

Proposal: **Uniform Partition of Heirs Property Act**
Attn: Valerie Sasaki Chair, Oregon Law Commission
Date: December 5, 2024
From: Amy Zubko
Location: Zoom

1. Problem

Middle to low-income landowners are likely to use a simple will to divide property among children or to die without any will in place. Unless a landowner specifies a different form of ownership in an estate plan, the owner's descendants will inherit real estate as tenants-in-common under state property law statutes. A tenant-in-common may sell that tenant's interest without the consent of the co-tenants, making it easy for non-family members to acquire an interest in the property. This condition has allowed real estate speculators to acquire heirs property in a forced sale at a price below its fair market value, depleting a family's wealth in the process.

To illustrate the problem, imagine a widow with three children who owns a small farm, including a farmhouse where she lives. Unless the widow makes other provisions in her estate plan, when she dies the three children will inherit the property as tenants-in-common, with each child owning a one-third share of the undivided piece of real estate. Imagine further that two of the children would like to maintain their ownership of the farm, but the third child wants to convert that child's share into cash. The two siblings cannot afford to buy out the third child, so the third child sells the child's one-third interest to an unrelated real estate investor.

In a tenancy-in-common, any co-tenant may file an action with a court to partition the property. In resolving a partition action, the court has two main remedies available: partition-in-kind or partition-by-sale. A partition-in-kind physically divides the property into shares of proportional value and gives each co-tenant full ownership of an individual share. However, if it is not possible to divide the property equitably, the court will often order a partition-by-sale, whereby the property is sold as a single parcel and the cash distributed to the co-tenants in proportion to their ownership.

In the example, the unrelated investor-owner can petition a court for partition of the farm. If the property contains only one farmhouse, dividing it into shares of equal value may be difficult. Therefore, a court is likely to order a partition-by-sale, forcing the two siblings to sell the property against their will. Even worse, forced sales often bring meager returns when the land is auctioned and there are few bidders. The investor might purchase the remaining shares at a price well below their fair market value, and the siblings would have little to show for their inheritance.

2. History of Reform Efforts

The Uniform Law Commission developed The Uniform Partition of Heirs Property Act (UPHPA) to help to solve the problem of forced, below-market sales of inherited property, while preserving a co-tenant's right to sell a share of property. The act only applies to heirs property –

one or more co-tenants must have received a property interest from a relative – and only when there is no written agreement governing partition among the owners. If both of those conditions exist, the act requires certain protections when a co-tenant files for a partition order: notice to all co-tenants, an independent appraisal, a right of first refusal at the court-determined fair market value, and then, if no co-tenant purchases the share from the co-tenant seeking partition, a partition-in-kind if feasible, and if not, a commercially reasonable sale for fair market value.

The Uniform Law Commission approved UHPA in 2010. The following organizations have endorsed UHPA:

ABA – Real Property, Trusts, and Estates Section; ABA – State and Local Government Section; American College of Real Estate Lawyers; Council of State Governments; National Bar Association; National Black Caucus of State Legislators; Center for Heirs Property Preservation, Black Family Land Trust; Federation of Southern Cooperatives; Heirs Property Retention Coalition; Lawyers Committee for Civil Rights; Southern Poverty Law Center; American Planning Association, NAACP, Appleseed, Concerned Citizens of Tillery, Southern Coalition for Social Justice; Endorsed as Suggested State legislation by the Council of State Governments (CSG); Approved by the American Bar Association, in 2011.

In 2018, the U.S. Congress passed a law giving preference for certain federal farm loans to states that enact the UHPA.

As of 2024, 24 states have adopted UHPA including: Alabama, Arizona, Arkansas, California, District of Columbia, Florida, Georgia, Hawaii, Illinois, Iowa, Maryland (substantially similar), Mississippi, Missouri, Montana, New Mexico, New York, South Carolina, Texas, US Virgin Islands, Utah, Virginia (substantially similar), and Washington.

An additional 6 states are currently considering the Act.

3. Scope of Project

The goal of this project would be to develop an Oregon version of UHPA.

4. Timeline of Project

This project was originally adopted by the Oregon Law Commission in 2020 and a workgroup met in the Spring of 2020 at which time the workgroup went into hiatus. Commissioner PK Runkles-Pearson and former Commissioner Susan Gary were originally the chair and reporter respectively. Both have agreed to take on those responsibilities again.

If the OLC approves a Work Group for this project in January 2025, the goal will be to complete work on a bill by fall 2025, for consideration in the 2026 legislative session.

5. Law Commission Involvement

The Oregon Law Commission is in a unique position to facilitate this project. The Commission has extensive experience incorporating Uniform Law Commission proposals into Oregon law.

Commission staff will facilitate the selection of Work Group membership, ensuring participation from a wide range of related constituencies, and will facilitate the Work Group's meetings.

The Oregon Law Commission staff will also ensure the cooperation of Legislative Counsel, and will work to ensure passage by the Oregon Legislative Assembly when the project is complete.

6. Project Participants

This project touches real property law and probate law, so the OLC will recruit Work Group members from those two areas of practice as well as reach out to the members of the workgroup in 2020. In addition, the OLC will recruit members with a real estate and title insurance background.

Additional information on the proposal can be found on the Uniform Law Commission's website at <https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d>.