LC 0073
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# D R A F T

**SUMMARY**

Digest: This Act adopts the Uniform Partition of Heirs Property Act and makes changes to existing law to sync with the new Act. (Flesch Readability Score: 61.4).

Adopts the Uniform Partition of Heirs Property Act. Requires partitions by sale, even if not heirs property, to be sold as an open market sale. Makes conforming changes to partition law.

## A BILL FOR AN ACT

Relating to partitions of real property; creating new provisions; amending ORS 94.775, 105.205, 105.210, 105.220, 105.245, 105.250, 105.270, 105.285, 105.290, 105.295, 105.300, 105.305, 105.320, 105.350, 105.355, 105.360, 105.365, 105.370, 105.390, 105.400, 105.405 and 107.105; and repealing ORS 105.225, 105.280, 105.325 and 105.330.

**Be It Enacted by the People of the State of Oregon:**

## UNIFORM PARTITION OF HEIRS PROPERTY ACT

**SECTION 1. Uniform Act. (1) Sections 1 to 8, 9 and 10 of this 2027 Act may be cited as the Uniform Partition of Heirs Property Act.**

**(2) In applying and construing sections 1 to 8, 9 and 10 of this 2027 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 2. Definitions. As used in sections 1 to 8 of this 2027 Act:**

**(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 spouse, domestic partner, 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 5 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) Twenty percent or more of the interests are held by cotenants who are relatives;**

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

**(C) Twenty 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 9 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, registration as a domestic partner, adoption or law of this state other than sections 1 to 8 of this 2027 Act.**

**SECTION 3. Applicability. (1) Upon filing an action to partition real property under ORS 105.205 to 105.405, the court shall enter a limited judgment determining**

**whether the property is heirs property. If the court determines that the property is heirs property at any point while the action is pending, the property must be partitioned under sections 1 to 8 of this 2027 Act unless all of the parties otherwise agree.**

**(2) Sections 1 to 8 of this 2027 Act supplement other provisions of ORS 105.205 to 105.405 and, only to the extent that they are inconsistent with those provisions, replace those provisions.**

**SECTION 4. Service; notice of proceedings. (1) Sections 1 to 8 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 court determines that the property that is subject to the action of partition is heirs property, within 10 days of that determination, the plaintiff:**

**(a) Shall mail a notice of the proceedings or deliver such notice according to alternative proceedings as adopted by rule by the recipient, if any, to:**

**(A) The Department of Revenue;**

**(B) The Department of Human Services;**

**(C) The Oregon Health Authority; and**

**(D) The State Treasurer.**

**(b) If a court allows for service of the summons and complaint against any defendant, known or unknown, to be made by publication under ORCP 7 or ORS 105.230, shall also post and maintain throughout the proceedings a conspicuous sign containing a notice of the proceedings on the property while the action is pending.**

**(3) A notice of the proceedings under this section, must include:**

**(a) That the action has commenced to partition the heir's property;**

**(b) The address or addresses of the property, if any, otherwise by any common designation by which the property is known;**

**(c) The name and address of the court and the case number under which the action is proceeding;**

**(d) The name and address of the plaintiff and the plaintiff's attorney, if any; and**

**(e) As may be required by the court, the names of the known defendants or any other information pertaining to the case.**

**SECTION 5. Determination of value. (1) Before ordering any other relief to any**

**party, including issuing an order of default against any party, or initiating the proceedings under section 6 of this 2027 Act, the court shall determine the fair market value of heirs property as provided under this section.**

**(2) If all parties 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) Unless the court makes a determination under subsection (3) of this section, 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) Not later than 30 days after the appraisal is filed, the court shall send notice to each party with a known address, without regard to whether they have appeared in the proceeding, stating:**

**(a) The purported fair market value of the property based on the appraisal;**

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

**(c) The time and date of the hearing under subsection (6) of this section;**

**(d) That a party may file an objection to the appraisal with the court before the hearing and state the grounds for the objection or may appear and present arguments and testimony at the hearing; and**

**(e) That the court, after the hearing, will determine the fair market value of the property.**

**(6) 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 is sent to each party under subsection (5) of this section. The hearing must be held whether or not an objection to the appraisal is filed under subsection (5)(d) of this section. 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 this section, the court shall determine the fair market value of the property and send notice to the parties of the determination of value.**

