

PARTITION

105.205 Who may maintain partition. When several persons 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 when several persons hold as tenants in common a vested remainder or reversion in any real property, any one or more of them may maintain a suit for the partition of the real property according to the respective rights of the persons interested therein, 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.

105.210 When and how partition prevented. (1) If the court finds that the property can neither be partitioned nor sold without great prejudice to the owners, the court may receive evidence as to the value of the respective interests, fix the value thereof, and make an order permitting an owner to borrow money upon the property with which to pay off the interest, as so fixed, of another owner. Subject to subsection (2) of this section, an owner 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 interest. A discharged owner 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. [Amended by 2001 c.606 §1]

105.215 Complaint. The interest of all known and unknown persons in the property shall be specifically and particularly set forth in the complaint for partition, as far as known to the plaintiff. If one or more of the parties, or the share or quantity of interest of any of the parties, is unknown to the plaintiff or is uncertain or contingent, or if the ownership of the inheritance depends upon an executory devise, or the remainder is a contingent remainder, so that the parties cannot be named, that fact shall be set forth in the complaint.

105.220 Tenants and lien creditors as defendants; liens on undivided interests. 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 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.

105.225 Summons; to whom directed. The summons shall be directed by name to all the tenants in common who are known, to all lien creditors who are made parties to the suit and generally to all persons unknown having or claiming an interest or estate in the property.

105.230 Service by publication. If a party having a share or interest in or lien upon the property is unknown or cannot be found, and such fact is made to appear by affidavit, the summons may be served on the unknown or unlocated party by publication, directed by the court or judge, as in ordinary cases. When service of the summons is made by publication it must be accompanied by a brief description of the property which is the subject of the suit. [Amended by 1979 c.284 §95]

105.235 Answer. The defendant shall set forth in the answer the nature and extent of the interest of the defendant in the property. If the defendant is a lien creditor the defendant shall set forth how the lien was created, the amount of the debt secured thereby and remaining due, and whether such debt is secured in any other way, and if so, the nature of the other security.

105.240 Rights determinable; ascertainment of title where defendant defaults or sale is necessary. The rights of the plaintiffs and defendants may be put in issue, tried and determined in the suit. If a defendant fails to answer, or if a sale of the property is necessary, the title shall be ascertained by proof to the satisfaction of the court before the judgment for partition or sale is given. [Amended by 2003 c.576 §361]

105.245 Sale or partition ordered by court. 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, the

court may order a sale of the property, and for that purpose may appoint one or more referees. Otherwise, upon the requisite proofs being made, it shall enter a judgment requiring a partition according to the respective rights of the parties, as ascertained by the court. The court shall appoint three referees to partition the property and shall designate the portion to remain undivided for the owners whose interest remain unknown or not ascertained. [Amended by 2003 c.576 §362]

105.250 Compensation when partition cannot be made without prejudice to party's interest. When 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 not be required to be paid to others by owners unknown, nor by infants unless it appears that an infant has personal property sufficient for that purpose, and that the interest of the infant will be promoted thereby.

105.255 How referees make partition; report. In making the partition the referees shall divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court. They shall designate the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust and describing the property divided and the shares allotted to each party with a particular description of each share.

105.260 Power of court over report; final judgment. The court may confirm or set aside the report in whole or in part and if necessary appoint new referees. Upon the report being confirmed, a judgment shall be given stating that the partition shall be effectual forever. Except as provided in ORS 105.265, the judgment is binding and conclusive:

(1) On all parties named therein, and their legal representatives, who have at the time any interest in any part of the property divided as owners in fee or as tenants for life or for years.

(2) On all parties named therein, and their legal representatives, entitled to the reversion, remainder or inheritance of the property or any part thereof after the termination of a particular estate therein, or who by any contingency may be entitled to a beneficial interest in the property.

(3) On all parties named therein, or their legal representatives, who have an interest in any undivided share of the property as tenants for years or for life.

(4) On all persons interested in the property who are unknown, to whom notice was given of the application for partition by publication, as directed by ORS 105.230.

(5) On all persons claiming from parties or persons listed in subsections (1) to (4) of this section. [Amended by 2003 c.576 §363]

105.265 Persons not affected by judgment. The judgment provided for in ORS 105.260 shall not affect tenants for years or for life of the whole of the property which is the subject of partition. Except as provided in ORS 105.260, the judgment and partition shall not preclude any person from claiming title to the property in question, or from controverting the title of the parties between whom the partition was made. [Amended by 2003 c.576 §364]

105.270 Order of sale on referees' report. 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. [Amended by 2003 c.576 §365]

105.275 Conclusiveness of order confirming report. If the report of the referee is confirmed the order of confirmation is binding and conclusive upon all parties to the suit.

105.280 How sale made; notice of sale. All sales of real property made by the referees shall be made by public auction to the highest bidder in the manner required for the sale of real property on execution. The notice shall state the terms of sale. If the property or any part of it is to be sold subject to a prior estate, charge or lien, that fact shall be stated in the notice.

105.285 Distribution of proceeds of sale. The proceeds of the sale of encumbered property shall be distributed by the judgment of the court as follows:

(1) To pay the property's just proportion of the general costs of the suit.

(2) To pay the costs of the reference.

(3) 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) The residue among the owners of the property sold, according to their respective shares. [Amended by 2003 c.576 §366]

105.290 Distribution of proceeds by referee or payment into court. The proceeds of sale and the securities taken by the referees, 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.

105.295 Continuance of suit after proceeds paid into court. 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.

105.300 When lienholder has other securities. Whenever any 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.

105.305 Credit allowed. 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 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 there is a known owner of full age, the security for the share of the owner shall be executed in the name of the owner.

