LC 9927
Bill
8/13/25 (RLM/)
2027 Regular Session
Mock-up of 2027 Heir's Property Act, TBD.

Relating to division of real property.

SECTION 1. Short title. Sections 1 to 13 of this 2027 Act may be cited as the Uniform Partition of Heirs Property Act.

SECTION 2. Definitions. (1) "Ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.

(2) "Collateral" means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual's ascendant or descendant.

(3) "Descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual.

(4) "Determination of value" means a court order determining the fair market value of heirs property under section 6 or 10 of this 2027 Act or adopting the valuation of the property agreed to by all cotenants.

(5) "Heirs property" means real property held in tenancy in common which satisfies all of the following requirements as of the filing of a partition action:

(a) There is no agreement in a record binding all the cotenants which governs the partition of the property;

(b) One or more of the cotenants acquired title from a relative, whether living or deceased; and

(c) Any of the following applies:

(A) 20 percent or more of the interests are held by cotenants who are relatives;

(B) 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

(C) 20 percent or more of the cotenants are relatives.

(6) "Partition by sale" means a court-ordered sale of the entire heirs property, whether by auction, sealed bids or open-market sale conducted under section 10 of this 2027 Act.

(7) "Partition in kind" means the division of heirs property into physically distinct and separately titled parcels.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Relative" means an ascendant, descendant or collateral or an individual otherwise related to another individual by blood, marriage, adoption or law of this state other than sections 1 to 13 of this 2027 Act.

SECTION 3. Applicability. (1) Sections 1 to 13 of this 2027 Act applies to partition actions filed on or after the effective date of this 2027 Act.

(2) In an action to partition real property under ORS 105.205, the court shall determine whether the property is heirs property. If the court determines that the property is heirs property, the property must be partitioned under sections 1 to 13 of this 2027 Act unless all of the cotenants otherwise agree in a record.

(3) Sections 1 to 13 of this 2027 Act supplements ORS 105.205 to 105.405 and, if an action is governed by sections 1 to 13 of this 2027 Act, replaces provisions of ORS 105.205 to 105.405 that are inconsistent with sections 1 to 13 of this 2027 Act.

SECTION 4. Service. (1) Sections 1 to 13 of this 2027 Act do not limit or affect the method by which service of a complaint in a partition action may be made.

(2) If the plaintiff in a partition action seeks an order of notice by publication and the court determines that the property may be heirs property, the plaintiff, not later than 10 days after the court's determination, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action. The sign must state that the action has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

Commented [RM1]: Would OST want notified of a filing if there were parties whose were unknown? Unreachable by ordinary service? Would OST ever want to be made a party or be allowed to become a party on behalf of unknown or unreachable interest holders?

Commented [LU1R2]: OST would like to be notified if there are missing co-tenants (i.e. those who cannot be located). OST does not want to be made a party or to stand in the shoes of the missing person - OST does not have resources for this and would have no information on which to base decisions. Better to have the court decide how to handle.

SECTION 5. Referees. If the court appoints referees pursuant to ORS 105.245, each referee, in addition to the requirements and disqualifications applicable to referees in ORS 105.210 to 105.405, must be disinterested and impartial and not a party to or a participant in the action.

SECTION 6. Determination of value. (1) Except as otherwise provided in subsections (2) and (3) of this section, if the court determines that the property that is the subject of a partition action is heirs property, the court shall determine the fair market value of the property by ordering an appraisal pursuant to subsection (4) of this section.

(2) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.

(3) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.

(4) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this state to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(5) If an appraisal is conducted pursuant to subsection (4) of this section, not later than 10 days after the appraisal is filed, the court shall send notice to each party with a known address, stating:

(a) The appraised fair market value of the property;

(b) That the appraisal is available at the clerk's office; and

(c) That a party may file with the court an objection to the appraisal not later than 30 days after the notice is sent, stating the grounds for the objection.