**SECTION 6. Cotenant buyout. (1) If any cotenant requested partition by sale, after the determination of value under section 5 of this 2027 Act, 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. The court may expand the period of time available at the request of a cotenant.**

**(3) The purchase price for each of the interests of a cotenant that requested partition by sale is the determination of value under section 5 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 7 (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. The court may expand the period of time available at the request of a cotenant as may be deemed reasonable for the cotenant to obtain financing. 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 as provided under ORS 105.285.**

**(b) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under section 7 (1) and (2) of this 2027 Act 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 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. The court may expand the period of time available at the request of a cotenant. 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 as provided by ORS 105.285.**

**(b) If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under section 7 (1) and (2) of this 2027 Act 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 as provided by ORS 105.285; 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.**

**SECTION 7. Partition in kind. (1) If all the interests of all offering cotenants are not purchased by other cotenants pursuant to section 6 of this 2027 Act or if after conclusion of the process described in section 6 of this 2027 Act, one or more cotenants remain that have requested partition in kind, the court shall enter a judgment requiring a partition according to the respective rights of the parties, as ascertained by the court and appoint three referees to partition the property under ORS 105.245 (2) unless the court, after consideration of the factors listed in section 8 of this 2027 Act, finds that partition in kind will result in great prejudice to the cotenants as a group.**

**(2) If the court does not order partition in kind under subsection (1) of this section, or if the referees report that the property cannot be partitioned under ORS 105.270, the court shall order partition by sale pursuant to section 9 of this 2027 Act**

**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 pursuant to subsection (1) of this section, the court may, in accordance with equitable principles, allocate to the cotenants that are unknown, unlocatable or the subject of a default judgment, if their interests were not bought out pursuant to section 6 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. If a court allocates property in this manner, the court shall title the property in the name of a trustee appointed for the purpose of preserving the property. Alternatively, the court may require that such interests be sold or otherwise accounted for by a payment made by, or instrument recorded against the interest of, one or more parties with the proceeds to be delivered to the State Treasurer as unclaimed property under ORS 105.370.**

**SECTION 8. Considerations for partition in kind. (1) In determining under section 7 of this 2027 Act whether partition in kind would result in great prejudice to the cotenants as a group, the court shall consider:**

**(a) Whether the heirs property practicably can be divided among the cotenants who are parties;**

**(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 relatives of the cotenant;**

**(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 factors.**

**(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.**

**(3) In considering whether to order partition in kind, the court shall allow two or more parties to have their individual interests aggregated.**

## PARTITION BY BROKER SALE UNDER UNIFORM ACT AND APPLICABLE TO ALL PARTITION ACTIONS

**SECTION 9. Partition by sale. (1) If the court orders a sale of 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 or managing principal broker as defined in 696.010, the court shall appoint a 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.**

**(3) The broker shall offer the property for sale in a commercially reasonable manner and on the terms and conditions established by the court. If the property or any**

**part of it is to be sold subject to a prior estate, claim, charge or lien that will not be discharged upon the sale, that fact must be stated in the listing. If the property is heirs property, the property may not be listed at a price lower than the value of the property as determined under section 5 of this 2027 Act.**

**(4) The broker shall report an offer to the court under section 10 of this 2027 Act if the broker obtains an offer to purchase the property that is at least:**

**(a) The determination of value, if the property is heirs property;**

**(b) A redetermined value under subsection (5)(b) of this section; or**

**(c) If no value has been determined, a reasonable price as determined by the broker.**

**(5) If, within a reasonable time, the broker does not obtain an offer to purchase heirs property under subsection (4) of this section, 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.**

**(6) 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 in the manner required for the sale of real property on execution.**

**SECTION 10. Report of offers; order of sale. (1) A broker appointed under section 9 (2) of this 2027 Act shall file a report with the court not later than seven days after receiving one or more valid offers under section 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;**

**(c) The proposed purchase price;**

**(d) The terms and conditions of the offer, including the terms of any owner financing;**

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

**(f) Other material facts relevant to the offer.**

**(3) Upon the receipt of one or more offers, the court may accept the best offer, as determined by the court, and order the sale completed on the terms of the accepted offer.**

**(4) Within an order authorizing a sale, the court:**

**(a) Shall authorize a person or entity to sign the deed and other documents to effectuate the sale and convey title of the property;**

**(b) May instruct that payments from the sale be disbursed as directed by a neutral third party to clear title or be disbursed pursuant to a judgment under ORS 105.285; and**