105.310 Setting off estate for life or years in part not sold. When only a part of the property is ordered to be sold, the whole of an estate for life or years in an undivided share of the property may be set off in any part of the property not ordered to be sold.

105.315 Disposition of life estate or leasehold. When the estate of any tenant for life or years in any undivided part of the property in question was admitted by the parties or ascertained by the court to be existing at the time of the order of sale, and the person entitled to such estate was made a party to the suit, the estate may be first set off out of any part of the property and a sale made of such parcel subject to the tenants prior unsold estate; but if in the judgment of the court a due regard to the interest of all the parties requires that such estate should also be sold, the sale of the estate may be ordered.

105.320 Compensation of tenants in case of sale. Any person entitled to an estate for life or years in any undivided part of the property, whose estate has been sold, shall be entitled to receive such sum in gross as is, deemed, upon principles of law applicable to annuities, a reasonable satisfaction for the estate. If the person so entitled consents to that sum, the person 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 clerk.

105.325 When court determines value of tenancy. If a tenant does not consent pursuant to ORS 105.320, before the report of sale, the court shall ascertain and determine what proportion of the proceeds of the sale, after

deducting expenses, will be a just and reasonable sum to be invested for the tenant's benefit, and shall order that sum to be deposited in court for that purpose.

105.330 Rules for determining value of certain estates. The proportion of the proceeds of the sale to be invested, as provided in ORS 105.325, shall be ascertained and determined as follows:

(1) If an estate in dower or curtesy is included in the order of sale its proportion shall be one-half of the proceeds of the sale of the property, or of the sale of the undivided share in the property upon which the claim or dower existed.

(2) If any other estate for life or years is included in the order of sale its proportion shall be the whole proceeds of the sale of the property, or of the sale of an undivided share of the property in which the estate existed.

105.335 Protection of unknown tenants. If any person entitled to an estate for life or years is unknown, the court shall provide for the protection of the rights of the person in the same manner, as far as possible, as if the person were known and had appeared.

105.340 Provision for future rights or interests. In all cases of sales in partition when it appears that any person has a vested or contingent future right or estate in any of the property sold, the court shall ascertain and settle the proportional value of the contingent or vested right or estate according to the principles of law applicable to annuities and survivorship, and shall direct such proportion of the proceeds of sale to be invested, secured or paid over in such manner as to protect the rights and interests of the parties. [Amended by 1969 c.591 §282]

105.345 Notice of terms of sale; separate sale of distinct parcels. In all cases of sales of property, the terms shall be known at the time. If the premises consist of distinct farms or lots they shall be sold separately, or otherwise if the court so directs.

105.350 Purchase by referee, conservator or guardian forbidden. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase at a partition sale; nor shall the guardian or conservator of the estate of an infant party be interested in the purchase of any real property that is the subject of the suit, except for the benefit of the infant. All sales contrary to the provisions of this section are void. [Amended by 1973 c.823 §99]

105.355 Report of sale. After completing the sale the referees 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 clerk.

105.360 Exception to report; confirmation of sale; order of confirmation. 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 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. [Amended by 2003 c.576 §367]

105.365 Purchase by encumbrancer or party entitled to share. When a party entitled to a share of the property, or an encumbrancer entitled to have the lien of the encumbrancer paid out of the sale, becomes a purchaser, the referees may take a receipt for so much of the proceeds of the sale as belongs to the party or the encumbrancer.

105.370 Investment of proceeds for certain parties. When there are proceeds of sale belonging to an unknown owner, or to a person without the state who has no legal representative within it, or when there are proceeds 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.

105.375 In whose name securities taken or investments made. Except as provided in ORS 105.380, security for the proceeds of sale shall be taken or investments of the proceeds shall be made in the name of the clerk of the court and the clerk's successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

105.380 When securities are payable to parties. When security is taken by the referees on a sale, and the parties interested in the security, by an instrument in writing under their hands delivered to the referees, agree upon the shares and proportions to which they are entitled, or when shares and proportions have been previously adjudged by the court, the securities shall be taken in the names of and payable to the parties entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

105.385 Clerk's treatment of securities and investments. The clerk in whose name a security is taken or by whom an investment is made, and the clerk's successors in office, shall receive the interest and principal as it becomes due and apply and invest it as the court may direct. The clerk shall file in the office of the clerk all securities taken, and keep an account in a book provided and kept for that purpose in the office, free for inspection by all persons, of investments and moneys received and disposed of by the clerk.

105.390 When proceeds paid to conservator or guardian of infant. When the share of an infant is sold, the proceeds of the sale may be paid by the referees making the sale to the guardian of the infant, the conservator of the estate of the infant or the special guardian appointed for the infant in the suit, upon the guardian or conservator giving the security required by law or ordered by the court. [Amended by 1973 c.823 §100]

105.395 Payment of proceeds to conservator of incapacitated person. When the interest in real property of an incapacitated person has been sold, the share of the incapacitated person of the proceeds shall be given, on the behalf of the incapacitated person, to the conservator of the estate of the incapacitated person if the conservator executes, with sufficient sureties, an undertaking approved by the judge of the court, that the conservator will faithfully discharge the trust reposed in the conservator and will render a true and just account to the person entitled to the proceeds or to the legal representative of the person. [Amended by 1973 c.823 §101]

105.400 When conservator or guardian may consent to partition. When an infant or an 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. [Amended by 1973 c.823 §102; 1987 c.158 §17]

105.405 Costs and expenses of partition. (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.

(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 be paid by the parties that will share in the lands divided in proportion to their respective interests therein, and shall be included and specified in the judgment. They shall be a lien on the several shares, and the judgment may be enforced by execution against the parties separately. When, however, 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. [Amended by 1971 c.502 §1; 2003 c.576 §368]