

Proposal: Uniform Partition of Heirs Property Act
Attention: Oregon Law Commission
Date: April 18, 2025
From: Valerie Sasaki, Chair, Oregon Law Commission
Location: Zoom

Background

On January 20, 2020, the Oregon Law Commission approved the creation of a workgroup to consider the Uniform Partition of Heirs Property Act for Oregon. The workgroup met once in the spring of 2020, however the constraints of Covid, staff resources, and an interest in reaching out to additional stakeholders resulted in the Commission putting the project on hold.

In August 2024, the Commission shared the proposal with estate planning and administration practitioners who had previously expressed interest in the Oregon Law Commission's efforts. Members of the subject matter panel were requested to review the proposal for timeliness, identify any recent issues with each proposal, both nationally or in Oregon, and help the Commission prioritize its resources. The feedback received indicated that there was interest in the proposal.

Update

On December 5, 2024, the Program Committee met via Zoom. After discussion the Program Committee voted to submit the proposal below to the full Commission for consideration. Because of changes to the Commission's membership, Valerie Sasaki has volunteered to chair the workgroup. Commissioner emeritus, Susan Gary, will continue to be involved with the project as the reporter.

Outreach for workgroup membership has begun and includes the Oregon Judicial Department, Oregon State Bar, Willamette University College of Law, legal aid providers, private practitioners, a representative from the Uniform Law Commission, Legislative Counsel, and the Legislative Policy and Research office. Meetings are expected to begin in Summer of 2025 with a goal of completing the statutory language and finalizing the report for 2027 legislative session. Meetings will be held remotely.

Proposal

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 UPHPA in 2010. The following organizations have endorsed UPHPA:

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 UPHPA.

As of 2024, 24 states have adopted UPHPA 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 UPHPA.

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. Former Commissioner PK Runkles-Pearson and former Commissioner Susan Gary were originally the chair and reporter respectively. Commissioner Sasaki has agreed to chair the workgroup.

If the OLC approves a Work Group for this project at the April 2025 meeting, the goal will be to complete work on a bill for consideration in the 2027 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 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>.