**(c) Shall direct that any remaining net proceeds of the sale be paid into court or disbursed as directed by the court.**

**SECTION 11.** ORS 105.245 is amended to read:

105.245. **(1)** If it is alleged in the complaint and established by evidence, or if it appears by the evidence to the satisfaction of the court without an allegation in the complaint, that the property or any part of it is so situated that partition cannot be made without great prejudice to the [*owners*]**cotenants**, the court may order a sale of the property[*, and for that purpose may appoint one or more referees. Otherwise,*] **by a broker under sections 9 and 10 of this 2027 Act.**

**(2) If the court does not order a sale under subsection (1) of this section,** upon the requisite proofs being made, [*it*]**the court** shall**:**

**(a)** [*enter*]**Enter** a judgment requiring a partition according to the respective rights of the parties, as ascertained by the court[.]**;**

**(b)** [*The court shall appoint*]**Appoint** three referees to partition the property**;** and

**(c)** [*shall designate*]**Designate** the portion to remain undivided for the [*owners*]**cotenants** whose interest remain unknown or not ascertained.

**SECTION 12.** ORS 105.270 is amended to read:

105.270. If the referees report to the court that the property to be partitioned, or any separate portion thereof, is so situated that a partition thereof cannot be made without great prejudice to the owners, and the court is satisfied that the report is correct, it may, by an order, direct [*the referees to sell the property or separate portion thereof so situated*]**the sale of the**

**property under sections 9 and 10 of this 2027 Act**.

**SECTION 13.** ORS 105.285 is amended to read:

105.285. [*The proceeds of the sale of encumbered property shall be distributed by the judgment of the court as follows:*]**The court may enter limited, general or supplemental judgments distributing proceeds received into or payable to the court or otherwise available for the benefit of the cotenants under section 6 or 10 of this 2027 Act:**

(1) To pay the [*property's*]**cotenants'** just proportion of the [*general costs of the suit*] **reasonable costs of the partition as determined under ORS 105.405**.

[*(2) To pay the costs of the reference.*]

[*(3)*]**(2)** To satisfy the several liens in their order of priority, by payment of the sums due and to become due, according to the judgment.

[*(4)*]**(3)** The residue among the [*owners of the property sold*]**cotenants**, according to their respective shares.

**SECTION 14.** ORS 105.355 is amended to read:

105.355. After completing the sale the [*referees*]**broker** shall report it to the court with the description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale and the securities, if any, taken. The report shall be filed with the **court** clerk.

**SECTION 15.** ORS 105.360 is amended to read:

105.360. [*The report of sale may be excepted to by any party entitled to a share of the proceeds in like manner and with like effect as in ordinary cases. If the sale is confirmed the order of confirmation shall direct the referees to execute conveyances and take securities pursuant to the sale, which acts they are hereby authorized to do. The order*]**An order under section 10 of this 2027 Act** shall discharge the property of the estate or interest of every person mentioned in ORS 105.260 and of tenants for life or years of the property sold. The order shall be binding and conclusive upon all such persons as if it were a judgment for the partition of such property and except as provided in ORS 105.350, upon all persons whomsoever as to the regularity of the proceedings concerning such sale.

**SECTION 16.** ORS 105.365 is amended to read:

105.365. [*When a party*]**If a cotenant** entitled to a share of the property, or [*an encumbrancer* ]**a lien creditor** entitled to have the lien [*of the encumbrancer*] paid out of the sale,

becomes a purchaser, [*the referees may take a receipt*] **the purchaser is entitled to credit** for so much of the proceeds of the sale as belongs to the party[ *or the encumbrancer*].

**SECTION 17.** ORS 105.370 is amended to read:

105.370. [*When there are proceeds of sale belonging to an unknown owner, or* ]**(1) Proceeds of a sale belonging to a cotenant who is unknown or who cannot be located must be reported and delivered to the State Treasurer as unclaimed property under ORS 98.352.**

**(2) Proceeds of a sale belonging** to a person without the state who has no legal representative within it[*, or when there are proceeds*]**or** arising from the sale of an estate subject to the prior estate of a tenant for life or years, which are paid into court or otherwise deposited by order of the court, [*such proceeds*] shall be invested in securities on interest for the benefit of the persons entitled thereto.

