

# House Bill 3269

Sponsored by Representative HOLVEY

## 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**.

Enacts Uniform Partition of Heirs Property Act.

### A BILL FOR AN ACT

1  
2 Relating to partition.

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

4 **SECTION 1. Short title. Sections 1 to 13 of this 2011 Act may be cited as the Uniform**  
5 **Partition of Heirs Property Act.**

6 **SECTION 2. Definitions. As used in sections 1 to 13 of this 2011 Act:**

7 (1) **"Ascendant" means an individual who precedes another individual in lineage, in the**  
8 **direct line of ascent from the other individual.**

9 (2) **"Collateral" means an individual who is related to another individual under the law**  
10 **of intestate succession of this state but who is not the other individual's ascendant or de-**  
11 **scendant.**

12 (3) **"Descendant" means an individual who follows another individual in lineage, in the**  
13 **direct line of descent from the other individual.**

14 (4) **"Determination of value" means a court order determining the fair market value of**  
15 **heirs property under section 6 or 10 of this 2011 Act, or adopting the valuation of the prop-**  
16 **erty agreed to by all cotenants.**

17 (5) **"Heirs property" means real property held in tenancy in common that satisfies all of**  
18 **the following requirements as of the filing of a partition action:**

19 (a) **There is no agreement in a record binding all the cotenants that governs the partition**  
20 **of the property;**

21 (b) **One or more of the cotenants acquired title from a relative, whether living or de-**  
22 **ceased; and**

23 (c) **Any of the following applies:**

24 (A) **20 percent or more of the interests are held by cotenants who are relatives;**

25 (B) **20 percent or more of the interests are held by an individual who acquired title from**  
26 **a relative, whether living or deceased; or**

27 (C) **20 percent or more of the cotenants are relatives.**

28 (6) **"Partition by sale" means a court-ordered sale of the entire heirs property, whether**  
29 **by auction, sealed bids or open-market sale conducted under section 10 of this 2011 Act.**

30 (7) **"Partition in kind" means the division of heirs property into physically distinct and**  
31 **separately titled parcels.**

32 (8) **"Record" means information that is inscribed on a tangible medium or that is stored**

**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 in an electronic or other medium and is retrievable in perceivable form.

2 (9) "Relative" means an ascendant, descendant or collateral, or an individual otherwise  
 3 related to another individual by blood, marriage, adoption or law of this state other than  
 4 sections 1 to 13 of this 2011 Act.

5 **SECTION 3. Relation to other law.** (1) In an action to partition real property, the court  
 6 shall determine whether the property is heirs property. If the court determines that the  
 7 property is heirs property, the property must be partitioned under sections 1 to 13 of this  
 8 2011 Act unless all of the cotenants otherwise agree in a record.

9 (2) Sections 1 to 13 of this 2011 Act supplement ORS 105.205 to 105.405. If an action is  
 10 governed by sections 1 to 13 of this 2011 Act, the provisions of sections 1 to 13 of this 2011  
 11 Act supersede the provisions of ORS 105.205 to 105.405 that are inconsistent with sections 1  
 12 to 13 of this 2011 Act.

13 **SECTION 4. Service; notice by posting.** (1) Sections 1 to 13 of this 2011 Act do not limit  
 14 or affect the method by which service of a complaint in a partition action may be made.

15 (2) If the plaintiff in a partition action seeks an order for service by publication and the  
 16 court has determined that the property may be heirs property, the plaintiff, not later than  
 17 10 days after the court's determination, shall post and maintain while the action is pending  
 18 a conspicuous sign on the property that is the subject of the action. The sign must state that  
 19 the action has been commenced and identify the name and address of the court and the  
 20 common designation by which the property is known. The court may require the plaintiff  
 21 to publish on the sign the name of the plaintiff and the known defendants.

22 **SECTION 5. Referees.** If the court appoints referees pursuant to ORS 105.245, each ref-  
 23 erree must be disinterested and impartial and not a party to or a participant in the action.

24 **SECTION 6. Determination of value.** (1) Except as otherwise provided in subsections (2)  
 25 and (3) of this section, if the court determines that the property that is the subject of a  
 26 partition action is heirs property, the court shall determine the fair market value of the  
 27 property by ordering an appraisal pursuant to subsection (4) of this section.