(6) If an appraisal is filed with the court pursuant to subsection (4), the court shall conduct a hearing to determine the fair market value of the property not sooner than 30 days after a copy of the notice of the appraisal is sent to each party under subsection (5), whether or not an objection to the appraisal is filed under subsection (5)(c). In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

(7) After a hearing under subsection (6) of this section, but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

SECTION 7. Cotenant Buyout. (1) If any cotenant requested partition by sale, after the determination of value under section 6 of this section, the court shall send notice to the parties that any cotenant except a cotenant that requested partition by sale may buy all the interests of the cotenants that

requested partition by sale.

(2) Not later than 45 days after the notice is sent under subsection (1) of this section, any cotenant except a cotenant that requested partition by sale may give notice to the court that it elects to buy all the interests of the cotenants that requested partition by sale.

(3) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined under section 6 of this 2027 Act multiplied by the cotenant's fractional ownership of the entire parcel.

(4) After expiration of the period in subsection (2) of this section, the following rules apply:

(a) If only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all the parties of that fact.

(b) If more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall allocate the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy and send notice to all the parties of that fact and of the price to be paid by each electing cotenant.

(c) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall send notice to all the parties of that fact and resolve the partition action under section 8 (1) and (2) of this 2027 Act.

(5) If the court sends notice to the parties under subsection (4)(a) or (b) of this section, the court shall set a date, not sooner than 60 days after the date the notice was sent, by which electing cotenants must pay their apportioned price into the court. After this date, the following rules apply:

(a) If all electing cotenants timely pay their apportioned price into court, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them.

(b) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under section 8 (1) and (2) of this section as if the interests of the cotenants that requested partition by sale were not purchased.

(c) If one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court [, on motion,] shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

(6) Not later than 20 days after the court gives notice pursuant to subsection (5)(c) of this section, any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After the 20-day period, the following rules apply:

(a) If only one cotenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to that cotenant. The court shall issue promptly an order reallocating the interests of all of the cotenants and disburse the amounts held by it to the persons entitled to them.

(b) If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under section 8 (1) and (2) of this section as if the interests of the cotenants that requested partition by sale were not purchased.

(c) If more than one cotenant pays the entire price for the remaining interest, the court shall reapportion the remaining interest among those paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest. The court shall promptly:

(A) Issue an order reallocating all of the cotenants' interests;

(B) Disburse the amounts held by the court to the persons entitled to them; and

(C) Refund any excess payment held by the court.

(7) Not later than 45 days after the court sends notice to the parties pursuant to subsection (1) of this section, any cotenant entitled to buy an interest under this section may request the court to authorize the sale as part of the pending action of the interests of cotenants named as defendants and served with the complaint but that did not appear in the action.

(8) If the court receives a timely request under subsection (7) of this section, the court, after hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to the following limitations:

(a) A sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under subsections (1) through (6) of this section have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and

(b) The purchase price for the interest of a nonappearing cotenant is based on the court's determination of value under section 6 of this 2027 Act.

SECTION 8. Partition Alternatives. (1) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to section 7 of this 2027 Act or if after conclusion of the buyout under section 7 of this 2027 Act, a cotenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in section 9 of this 2027 Act, finds that partition in kind will result in [great] [manifest] prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have their individual interests aggregated.

(2) If the court does not order partition in kind under subsection (1) of this section, the court shall order partition by sale pursuant to section 10 of this section or, if no cotenant requested partition by sale, the court shall dismiss the action.

(3) If the court orders partition in kind pursuant to subsection (1) of this section, the court may require that one or more cotenants pay one or more other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.

(4) If the court orders partition in kind, the court shall allocate to the cotenants that are unknown, unlocatable or the subject of a default [entry][judgment], if their interests were not bought out pursuant to section 7 of this 2027 Act, a part of the property representing the combined interests of these cotenants as determined by the court [and this part of the property shall remain undivided].

SECTION 9. Considerations for Partition in Kind. (1) In determining under section 8 (1) of this section whether partition in kind would result in [great][manifest] prejudice to the cotenants as a group, the court shall consider the following:

(a) Whether the heirs property practicably can be divided among the cotenants;

(b) Whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;

(c) Evidence of the collective duration of ownership or possession of the property by:

(A) A cotenant; and

(B) One or more predecessors in title or predecessors in possession to the cotenant who are or were

Commented [RM2]: Would OST want notified if defaulted parties only served by publication were to have their interests sold?