**SECTION 18.** ORS 105.405 is amended to read:

105.405. [*(1) The expenses of the referees, including those of a surveyor and assistants of the surveyor when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be paid by the plaintiff, and may be allowed as part of the costs of partition.*]**(1) The court shall ascertain and allow as the reasonable costs of the partition:**

**(a) The fees and expenses of the referees, appraisers, surveyors and brokers.**

**(b) The fees, costs and disbursements of an attorney for any party that are for services performed for the common benefit of all parties.**

(2) The reasonable costs of partition[*, including reasonable attorney fees and disbursements, that are for services performed for the common benefit of all parties, shall*]**:**

**(a) Must** be paid by the parties [*that will share in the lands divided*] in proportion to their respective interests therein[*, and shall*]**.**

**(b) Must** be included and specified in the judgment.

**(c)** [*They shall be*]**Are** a lien on the several shares **of the property or any party's interest in any investment or proceeds that arise under ORS 105.205 to 105.405, whether or not distributed**, and the judgment may be enforced by execution against the parties separately.

**(3)** [*When, however,*]**If** a controversy arises between some of the parties only, the court

may require the expense of such controversy to be paid by any of, or all, the parties thereto.

**SECTION 19. ORS 105.280 is repealed.**

**PARTIES AND CLAIMS**

**SECTION 20.** ORS 105.205 is amended to read:

105.205. **(1) As used in ORS 105.205 to 105.405, "cotenant" means:**

**(a)**[*When*] **One of** several persons **who** hold real property as tenants in common, in which one or more of them have an estate of inheritance, or for life or years**;**[,] or

**(b)** [*when*] **One of** several persons **who** hold as tenants in common a vested remainder or reversion in any real property[,]**.**

**(2)** [ *any one or more of them*]**One or more cotenant** may maintain a suit for the partition of the real property according to the respective rights of the [*persons interested therein*]**plaintiffs and defendants**, and for a sale of all or a part of the property if it appears that a partition cannot be had without great prejudice to [*the owner*]**a cotenant**.

**SECTION 21.** ORS 105.220 is amended to read:

105.220. [*The plaintiff shall make a tenant in dower, by the curtesy, for life or for years of any portion of the entire property and creditors having a lien upon any portion of the property defendants in the suit. When the*]**(1) The plaintiff shall name as defendants in a suit all persons indispensable to the partition, including all:**

**(a) Cotenants to an interest in the property that is subject to the partition;**

**(b) Persons owning a vested or contingent interest in the property that is arising out of, or carved from, or otherwise junior to any cotenant's interest, including persons unknown or unborn; and**

**(c) Lien creditors with claims secured in any respect to any portion of a party's interest in the property.**

**(2) A complaint may additionally name as parties all persons whether known or unknown, claiming any legal or equitable right, title, estate, lien or interest in the real property described in the complaint adverse to the plaintiff's interest in the property.**

**(3) Joinder of any other claim to a partition petition may not be permitted.**

**(4) The court shall decide the nature, extent, priority or validity of a party's lien not previously determined and any other issues as the court directs. Adjudication of liens must precede a partition not made by sale. If a** lien is upon an undivided interest or estate of any of the parties and a partition is made, it is thenceforth a lien only upon the share assigned to such party**,**[*;*] but such share shall be first charged with its just proportion of the cost of the partition in preference to such lien.

## CONFORMING, FORM AND STYLE AMENDMENTS

**SECTION 22.** ORS 94.775 is amended to read:

94.775. (1) Judicial partition by division of a lot in a planned community is not allowed under ORS 105.205, unless:

(a) The declaration expressly allows the division of lots in a planned community; or

(b) The lot may be divided under ORS 94.776.

(2) The lot may be partitioned by sale and division of the proceeds under [*ORS 105.245*]**sections 9 and 10 of this 2027 Act**.

(3) The restriction specified in subsection (1) of this section does not apply if the homeowners association has removed the property from the provisions of the declaration.

**SECTION 23.** ORS 105.210 is amended to read:

105.210. (1) [*If*]**Except with respect to heir's property as defined in section 2 of this 2027 Act, if** the court finds that the property can neither be partitioned nor sold without great prejudice to the [*owners*]**cotenants**, the court may receive evidence as to the value of the respective interests, fix the value thereof, and make an order permitting [*an owner*]**a cotenant** to borrow money upon the property with which to pay off the interest, as so fixed, of another [*owner*]**cotenant**. Subject to subsection (2) of this section, [*an owner*]**a cotenant** whose interest in the property is to be satisfied shall be fully discharged by proof of payment filed with the court of the amount fixed by the court as the value of that [*owner's*]**cotenant's** interest. A discharged [*owner*]**cotenant** shall have no further interest in or claim upon the property.