28 (2) If all cotenants have agreed to the value of the property or to another method of  
 29 valuation, the court shall adopt that value or the value produced by the agreed method of  
 30 valuation.

31 (3) If the court determines that the evidentiary value of an appraisal is outweighed by  
 32 the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair  
 33 market value of the property and send notice to the parties of the value.

34 (4) If the court orders an appraisal, the court shall appoint a disinterested real estate  
 35 appraiser licensed in this state to determine the fair market value of the property assuming  
 36 sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall  
 37 file a sworn or verified appraisal with the court.

38 (5) If an appraisal is conducted pursuant to subsection (4) of this section, not later than  
 39 10 days after the appraisal is filed, the court shall send notice to each party with a known  
 40 address, stating:

- 41 (a) The appraised fair market value of the property;
- 42 (b) That the appraisal is available at the clerk's office; and
- 43 (c) That a party may file with the court an objection to the appraisal not later than 30  
 44 days after the notice is sent, stating the grounds for the objection.

45 (6) If an appraisal is filed with the court pursuant to subsection (4) of this section, the

1 court shall conduct a hearing to determine the fair market value of the property not sooner  
 2 than 30 days after a copy of the notice of the appraisal is sent to each party under subsection  
 3 (5) of this section, whether or not an objection to the appraisal is filed under subsection (5)(c)  
 4 of this section. In addition to the court-ordered appraisal, the court may consider any other  
 5 evidence of value offered by a party.

6 (7) After a hearing under subsection (6) of this section, but before considering the merits  
 7 of the partition action, the court shall determine the fair market value of the property and  
 8 send notice to the parties of the value.

9 **SECTION 7. Cotenant buyout.** (1) If any cotenant requested partition by sale, after the  
 10 determination of value under section 6 of this 2011 Act, the court shall send notice to the  
 11 parties that any cotenant except a cotenant that requested partition by sale may buy all the  
 12 interests of the cotenants that requested partition by sale.

13 (2) Not later than 45 days after the notice is sent under subsection (1) of this section,  
 14 any cotenant except a cotenant that requested partition by sale may give notice to the court  
 15 that the cotenant elects to buy all the interests of the cotenants that requested partition by  
 16 sale.

17 (3) The purchase price for each of the interests of a cotenant that requested partition  
 18 by sale is the value of the entire parcel determined under section 6 of this 2011 Act multiplied  
 19 by the cotenant's fractional ownership of the entire parcel.

20 (4) After expiration of the period described in subsection (2) of this section, the following  
 21 rules apply:

22 (a) If only one cotenant elects to buy all the interests of the cotenants that requested  
 23 partition by sale, the court shall notify all the parties of that fact.

24 (b) If more than one cotenant elects to buy all the interests of the cotenants that re-  
 25 quested partition by sale, the court shall allocate the right to buy those interests among the  
 26 electing cotenants based on each electing cotenant's existing fractional ownership of the  
 27 entire parcel divided by the total existing fractional ownership of all cotenants electing to  
 28 buy and send notice to all the parties of that fact and of the price to be paid by each electing  
 29 cotenant.

30 (c) If no cotenant elects to buy all the interests of the cotenants that requested partition  
 31 by sale, the court shall send notice to all the parties of that fact and resolve the partition  
 32 action under section 8 (1) and (2) of this 2011 Act.

33 (5) If the court sends notice to the parties under subsection (4)(a) or (b) of this section,  
 34 the court shall set a date, not sooner than 60 days after the date the notice was sent, by  
 35 which electing cotenants must pay their apportioned price into the court. After this date, the  
 36 following rules apply:

37 (a) If all electing cotenants timely pay their apportioned price into court, the court shall  
 38 issue an order reallocating all the interests of the cotenants and disburse the amounts held  
 39 by the court to the persons entitled to them.

40 (b) If no electing cotenant timely pays its apportioned price, the court shall resolve the  
 41 partition action under section 8 (1) and (2) of this 2011 Act as if the interests of the cotenants  
 42 that requested partition by sale were not purchased.

