

House Bill 2892

Sponsored by Representative KENNEMER (at the request of Professional Land Surveyors of Oregon) (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows landowners with common boundary that is uncertain or subject to dispute to locate and fix boundary by agreement.

A BILL FOR AN ACT

1
2 Relating to boundary by agreement; creating new provisions; and amending ORS 92.010.

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

4 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS 92.010 to 92.192.**

5 **SECTION 2. (1) When all or part of a common boundary between lawfully established**
6 **units of land is uncertain or subject to dispute, the owners of the lawfully established units**
7 **of land sharing the common boundary may, as provided in this section, locate and fix the**
8 **boundary by agreement.**

9 **(2) Owners who locate and fix a boundary by agreement shall:**

10 **(a) Document the agreement in a written instrument.**

11 **(b) Subject to subsection (3) of this section, have a registered professional land surveyor**
12 **survey and monument the boundary in the manner described in ORS 92.060 (1) and file a**
13 **record of survey, including the recordation number assigned to the agreement by the office**
14 **of the county clerk, with the county surveyor in accordance with ORS 209.250.**

15 **(c) Present the written instrument documenting the boundary by agreement for**
16 **recordation in the deed records of the county by the county clerk for the county in which**
17 **the lawfully established units of land are situated.**

18 **(3) The county surveyor may waive the requirement to have a boundary surveyed and**
19 **monumented if the county surveyor determines that:**

20 **(a) It is not practicable to survey and monument the boundary; or**

21 **(b) The boundary has already been surveyed and monumented.**

22 **(4) The written instrument documenting the boundary by agreement must:**

23 **(a) Be titled "Boundary Line Agreement."**

24 **(b) Include a description of the boundary, as described in ORS 93.600.**

25 **(c) Specify the filing number of the survey described in subsection (2) of this section, if**
26 **any.**

27 **(d) Be signed and acknowledged by the owners of the lawfully established units of land.**

28 **(e) Be submitted to the county surveyor for examination and a determination that the**
29 **agreement complies with this section.**

30 **(5) If the county surveyor determines that the boundary line agreement complies with**
31 **this section, the county surveyor shall sign and attach to the agreement a certification that**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 the boundary line agreement has been examined and found to be in compliance with this
2 section.

3 (6) A boundary by agreement may not result in the creation or elimination of a lawfully
4 established unit of land.

5 (7) Boundary by agreement under this section may not be used as an alternative to
6 meeting the requirements for reconfiguration of existing property by either a property line
7 adjustment or a replat under ORS 92.010 to 92.192.

8 (8) The owners, their successors, assigns, heirs and devisees to the lawfully established
9 units of land are estopped from making a legal challenge to a boundary by agreement once
10 the written instrument for the boundary by agreement has been recorded in the deed records
11 of the county in which the land is situated.

12 (9) The governing body of a county may establish a fee for the services of the county
13 surveyor under this section.

14 (10) A county clerk to whom a boundary by agreement is presented for recordation:

15 (a) Shall record the agreement if a certification of compliance is attached pursuant to
16 subsection (5) of this section; and

17 (b) May collect a fee as provided in ORS 205.320 for recording the agreement.

18 **SECTION 3.** ORS 92.010 is amended to read:

19 92.010. As used in ORS 92.010 to 92.192, unless the context requires otherwise:

20 (1) "Declarant" means the person who files a declaration under ORS 92.075.

21 (2) "Declaration" means the instrument described in ORS 92.075 by which the subdivision or
22 partition plat was created.

23 (3)(a) "Lawfully established unit of land" means:

24 (A) A lot or parcel created pursuant to ORS 92.010 to 92.192; or

25 (B) Another unit of land created:

26 (i) In compliance with all applicable planning, zoning and subdivision or partition ordinances
27 and regulations; or

28 (ii) By deed or land sales contract, if there were no applicable planning, zoning or subdivision
29 or partition ordinances or regulations.

30 (b) "Lawfully established unit of land" does not mean a unit of land created solely to establish
31 a separate tax account.

32 (4) "Lot" means a single unit of land that is created by a subdivision of land.

33 (5) "Negotiate" means any activity preliminary to the execution of a binding agreement for the
34 sale of land in a subdivision or partition, including but not limited to advertising, solicitation and
35 promotion of the sale of such land.

36 (6) "Parcel" means a single unit of land that is created by a partition of land.

37 (7) "Partition" means either an act of partitioning land or an area or tract of land partitioned.

38 (8) "Partition plat" includes a final map and other writing containing all the descriptions, lo-
39 cations, specifications, provisions and information concerning a partition.

40 (9) "Partitioning land" means dividing land to create not more than three parcels of land within
41 a calendar year, but does not include:

42 (a) Dividing land as a result of a lien foreclosure, foreclosure of a recorded contract for the sale
43 of real property or the creation of cemetery lots;

44 (b) Adjusting a property line as property line adjustment is defined in this section;

45 (c) Dividing land as a result of the recording of a subdivision or condominium plat;

1 (d) Selling or granting by a person to a public agency or public body of property for state
 2 highway, county road, city street or other right of way purposes if the road or right of way complies
 3 with the applicable comprehensive plan and ORS 215.213 (2)(p) to (r) and 215.283 (2)(q) to (s). How-
 4 ever, any property sold or granted for state highway, county road, city street or other right of way
 5 purposes shall continue to be considered a single unit of land until the property is further subdivided
 6 or partitioned; or

7 (e) Selling or granting by a public agency or public body of excess property resulting from the
 8 acquisition of land by the state, a political subdivision or special district for highways, county roads,
 9 city streets or other right of way purposes when the sale or grant is part of a property line ad-
 10 justment incorporating the excess right of way into adjacent property. The property line adjustment
 11 shall be approved or disapproved by the applicable local government. If the property line adjustment
 12 is approved, it shall be recorded in the deed records of the county where the property is located.

13 (10) "Plat" includes a final subdivision plat, replat or partition plat.

14 (11) "Property line" means the division line between two units of land.

15 (12) "Property line adjustment" means a relocation or elimination, **except a relocation by**
 16 **means of a boundary by agreement under section 2 of this 2011 Act**, of all or a portion of the
 17 common property line between abutting properties that does not create an additional lot or parcel.

18 (13) "Replat" means the act of platting the lots, parcels and easements in a recorded subdivision
 19 or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to in-
 20 crease or decrease the number of lots in the subdivision.

21 (14) "Road" or "street" means a public or private way that is created to provide ingress or
 22 egress for persons to one or more lots, parcels, areas or tracts of land, excluding a private way that
 23 is created to provide ingress or egress to such land in conjunction with the use of such land for
 24 forestry, mining or agricultural purposes.

25 (15) "Sale" or "sell" includes every disposition or transfer of land or an interest or estate
 26 therein.

27 (16) "Subdivide land" means to divide land to create four or more lots within a calendar year.

28 (17) "Subdivision" means either an act of subdividing land or an area or a tract of land subdi-
 29 vided.

30 (18) "Subdivision plat" includes a final map and other writing containing all the descriptions,
 31 locations, specifications, dedications, provisions and information concerning a subdivision.

32 (19) "Utility easement" means an easement noted on a subdivision plat or partition plat for the
 33 purpose of installing or maintaining public or private utility infrastructure for the provision of wa-
 34 ter, power, heat or telecommunications to the public.

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