(2) A court may not order the discharge of an interest of a public body in real property without the consent of the governing body of the public body.

**SECTION 24.** ORS 105.250 is amended to read:

105.250. [*When*]**If** it appears that partition cannot be made without prejudice to the rights and interests of some of the parties, the court may adjudge compensation to be made by one party to another on account of the inequality of partition. Compensation [*shall*]**may** not be required to be paid to others by [*owners unknown, nor by infants unless it appears that an infant*] **an unknown or unborn party or by a minor unless the minor** has personal property sufficient for that purpose, and that the interest of the [*infant*]**minor** will be promoted thereby.

**SECTION 25.** ORS 105.290 is amended to read:

105.290. The proceeds of sale and the securities taken by the referees**, brokers or a neutral third party**, or any part thereof, shall be distributed by them to the persons entitled thereto whenever the court so directs. If no such direction is given, all proceeds and securities shall be paid into court or deposited as directed by the court.

**SECTION 26.** ORS 105.295 is amended to read:

105.295. When the proceeds of sales of any shares or parcel belonging to known persons who are parties to the suit are paid into court, the suit may be continued as between such parties for the determination by the court of their respective claims thereto. Further testimony may be taken in court, [*or by a referee, at the discretion of the court,*] and the court may, if necessary, require the parties to present the facts or law in controversy by pleadings as in an original suit.

**SECTION 27.** ORS 105.300 is amended to read:

105.300. Whenever any **lien creditor** party to the suit[*, who holds a lien upon any part of the property*] has other securities for the payment of the amount of the lien, the court may, in its discretion, order the securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property.

**SECTION 28.** ORS 105.305 is amended to read:

105.305. The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises which it may direct to be sold on credit[*;*] and for that portion of which the purchase money is required by ORS 105.370 to be invested[ *for the benefit of unknown owners, infants or parties out of the state. The referees*]**. A fiduciary appointed by the court** may take separate mortgages and other securities

for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be sold on credit, in the name of the clerk of the court and the clerk's successor in office. [*When*]**If** there is a known [*owner of full age*]**cotenant of 18 years of age or older**, the security for the share of the [*owner*]**cotenant** shall be executed in the name of the [*owner*]**cotenant**.

**SECTION 29.** ORS 105.320 is amended to read:

105.320. **(1)** Any [*person*]**cotenant** entitled to an estate for life or years in any undivided part of the property, whose estate has been sold, [*shall be*]**is** entitled to receive such sum in gross as is, deemed, upon principles of law applicable to annuities, a reasonable satisfaction for the estate.

**(2)** If the [*person so entitled*]**cotenant** consents to that sum, the [*person*]**cotenant** shall accept it by executing an instrument that is duly acknowledged or proved in the same manner as deeds for the purpose of record, and filed with the **court** clerk.

**(3) If a cotenant does not consent to that sum, the court or a fiduciary appointed by the court shall invest the whole proceeds of the sale of the cotenant's undivided part of the property for the cotenant's benefit and shall pay the income of the investment for the benefit of the cotenant during the remaining duration of the cotenant's estate. Upon termination of the cotenant's estate, the court shall, as provided in ORS 105.340, invest, secure or pay to the cotenant the principal of the investment and any income not yet paid.**

**SECTION 30.** ORS 105.350 is amended to read:

105.350. **(1)** [*Neither of the referees, nor any person for the benefit of either of them, shall*] **A referee, broker, surveyor or any third party appointed under ORS 105.205 to 105.405 must be disinterested and impartial with respect to any party to the action and may not** be interested in any purchase at a partition sale[*;*]**.**

**(2)** [ *nor shall the*]**A** guardian or conservator of [*the estate of an infant party*]**a party may not** be interested in the purchase of any real property that is the subject of the suit, except for the benefit of the [*infant*]**party**.