Commented [LU2R2]: Yes

Commented [RM3]: Should the court pay and report to OST's unclaimed property fund moneys for nonappearing parties whose addresses are unknown?

Commented [LU3R2]: OST is open to having unclaimed funds sent directly to OST (without the usual statutory waiting period for unclaimed property). OST would need authority similar to handling foreclosure proceeds (ORS 312.540) to handle claims for the funds, and could use existing methods to search for missing individuals. This might also reduce court workload as the court would not need to track these funds, handle claims, and then transfer unclaimed funds to OST later.

Commented [RM4]: Should OST be involved in this? Should property held in trust for unknown claimants be titled to OST? Liquidated by sale by court?

Commented [LU4R2]: OST does not want to receive/hold an interest in real property. OST would be willing to handle liquidated proceeds on behalf of missing individuals to the extent this group thinks it would be helpful to do so (similar to answer above). Otherwise, we assume the proceeds would be held by the court and handled via unclaimed property statutes.

relatives of the cotenant or each other;

(d) A cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

(e) The lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;

(f) The degree to which the cotenants have contributed their pro rata share of the property taxes, insurance and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance or upkeep of the property; and

(g) Any other relevant factor.

(2) The court may not consider any one factor in subsection (1) of this section to be dispositive without weighing the totality of all relevant factors and circumstances.

SECTION 10. Open-Market Sale, Sealed Bids or Auction. (1) If the court orders a sale of heirs property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group.

(2) If the court orders an open-market sale and the parties, not later than 10 days after the entry of the order, agree on a real estate broker licensed in this state to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this state to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

(3) If the broker appointed under subsection (2) obtains within a reasonable time an offer to purchase the property for at least the determination of value:

(a) The broker shall comply with the reporting requirements in section 11 of this section; and

(b) The sale may be completed in accordance with state law other than sections 1 to 13 of this 2027 Act.

(4) If the broker appointed under subsection (2) does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after hearing, may:

(a) Approve the highest outstanding offer, if any;

(b) Redetermine the value of the property and order that the property continue to be offered for an additional time; or

(c) Order that the property be sold by sealed bids or at an auction.

(5) If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted under [insert reference to general partition statute or, if there is none, insert reference to foreclosure sale].

(6) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

SECTION 11. Report of Open-Market Sale. (1) A broker appointed under section 10 (2) of this 2027 Act to offer heirs property for open-market sale shall file a report with the court not later than seven days after receiving an offer to purchase the property for at least the value determined under section 6 or 10 of this 2027 Act.

(2) The report required by subsection (1) of this section must contain the following information:

(a) A description of the property to be sold to each buyer;

(b) The name of each buyer;

Commented [RM5]: Again, would OST want court to deliver report & funds to unclaimed property for unidentified or identified but unlocatable parties?

Commented [LU5R2]: Similar to response above, OST is open to receiving the funds and handling them similar to foreclosure proceeds – if that would make court's workload easier. OST could handle claims for the funds, search for missing individuals, etc. but would need authority to do so.

(c) The proposed purchase price;

(d) The terms and conditions of the proposed sale, including the terms of any owner financing;

(e) The amounts to be paid to lienholders;

(f) A statement of contractual or other arrangements or conditions of the broker's commission; and

(g) Other material facts relevant to the sale.

SECTION 12. Uniformity of Application and Construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 13. Relation to Electronic Signatures in Global and National Commerce Act. Sections 1 to 13 of this 2027 Act modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c) or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. 105.400,7003(b).

SECTION 14. Adding. Sections 1 to 13 of this 2025 Act are added to ORS 105.205 to 105.405.

SECTION 15. Section Captions. The section captions used in this 2025 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2025 Act.

SECTION 16. Effective Date. This 2027 Act takes effect on [date].