43 (c) If more than one cotenant pays the entire price for the remaining interest, the court  
 44 shall reapportion the remaining interest among those paying cotenants, based on each paying  
 45 cotenant's original fractional ownership of the entire parcel divided by the total original

1 fractional ownership of all cotenants that paid the entire price for the remaining interest.  
 2 The court shall issue promptly an order reallocating all of the cotenants' interests, disburse  
 3 the amounts held by it to the persons entitled to them and promptly refund any excess  
 4 payment held by the court.

5 (6) Not later than 45 days after the court sends notice to the parties pursuant to sub-  
 6 section (1) of this section, any cotenant entitled to buy an interest under this section may  
 7 request the court to authorize the sale as part of the pending action of the interests of  
 8 cotenants named as defendants and served with the complaint but that did not appear in the  
 9 action.

10 (7) If the court receives a timely request under subsection (6) of this section, the court,  
 11 after hearing, may deny the request or authorize the requested additional sale on such terms  
 12 as the court determines are fair and reasonable, subject to the following limitations:

13 (a) A sale authorized under this subsection may occur only after the purchase prices for  
 14 all interests subject to sale under subsections (1) to (6) of this section have been paid into  
 15 court and those interests have been reallocated among the cotenants as provided in sub-  
 16 sections (1) to (6) of this section; and

17 (b) The purchase price for the interest of a nonappearing cotenant is based on the court's  
 18 determination of value under section 6 of this 2011 Act.

19 **SECTION 8. Partition alternatives.** (1) If all the interests of all cotenants that requested  
 20 partition by sale are not purchased by other cotenants pursuant to section 7 of this 2011 Act,  
 21 or if after conclusion of the buyout under section 7 of this 2011 Act, a cotenant remains that  
 22 has requested partition in kind, the court shall order partition in kind unless the court, after  
 23 consideration of the factors listed in section 9 of this 2011 Act, finds that partition in kind  
 24 will result in manifest prejudice to the cotenants as a group. In considering whether to order  
 25 partition in kind, the court shall approve a request by two or more parties to have their in-  
 26 dividual interests aggregated.

27 (2) If the court does not order partition in kind under subsection (1) of this section, the  
 28 court shall order partition by sale pursuant to section 10 of this 2011 Act or, if no cotenant  
 29 requested partition by sale, the court shall dismiss the action.

30 (3) If the court orders partition in kind pursuant to subsection (1) of this section, the  
 31 court may require that one or more cotenants pay one or more other cotenants amounts so  
 32 that the payments, taken together with the value of the in-kind distributions to the  
 33 cotenants, will make the partition in kind just and proportionate in value to the fractional  
 34 interests held.

35 (4) If the court orders partition in kind, the court shall allocate to the cotenants that  
 36 are unknown, unlocatable or the subject of a default judgment, if their interests were not  
 37 bought out pursuant to section 7 of this 2011 Act, a part of the property representing the  
 38 combined interests of these cotenants as determined by the court, and this part of the  
 39 property shall remain undivided.

40 **SECTION 9. Considerations for partition in kind.** (1) In determining under section 8 (1)  
 41 of this 2011 Act whether partition in kind would result in manifest prejudice to the cotenants  
 42 as a group, the court shall consider the following:

43 (a) Whether the heirs property practicably can be divided among the cotenants;

44 (b) Whether partition in kind would apportion the property in such a way that the ag-  
 45 gregate fair market value of the parcels resulting from the division would be materially less

1 than the value of the property if it were sold as a whole, taking into account the condition  
 2 under which a court-ordered sale likely would occur;

3 (c) Evidence of the collective duration of ownership or possession of the property by a  
 4 cotenant and one or more predecessors in title or predecessors in possession to the cotenant  
 5 who are or were relatives of the cotenant or each other;

6 (d) A cotenant's sentimental attachment to the property, including any attachment  
 7 arising because the property has ancestral or other unique or special value to the cotenant;

8 (e) The lawful use being made of the property by a cotenant and the degree to which the  
 9 cotenant would be harmed if the cotenant could not continue the same use of the property;

10 (f) The degree to which the cotenants have contributed their pro rata share of the  
 11 property taxes, insurance and other expenses associated with maintaining ownership of the  
 12 property or have contributed to the physical improvement, maintenance or upkeep of the  
 13 property; and

14 (g) Any other relevant factor.

