Meeting Notes

Oregon Law Commission

Partition of Heirs Property Work Group

October 29, 2026

I. Call to Order

In Attendance: Valerie Sasaki, Amy Zubko, Tabitha Palmer-Dupru, Robert Mauger, Jefff Petty, Mark Comstock, Jeremy Rogers, Matt Shields, Patricia Pascone, Tony Kullen

II. Discussion

a. Preliminary Provisions and Definitions

A question was raised about whether section 5(1), which addresses relief before entry of default, could conflict with the earlier determination that property is heirs property. That preliminary determination was distinguished from an award of relief, and it was agreed to use "order of default," deleting "or judgment" from the existing phrase. Section 4(2)(b) would also be clarified to state that, if the court allows service by publication, the plaintiff shall also post and maintain the required sign on the property.

There was discussion of proposed definition changes concerning domestic partnerships and the treatment of spouses and registered domestic partners. No concerns were expressed about recognizing domestic partnerships, and the proposed revisions concerning the exclusion of spouses and registered domestic partners were accepted for incorporation into the draft. A separate comment concerning a determination and the order memorializing it was discussed without further concern.

b. Relationship Between Partition Procedures

There was discussion of how the draft connects the heirs-property process with provisions applicable to partition actions generally, including the availability of open-market sales in ordinary partition proceedings. The structure was viewed as implementing the earlier discussion about coordinating the two processes, and review turned to the court's authority to consider offers and complete a sale.

c. Selection of an Offer

Section 10(3) was intended to give the court discretion to select an offer without prescribing an extensive additional process. It was agreed to replace "highest offer" with "best offer,"

recognizing that a slightly lower offer without contingencies may be preferable to a higher but less reliable offer. There was discussion of the difficulty of evaluating offers when co-owners disagree and the potential usefulness of a broker's recommendation or other information presented to the court. The proposed language would allow the court, upon receipt of one or more offers, to accept the best offer as determined by the court and order completion of the sale on the accepted terms.

d. Sale Orders and Authority to Convey

It was agreed that the requirements governing completion of a sale and disposition of proceeds should be separated from the offer-selection provision because those requirements apply even when only one offer is received. There was discussion of whether the court should "authorize" or "order" a sale, and the order terminology was retained in light of the broader statutory structure and the need to address missing, defaulting, or unwilling co-owners.

There was also discussion of whether the statute should expressly require the sale order to identify who may convey the property on behalf of the co-owners. Although that authority may already be included in practice, express direction was considered useful to prevent problems when the transaction reaches the title company. An approach resembling a receivership was preferred, in which an identified person completes the transaction, rather than relying on the judgment itself to convey title to a buyer whose closing date and financing may change. The language would therefore require identification of the person or entity authorized to effectuate the sale and convey title, broad enough to cover purchase agreements, escrow instructions, and other necessary documents.

e. Broker Selection and Alternative Appointees

A question remained about how courts would identify the pool of brokers available for appointment and ensure an objective selection process. There was discussion of obtaining recommendations from the parties and selecting someone familiar with the type of property and local market, while avoiding requirements that would be too prescriptive for differing circumstances across the state. Further information would be sought about practices in other states using the act, including through realtor associations, to determine whether additional statutory guidance was needed. Sections 11 and 12 would permit use of a broker or another neutral third party when a broker is unavailable or another appointment better fits the circumstances.

f. Physical Division and Land-Use Requirements

A question was raised about whether partition in kind would require an exception to restrictions on dividing land without the usual approvals. There was discussion that a referee may need surveying assistance and an appropriate partition plan, but broader changes to land-use or lot-division requirements were considered outside the work group's scope.

g. Liens, Closing, and Net Proceeds

Review of section 13 identified a need to distinguish payment of liens necessary to clear title at closing from later distribution of funds held by the court. It was emphasized that a title company generally needs authority to pay applicable liens and judgments during closing rather than send all funds to the court and leave secured creditors waiting for a later distribution. The discussion included an example from a Washington partition proceeding in which a mortgage lender's lien had been transferred to proceeds in the court registry instead of being paid at closing, illustrating the practical concern.

It was agreed that the sale-order language should address authority to complete the transaction, payment of liens and judgments needed to clear title, and disposition of the remaining net proceeds. The language would leave room to tailor the order to the transaction rather than require a single sequence for every case, and distribution at closing could be appropriate when the necessary issues had already been resolved. Revised language would be developed to implement that approach.

h. Judgments and Distributions during the proceeding

Section 13 would permit limited or supplemental judgments to accommodate distributions at different stages and avoid uncertainty about the appropriate judgment after entry of a general judgment. Deletion of the provision allowing satisfaction of liens was considered, but the provision was retained because the section also applies to money received during co-owner buyouts, when creditor claims may need resolution before an eventual sale or final distribution. The provision would remain available when needed even if title-clearing liens had already been paid at closing

i. Expenses and Conforming Amendments

It was confirmed that attorney fees remained addressed in section 14, and it was agreed to remove "typical" from the fee standard, leaving reasonableness as the measure. Terminology and grammatical cleanup in the following provisions were accepted without undertaking broader modernization of historical property terminology. Section 18 would preserve the distinction between ordinary partition and heirs-property proceedings by preventing use of its alternative buyout mechanism for heirs property.

Related provisions would be conformed to the broader appointment authority by referring to the person authorized to conduct the sale rather than itemizing referees, brokers, and other appointees. For provisions involving ongoing management of securities or investment of proceeds, a court-appointed fiduciary was preferred over a broker or an unspecified neutral party. There was also discussion of extending section 25's disinterestedness requirements to other appointed third parties and correcting the post-sale reporting provision to reflect the revised roles.

j. Confirmation and Finality of the Sale

Questions were raised about whether section 27's existing exceptions and confirmation procedures duplicated section 10 or could suggest that objections remained available after closing. The proposed approach would delete the opening procedures and connect the remaining discharge-of-interests language to the earlier sale order. The prohibition on certain purchases by fiduciaries was also discussed in reviewing the retained language, and further review of the revised text was requested before final agreement on the changes.

Sections 28 and 30 would avoid assigning purchaser credits or payments to guardians specifically to brokers, using language focused on the credit or payment itself. Following completion of the section-by-section review, it was also agreed that references to real estate brokers should encompass both real estate brokers and principal brokers, potentially through a definition or reference to the licensing statutes.

k. Possession and Possible Pre-Sale Relief

There was discussion of whether the bill should address possession in addition to title, particularly when an occupying co-owner refuses to leave, and the resulting difficulty reduces the property's marketability or sale price. Lawful tenants with leases were distinguished from holdover co-owners, and questions were raised about whether existing eviction, ejectment, waste, or contempt remedies would adequately address the different situations. A proposal to authorize pursuit of existing remedies before sale raised concerns about creating additional powers, complicating the bill, and affecting an occupant who might seek to purchase the property.

The possession issue would receive further consideration, with broader pre-sale eviction provisions potentially addressed through a later amendment. For the base bill, narrower language was supported recognizing the court's authority to address possession and issue ancillary orders in furtherance of a sale. Such authority could also assist with access for appraisals when an occupant obstructs entry, without prescribing a new eviction process.

III. Scheduling

The changes would be incorporated into a clean draft and recirculated, with delivery logistics to be addressed separately. A report would also be prepared, and a placeholder filing was contemplated to allow time to refine the materials before Commission approval.

Having completed the review, the anticipated next step was a brief December meeting to review the final product rather than holding the previously contemplated November 9 meeting.