**(3)** All sales **or conveyances** contrary to the provisions of this section are void.

**SECTION 31.** ORS 105.390 is amended to read:

105.390. When the share of [*an infant*]**a minor or unborn person** is sold, the proceeds

of the sale may be paid [*by the referees making the sale*] to the guardian of the [*infant*]**person**, the conservator of the estate of the [*infant*]**person** or the special guardian appointed for the [*infant*]**person** in the suit, upon the guardian or conservator giving the security required by law or ordered by the court.

**SECTION 32.** ORS 105.400 is amended to read:

105.400. When [*an infant*]**a minor** or an **unborn or** incapacitated person is interested in real estate held in common or in any other manner so as to authorize the infant or incapacitated person being made a party to an action for the partition thereof, the guardian of the [*infant or incapacitated*] person or the conservator of the estate of the [*infant or incapacitated*] person may consent to a partition without suit and agree upon the share to be set off to the [*infant or incapacitated*] person. When the court so orders, the guardian or conservator may execute a release on behalf of the [*infant or other incapacitated*] person to the owners of the other shares of the parts to which they are respectively entitled.

**SECTION 33.** ORS 107.105 is amended to read:

107.105. (1) Whenever the court renders a judgment of marital annulment, dissolution or separation, the court may provide in the judgment:

(a) For the future care and custody, by one party or jointly, of all minor children of the parties born, adopted or conceived during the marriage and for minor children born to the parties prior to the marriage, as the court may deem just and proper under ORS 107.137. The court may hold a hearing to decide the custody issue prior to any other issues. When appropriate, the court shall recognize the value of close contact with both parents and encourage joint parental custody and joint responsibility for the welfare of the children.

(b) For parenting time rights of the parent not having custody of such children and for visitation rights pursuant to a petition filed under ORS 109.119. When a parenting plan has been developed as required by ORS 107.102, the court shall review the parenting plan and, if approved, incorporate the parenting plan into the court's final order. When incorporated into a final order, the parenting plan is determinative of parenting time rights. If the parents have been unable to develop a parenting plan or if either of the parents requests the court to develop a detailed parenting plan, the court shall develop the parenting plan in the best interest of the child, ensuring the noncustodial parent sufficient access to the child to provide for appropriate quality parenting time and ensuring the safety of the parties, if implicated.

The court shall deny parenting time to a parent under this paragraph if the court finds that the parent has been convicted of rape under ORS 163.355, 163.365 or 163.375 or other comparable law of another jurisdiction and the rape resulted in the conception of the child. Otherwise, the court may deny parenting time to the noncustodial parent under this subsection only if the court finds that parenting time would endanger the health or safety of the child. In the case of a noncustodial parent who has a disability as defined by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), the court may consider the noncustodial parent's disability in determining parenting time only if the court finds that behaviors or limitations related to the noncustodial parent's disability are endangering or will likely endanger the health, safety or welfare of the child. The court shall recognize the value of close contact with both parents and encourage, when practicable, joint responsibility for the welfare of such children and extensive contact between the minor children of the divided marriage and the parties. If the court awards parenting time to a noncustodial parent who has committed abuse, other than being convicted for rape as described in this paragraph, the court shall make adequate provision for the safety of the child and the other parent in accordance with the provisions of ORS 107.718 (6).

(c) For the support of the children of the marriage by the parties. In ordering child support, the formula established under ORS 25.275 shall apply. The court may at any time require an accounting from the custodial parent with reference to the use of the money received as child support. The court is not required to order support for any minor child who has become self-supporting, emancipated or married or for any child who has ceased to attend school after becoming 18 years of age. A general judgment entered under this section may include an amount for support as requested in a petition filed under ORS 107.085 or under a motion for relief made pursuant to ORS 107.095 (1)(b) for which a limited judgment was not entered, payment of which commences no earlier than the date the petition or motion was served on the nonrequesting party, and the amount shall be considered a request for relief that has been decided by the general judgment for purposes of ORS 18.082 (3).

