

Meeting Notes
Oregon Law Commission
Partition of Heirs Property Work Group – Lienholder Small Group
June 8, 2026

I. Call to Order

In Attendance: Tabitha Palmer DuPrau, Mark Comstock, Robert Mauger, Jeremy Rogers, Tony Kullen, Amy Zubko, Nora Robison, Gracie Schweitzer

Amy Zubko introduced Gracie Schweitzer and Nora Robison, two Oregon Law Commission summer law clerks who will be working on the project and noted that they had reviewed the prior meeting and prepared draft notes. The group met to discuss judgment creditors, lienholders, and whether the current LC draft addresses issues raised at the full work group meeting on May 11, 2026.

II. Discussion

a. Sections 3 and 10: Lienholders

The discussion began with Section 10, which addresses open-market sales in 10(3)(b) and states that a sale may be completed in accordance with state law other than Sections 1 to 13 of the draft. Concern was raised about whether that cross-reference is enough to make clear that existing Oregon law on liens continues to apply and that the Act does not authorize a sale of property free and clear of liens without a specific legal basis.

There was discussion that, under ordinary real property practice, liens are released through satisfaction, release, reconveyance, or a specific court-authorized process, rather than by the cotenants' valuation of the property. Several participants questioned whether the draft should expressly state that creditors and lienholders remain protected, especially because Section 3 provides that heirs property must be partitioned under Sections 1 to 13 unless all cotenants otherwise agree in a record. Concern was raised that, without clearer language, cotenants could agree on a value that does not account for a substantial lien, creating uncertainty about the court's statutory direction. A question was raised about a lack of language in the draft which required lienholders/creditors to be parties in partition actions.

The group generally agreed that creditors, lienholders, and others with an interest in the property should be made parties under the Oregon version of the UHPA. The group discussed whether the Act should cross-reference existing Oregon partition statutes rather than recreate those provisions in the heirs property sections. It was suggested that existing partition law may already address creditors, lienholders, and tenants in sale, partition-in-kind, and buyout contexts, but the draft should be clearer, either with a cross reference or the addition of language, about whether and how those provisions apply. A specific note was made about "cotenants" in Sec. 3(2) "unless all of the cotenants otherwise agree in a record" should change to include all interested parties.

A question was raised of whether other sections of the UHPA should include creditors' needs. The group discussed the differences between notice to voluntary vs. involuntary creditors. Under

current Oregon law, there is no difference in treatment and notice requirements. A suggestion was to bring in statutory language in order to keep this theme.

b. Section 7: Buyout Valuation

The group next discussed Section 7 and whether the buyout process adequately accounts for liens, secured debt, equity value, costs, fees, and other claims before cotenants are paid out. Concern was raised that Section 7 appears to require payment to a cotenant whose interest is bought out even though the overall partition may not be complete and creditor or cost issues may remain unresolved.

The group discussed whether a buyout price should be based on the property's full fair market value or on its equity value after accounting for secured debt and other burdens. Questions were also raised about whether the court's valuation should account for cotenant contributions, including payment of taxes, insurance, maintenance, and improvements. There was discussion of the court's role in determination of property value, which would consider these relevant factors, and whether leaving this section more general would give the court room to make the final determination. It was noted that Section 9 expressly includes contribution-related factors for partition in kind, but Sections 6 and 7 do not appear to provide comparable guidance for buyout valuation.

The group discussed whether the statute should tell courts which valuation factors to consider or instead leave those issues to the parties and the court in individual cases. The group did not resolve the drafting question, but there was agreement that the current language should more clearly flag these issues.

c. Deferred Tax Recapture

A question was raised about deferred tax recapture for agricultural and forest land and how that potential liability should affect valuation. The group discussed that recapture may depend on whether the qualifying use continues, rather than on sale alone. There was discussion that the possibility of recapture may affect value and should be considered when courts or parties evaluate buyout price, partition in kind, or an open-market sale. Again there was some discussion of whether there should be explicit statutory criteria for buyout prices or whether the court should have the ability to make that determination. This issue was flagged for additional discussion.

d. Uniformity/Contribution and Value

The group moved on to a discussion of contribution and value in the current draft. The group discussed if these issues should be addressed under current Oregon law or through the UHPA. An example was shared that under the UHPA, Section 9(1)(f) includes these issues for partition in kind but the draft lacks such language for partition in sale. The group discussed options for addressing these issues, either by incorporating current Oregon law, or addressing within the Uniform Act. The group's consensus was to make these changes and depart from the UHPA in order to incorporate the missing language discussed previously.

The group discussed whether the Uniform Act or its commentary adequately addresses creditors and lienholders. Participants suggested asking Jane Sternecky, Susan Gary, or others familiar with the Uniform Act how other states have handled these issues, especially because many states have adopted the Act and those agricultural states likely encounter lender and lienholder concerns. The group also discussed that Oregon has sometimes departed from uniform language when Oregon-specific policy concerns required a different approach.

The group did not make a final decision on drafting, but there appeared to be agreement that the draft should not be left unchanged on creditor, lienholder, and valuation issues.

III. Scheduling

Amy planned to circulate notes from this discussion to Jane, Valarie, and the larger work group before the Thursday meeting. Amy also planned to check with Jane, and possibly Susan Gary, about whether the Uniform Act or other states have addressed creditor and lienholder issues. The larger work group was expected to discuss feedback from this conversation and next steps at the meeting on Thursday.