15 (2) The court may not consider any one factor in subsection (1) of this section to be  
 16 dispositive without weighing the totality of all relevant factors and circumstances.

17 **SECTION 10. Open-market sale, sealed bids or auction.** (1) If the court orders a sale of  
 18 heirs property, the sale must be an open-market sale unless the court finds that a sale by  
 19 sealed bids or an auction would be more economically advantageous and in the best interests  
 20 of the cotenants as a group.

21 (2) If the court orders an open-market sale and the parties, not later than 10 days after  
 22 the entry of the order, agree on a real estate broker licensed in this state to offer the  
 23 property for sale, the court shall appoint the broker and establish a reasonable commission.  
 24 If the parties do not agree on a broker, the court shall appoint a disinterested real estate  
 25 broker licensed in this state to offer the property for sale and shall establish a reasonable  
 26 commission. The broker shall offer the property for sale in a commercially reasonable man-  
 27 ner at a price no lower than the determination of value and on the terms and conditions  
 28 established by the court.

29 (3) If the broker appointed under subsection (2) of this section obtains within a reason-  
 30 able time an offer to purchase the property for at least the determination of value:

31 (a) The broker shall comply with the reporting requirements in section 11 of this 2011  
 32 Act; and

33 (b) The sale may be completed in accordance with state law other than sections 1 to 13  
 34 of this 2011 Act.

35 (4) If the broker appointed under subsection (2) of this section does not obtain within a  
 36 reasonable time an offer to purchase the property for at least the determination of value,  
 37 the court, after hearing, may:

38 (a) Approve the highest outstanding offer, if any;

39 (b) Redetermine the value of the property and order that the property continue to be  
 40 offered for an additional time; or

41 (c) Order that the property be sold by sealed bids or at an auction.

42 (5) If the court orders a sale by sealed bids or an auction, the court shall set terms and  
 43 conditions of the sale. If the court orders an auction, the auction must be conducted under  
 44 ORS 105.280.

45 (6) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is en-

1 titled to a credit against the price in an amount equal to the purchaser's share of the pro-  
2 ceeds.

3 **SECTION 11. Report of open-market sale.** (1) A broker appointed under section 10 (2) of  
4 this 2011 Act to offer heirs property for open-market sale shall file a report with the court  
5 not later than seven days after receiving an offer to purchase the property for at least the  
6 value determined under section 6 or 10 of this 2011 Act.

7 (2) The report required by subsection (1) of this section must contain the following in-  
8 formation:

9 (a) A description of the property to be sold to each buyer;

10 (b) The name of each buyer;

11 (c) The proposed purchase price;

12 (d) The terms and conditions of the proposed sale, including the terms of any owner fi-  
13 nancing;

14 (e) The amounts to be paid to lienholders;

15 (f) A statement of contractual or other arrangements or conditions of the broker's  
16 commission; and

17 (g) Other material facts relevant to the sale.

18 **SECTION 12. Uniformity of application and construction.** In applying and construing  
19 sections 1 to 13 of this 2011 Act, consideration must be given to the need to promote uni-  
20 formity of the law with respect to its subject matter among states that enact the Uniform  
21 Partition of Heirs Property Act.

22 **SECTION 13. Relation to Electronic Signatures in Global and National Commerce Act.**  
23 Sections 1 to 13 of this 2011 Act modify, limit and supersede the Electronic Signatures in  
24 Global and National Commerce Act, 15 U.S.C. 7001 et seq., but do not modify, limit or su-  
25 persede section 101(c) of that Act, 15 U.S.C. 7001(c), or authorize electronic delivery of any  
26 of the notices described in section 103(b) of that Act, 15 U.S.C. 7003(b).

27 **SECTION 14.** Sections 1 to 13 of this 2011 Act apply only to complaints for partition filed  
28 on or after the effective date of this 2011 Act.

29 **SECTION 15.** The section captions used in this 2011 Act are provided only for the con-  
30 venience of the reader and do not become part of the statutory law of this state or express  
31 any legislative intent in the enactment of this 2011 Act.

32