(d) For spousal support, an amount of money for a period of time as may be just and equitable for one party to contribute to the other, in gross or in installments or both. Unless otherwise expressly provided in the judgment and except for any unpaid balance of previously ordered spousal support, liability for the payment of spousal support shall terminate on the

death of either party, and there shall be no liability for either the payment of spousal support or for any payment in cash or property as a substitute for the payment of spousal support after the death of either party. The court may approve an agreement for the entry of an order for the support of a party. A general judgment entered under this section may include an amount for support as requested in a petition filed under ORS 107.085 or under a motion for relief made pursuant to ORS 107.095 (1)(b) for which a limited judgment was not entered, payment of which commences no earlier than the date the petition or motion was served on the nonrequesting party, and the amount shall be considered a request for relief that has been decided by the general judgment for purposes of ORS 18.082 (3). In making the spousal support order, the court shall designate one or more categories of spousal support and shall make findings of the relevant factors in the decision. The court may order:

(A) Transitional spousal support as needed for a party to attain education and training necessary to allow the party to prepare for reentry into the job market or for advancement therein. The factors to be considered by the court in awarding transitional spousal support include but are not limited to:

(i) The duration of the marriage;

(ii) A party's training and employment skills;

(iii) A party's work experience;

(iv) The financial needs and resources of each party;

(v) The tax consequences to each party;

(vi) A party's custodial and child support responsibilities; and

(vii) Any other factors the court deems just and equitable.

(B) Compensatory spousal support when there has been a significant financial or other contribution by one party to the education, training, vocational skills, career or earning capacity of the other party and when an order for compensatory spousal support is otherwise just and equitable in all of the circumstances. The factors to be considered by the court in awarding compensatory spousal support include but are not limited to:

(i) The amount, duration and nature of the contribution;

(ii) The duration of the marriage;

(iii) The relative earning capacity of the parties;

(iv) The extent to which the marital estate has already benefited from the contribution;

(v) The tax consequences to each party; and

(vi) Any other factors the court deems just and equitable.

(C) Spousal maintenance as a contribution by one spouse to the support of the other for either a specified or an indefinite period. The factors to be considered by the court in awarding spousal maintenance include but are not limited to:

(i) The duration of the marriage;

(ii) The age of the parties;

(iii) The health of the parties, including their physical, mental and emotional condition;

(iv) The standard of living established during the marriage;

(v) The relative income and earning capacity of the parties, recognizing that the wage earner's continuing income may be a basis for support distinct from the income that the supported spouse may receive from the distribution of marital property;

(vi) A party's training and employment skills;

(vii) A party's work experience;

(viii) The financial needs and resources of each party;

(ix) The tax consequences to each party;

(x) A party's custodial and child support responsibilities; and

(xi) Any other factors the court deems just and equitable.

(e) For the delivery to one party of such party's personal property in the possession or control of the other at the time of the giving of the judgment.

(f) For the division or other disposition between the parties of the real or personal property, or both, of either or both of the parties as may be just and proper in all the circumstances. In determining the division of property under this paragraph, the following apply:

(A) A retirement plan or pension or an interest therein shall be considered as property.

(B) The court shall consider the contribution of a party as a homemaker as a contribution to the acquisition of marital assets.

(C) Except as provided in subparagraph (D) of this paragraph, there is a rebuttable presumption that both parties have contributed equally to the acquisition of property during the marriage, whether such property is jointly or separately held.

(D)(i) Property acquired by gift to one party during the marriage and separately held by that party on a continuing basis from the time of receipt is not subject to a presumption of

equal contribution under subparagraph (C) of this paragraph.

(ii) For purposes of this subparagraph, "property acquired by gift" means property acquired by one party through gift, devise, bequest, operation of law, beneficiary designation or inheritance.

(E) Subsequent to the filing of a petition for annulment or dissolution of marriage or separation, the rights of the parties in the marital assets shall be considered a species of co-ownership, and a transfer of marital assets under a judgment of annulment or dissolution of marriage or of separation entered on or after October 4, 1977, shall be considered a partitioning of jointly owned property.

(F) The court shall require full disclosure of all assets by the parties in arriving at a just property division.

(G) In arriving at a just and proper division of property, the court shall consider reasonable costs of sale of assets, taxes and any other costs reasonably anticipated by the parties.

(H)(i) If a party has been awarded spousal support in lieu of a share of property, the court shall so state on the record and shall order the obligor to provide for and maintain life insurance in an amount commensurate with the obligation and designating the obligee as beneficiary for the duration of the obligation.

(ii) The obligee or attorney of the obligee shall cause a certified copy of the judgment to be delivered to the life insurance company or companies.

