold, subject to a prior charge for costs.

The court shall appoint a trustee or make other suitable provision for the proceeds of any share held for life or years or in remainder. The ascertained share of any absent owner shall be retained, or the proceeds invested for the owner's benefit, under like order.

[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1210 Decree.** The decree shall establish the shares and interests of the owners in the property. A decree for partition in kind shall appoint three referees unless the parties agree on a smaller number. A decree ordering a sale shall appoint one or more referees, and three disinterested freeholders to appraise the property, and may direct either a public or private sale. All other matters involved in the cause, including those relating to liens, may be determined by the same decree or later supplemental decree or decrees.

[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1211 Liens.** The court shall decide the nature, extent, priority or validity of any party's lien, not previously determined, on notice to the interested parties by the referees as the court prescribes, and upon issues as the court directs. Such adjudication shall precede a partition in kind. The pendency of any such controversy shall not delay a sale or distribution of the proceeds to any party not affected by the lien.

[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1212 Sale free of liens.** Personal property shall be sold free of all liens. Real property shall be sold free of all liens, except those held against the entire property sold.

[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1213 Possession and preservation of property.** The court may order the referee to lease or take possession of any property involved in the action. The court may order the property preserved by injunction or by other appropriate provision for its care and custody. Expenses incurred under this rule and allowed by the court shall be part of the costs.

[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1214 Referees to divide; oath.** Referees authorized to make partition in kind shall qualify by taking an oath and need give no bond.

[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1215 Partition in kind; marking parcels.** Referees who partition real estate in kind shall mark out each parcel by visible monuments, and file a report thereof. Referees may employ a surveyor or assistants to aid them, if necessary, whose fees and expenses, when allowed by the court, shall be part of the costs.

[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1216 Specific allotment.** For good reasons shown, the court may order referees making a partition in kind to allot a particular tract or article to a particular party.

[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]

**Rule 1.1217 Report of referees; notice and hearing.**

~~1.1217(1) Referees shall file a report of their proposed partition in kind, describing with reasonable particularity the respective shares and the specific property allotted to each owner, with a plat of any real estate involved. The court shall promptly fix a time and place for a hearing, and the referee shall give at least ten days' notice thereof in such manner as the court directs. On hearing, the court may approve, modify or disapprove the report, and refer it to the same or different referees or order a sale.~~

~~1.1217(2) Referees shall report their inability to make a division to the court. The court shall order a sale of personal property without further notice. As to real estate, the report shall be heard under rule 1.1217(1). On hearing, the court may make any further decree of sale or otherwise as may be proper under the exigencies of the case.~~

~~[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]~~

**Rule 1.1218 Partition in kind; decree; apportioning costs; recording.**

~~1.1218(1) Decree; costs. On approving a partition in kind, the court shall enter a decree allotting the property or share set off to each party, apportioning the costs among the allottees and entering judgment against them for their individual shares thereof, which shall be liens on the respective allotments, and for which special execution may issue on demand of anyone interested.~~

~~1.1218(2) Recording. The clerk shall file with the recorder of each county where any of the real estate lies, a certified transcript of so much of the decree as shows the book and page where it is recorded, the confirmation of the shares and interests in the property apportioned, the names of the parties found entitled to share therein, and an accurate description of each parcel allotted to each several owner. Such transcript shall be presented to the county auditor for transfer, recorded in the deed records, and indexed as a conveyance of each parcel, with the name of the allottee as grantee and names of all other parties as grantors. The costs of making and recording such transcript shall be assessed as part of the costs in the case.~~

~~[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]~~

~~Rule 1.1219 Referees to sell; oath; bond. A sale referee shall qualify by taking an oath. No bond shall be required before the referee conveys real estate unless the referee is to sell personal property, take possession of real estate, or receive a payment on the sale before conveyance, in which case, the referee shall give such bond as the court directs. Before conveying real estate, the referee shall give bond for 125 percent of the total sale price, payable to the parties entitled to the proceeds, conditioned for the faithful discharge of the referee's duties in connection with the sale and its proceeds.~~

~~[Report 1943; amendment 1945; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]~~