(iii) If the obligee or the attorney of the obligee delivers a true copy of the judgment to the life insurance company or companies, identifying the policies involved and requesting such notification under this section, the company or companies shall notify the obligee, as beneficiary of the insurance policy, whenever the policyholder takes any action that will change the beneficiary or reduce the benefits of the policy. Either party may request notification by the insurer when premium payments have not been made. If the obligor is ordered to provide for and maintain life insurance, the obligor shall provide to the obligee a true copy of the policy. The obligor shall also provide to the obligee written notice of any action that will reduce the benefits or change the designation of the beneficiaries under the policy.

(g) For the creation of trusts as follows:

(A) For the appointment of one or more trustees to hold, control and manage for the benefit of the children of the parties, of the marriage or otherwise such of the real or personal

property of either or both of the parties, as the court may order to be allocated or appropriated to their support and welfare, and to collect, receive, expend, manage or invest any sum of money awarded for the support and welfare of minor children of the parties.

(B) For the appointment of one or more trustees to hold, manage and control such amount of money or such real or personal property of either or both of the parties, as may be set aside, allocated or appropriated for the support of a party.

(C) For the establishment of the terms of the trust and provisions for the disposition or distribution of such money or property to or between the parties, their successors, heirs and assigns after the purpose of the trust has been accomplished. Upon petition of a party or a person having an interest in the trust showing a change of circumstances warranting a change in the terms of the trust, the court may make and direct reasonable modifications in its terms.

(h) To change the name of either spouse to a name the spouse held before the marriage. The court shall order a change if it is requested by the affected party.

(i) For a money award for any sums of money found to be then remaining unpaid upon any order or limited judgment entered under ORS 107.095. If a limited judgment was entered under ORS 107.095, the limited judgment shall continue to be enforceable for any amounts not paid under the limited judgment unless those amounts are included in the money award made by the general judgment.

(j) For an award of reasonable attorney fees and costs and expenses reasonably incurred in the action in favor of a party or in favor of a party's attorney.

(2) In determining the proper amount of support and the proper division of property under subsection (1)(c), (d) and (f) of this section, the court may consider evidence of the tax consequences on the parties of its proposed judgment.

(3) Upon the filing of the judgment, the property division ordered shall be deemed effective for all purposes. This transfer by judgment, which shall affect solely owned property transferred to the other spouse as well as commonly owned property in the same manner as would a declaration of a resulting trust in favor of the spouse to whom the property is awarded, is not a taxable sale or exchange.

(4) If an appeal is taken from a judgment of annulment or dissolution of marriage or of separation or from any part of a judgment rendered in pursuance of the provisions of ORS

107.005 to 107.086, 107.095, 107.105, 107.115 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610, the court rendering the judgment may provide in a supplemental judgment for any relief provided for in ORS 107.095 and shall provide that the relief granted in the judgment is to be in effect only during the pendency of the appeal. A supplemental judgment under this subsection may be enforced as provided in ORS 33.015 to 33.155 and ORS chapter 18. A supplemental judgment under this subsection may be appealed in the same manner as provided for supplemental judgments modifying a domestic relations judgment under ORS 19.275.

(5) If an appeal is taken from the judgment or other appealable order in a suit for annulment or dissolution of a marriage or for separation and the appellate court awards costs and disbursements to a party, the court may also award to that party, as part of the costs, such additional sum of money as it may adjudge reasonable as an attorney fee on the appeal.

(6) If, as a result of a suit for the annulment or dissolution of a marriage or for separation, the parties to such suit become owners of an undivided interest in any real or personal property, or both, either party may maintain supplemental proceedings by filing a petition in such suit for the partition of such real or personal property, or both, within two years from the entry of the judgment, showing among other things that the original parties to the judgment and their joint or several creditors having a lien upon any such real or personal property, if any there be, constitute the sole and only necessary parties to such supplemental proceedings. The procedure in the supplemental proceedings, so far as applicable, shall be the procedure provided in ORS **105.205 to** 105.405 for the partition of real property, and the court granting the judgment shall have in the first instance and retain jurisdiction in equity therefor.

**SECTION 34. ORS 105.225, 105.325 and 105.330 are repealed.**

**SECTION 35. Sections 1 to 10 of this 2027 Act are added to and made a part of ORS 105.205 to 105.405.**

## APPLICABILITY

**SECTION 36. Applicable date. Sections 1 to 10 of this 2027 Act apply to partition actions filed on or after the effective date of this 2027 Act.**

## CAPTIONS

**SECTION 37. Captions. The unit and section captions used in this 2027 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 2027 Act.**

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