**Rule 1.1220 Notice and expense of sale.**

~~1.1220(1) Notice of public sale. The referees shall give notice of the time and place of any public sale by two publications, at least six days apart, in some newspaper of general circulation in the county where the sale is to be held. The last publication shall be at least seven days prior to a sale of real estate and at least four days prior to a sale of personal property.~~

~~1.1220(2) Expense. If authorized by the court, referees may advertise the sale beyond the required notice, or employ an auctioneer, clerk or assistant. When allowed by the court the expense thereof shall be part of the costs.~~

~~[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]~~

**Rule 1.1221 Report of sale; notice.**

~~1.1221(1) Generally. The referees shall report all proposed sales to the court, which in its discretion, may require a hearing thereon at a specified time and place. The referee shall mail notice of the hearing as directed by the court to all parties requesting notice pursuant to rule 1.1221(2) at the addresses shown in the requests within the time prescribed by the court and shall give such notice to other parties as the court may direct.~~

~~1.1221(2) Request for notice. Notice and hearing must be accorded to any party who, before the report is approved, files with the clerk, a duplicate request therefor, bearing the party's name and the address to which notice is to be sent. The clerk shall docket the request, and transmit the copy to any referee forthwith, or if none has been appointed, then as soon as appointment is made.~~

~~[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]~~

**~~Rule 1.1222 Approval or disapproval of sale; conveyance; security.~~**

~~1.1222(1) The court may dispense with approval of a public sale of personal property, which may then be sold on full payment of the price bid. All other sales shall be subject to the approval of the court. The court by express order may approve a private sale though it be for less than the appraised value.~~

~~1.1222(2) No real estate shall be conveyed until the sale is approved by the court. No conveyance shall be made until the price is fully paid.~~

~~1.1222(3) If the sale is disapproved, the money paid and the securities given must be returned to the persons entitled thereto.~~

~~1.1222(4) The court in its discretion may require all or any of the parties, before they receive the monies arising from any sale, to give satisfactory security to refund the same, with interest, in case it afterward appears such parties were not entitled thereto.~~

~~[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]~~

**~~Rule 1.1223 Validity of deed.~~** ~~A referee's deed, recorded in the county where the land lies, shall be valid against all subsequent purchasers, and against all persons interested at the time, who were parties to the proceeding.~~

~~[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]~~

**~~Rule 1.1224 Costs.~~** ~~All costs shall be advanced by the plaintiff, but eventually paid by all parties proportionately to their interests. Costs created by contests shall be taxed against the losing contestant unless otherwise ordered. If partition is in kind, costs shall be adjudged, and may be collected as provided in rule 1.1218(1). If partition is by sale, the costs shall be paid from the proceeds and deducted from the shares of the parties against whom they are taxed. These remedies for collecting costs shall be cumulative of other remedies.~~

~~[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]~~

~~[See rule 1.1225]~~

**~~Rule 1.1225 Attorney fees.~~** ~~On partition of real estate, but not of personal property, the court shall fix, and tax as costs, a fee in favor of plaintiff's attorney, in a reasonable amount, to be determined by the court.~~

~~[Report 1943; amendment 1955; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]~~

**~~Rule 1.1226 Other fees.~~** ~~Appraisers and referees in all partition suits, and any attorney employed by a referee with approval of the court, shall receive such reasonable compensation as the court allows, which shall be part of the costs.~~

~~[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]~~

**~~Rule 1.1227 Final reports.~~** ~~Unless waived in writing by all interested parties, the court shall fix a time and place of hearing the referee's final report, and prescribe the time and manner of notice which the referee shall give to all interested persons.~~

~~[Report 1943; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]~~

**~~Rule 1.1228 Paying small sums for minor.~~** ~~Whenever a minor for whom no conservator has been appointed is entitled to proceeds of a partition sale in an amount not exceeding \$10,000, the court may order the proceeds paid to the minor's parent or natural guardian, or the person with whom the minor resides, for the use of such minor. The written receipt of such person, when filed with the court, shall discharge the referee of all liability for the proceeds.~~

~~[Report 1943; amendment 1961; amendment 1973; May 24, 1988, effective August 1, 1988; October 31, 1997, effective January 24, 1998; November 9, 2001, effective February 15, 2002]~~

**Rules 1.1229 to 1.1300 Reserved.**