

# SENATE BILL REPORT

## SB 5005

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As Reported by Senate Committee On:  
Law & Justice, January 26, 2023

**Title:** An act relating to real property.

**Brief Description:** Concerning real property.

**Sponsors:** Senators Pedersen, Padden, Dhingra and Nobles; by request of Uniform Law Commission.

**Brief History:**

**Committee Activity:** Law & Justice: 1/19/23, 1/26/23 [DPS].

**Brief Summary of First Substitute Bill**

- Establishes requirements for the partition of heirs property.
- Allows servient estate owners to file a civil action to relocate various easements if certain requirements are satisfied.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5005 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L.

**Staff:** Ryan Giannini (786-7285)

**Background:** Partitioning of Property. When several persons hold and are in possession of real property as tenants in common, each person has the freedom to partition the land if they desire to no longer co-own it, according to the respective rights of the persons with interests in the property. A partition may be voluntary or by court order. A partition may require the

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sale of all or part of the property if the division cannot be made without great prejudice to the owners. Prior to distributing the proceeds of any sale of the property, the plaintiff must produce a certificate of the clerk showing any remaining unsatisfied liens on the property.

Easements. An easement is a property right that allows an easement holder to use the real property of another person for a specific purpose. An easement is a real property interest, but legal title to the land is retained by the original owner for all other purposes. Common easements include the right to use driveways and private roads, and access utility and sewer lines. An easement may be created by a written instrument, or by implication, such as an easement implied from necessity. Washington also recognizes easements by prescription, a doctrine equivalent to adverse possession.

The Uniform Law Commission. The Uniform Law Commission (ULC) is a state-supported, nonpartisan, nonprofit organization that drafts and proposes specific statutory language that may be adopted by states.

In 2010, the ULC drafted the Uniform Partition of Heirs Property Act (UPHPA) which preserves the right of a co-tenant to sell the co-tenant's interest in inherited real estate, while ensuring that other co-tenants have due process to prevent a forced sale. The UPHPA has been adopted in 22 states.

In 2020, the ULC drafted the Uniform Easement Relocation Act (UERA) which provides an alternative procedure for court-ordered easement relocation in cases where owners of properties affected by an easement cannot agree to terms for the relocation of the easement. The UERA has been adopted in Nebraska and Utah.

**Summary of Bill (First Substitute):** Uniform Partition of Heirs Property Act. *Determination of Heirs Property.* "Heirs property" is defined as real property held in tenancy in common that satisfies all the following requirements as of the filing of a partition action:

- there is no agreement in a record binding all the cotenants which governs the partition of the property;
- one or more of the cotenants acquired title from a living or deceased relative; and
- 20 percent or more of the interests are held by cotenants who are relatives or by an individual who acquired title from a living or deceased relative, or 20 percent or more of the cotenants are relatives.

Courts must determine whether property is considered heirs property in partition actions. If a court determines that a property is heirs property, various requirements must be followed.

*Notice.* Within ten days of a court determination that a property is heirs property, the plaintiff seeking partition must provide notice to the defendants by posting a conspicuous sign on the property which states that a partition action has commenced and provides information regarding the court and property. The plaintiff must maintain the sign while the

action is pending.

*Referees.* Any referee appointed by the court must be disinterested and impartial.

*Valuation.* A court shall determine the fair market value of the heirs property by ordering an appraisal by a disinterested real estate appraiser licensed in Washington. However, if the cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt the agreed value or the value produced by the agreed method. If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court shall determine the fair market value of the property after an evidentiary hearing.

If an appraisal was ordered by the court, the appraiser must file a sworn or verified appraisal with the court upon completion of the appraisal. Within ten days of the appraisal being filed with the court, notice must be sent to each party detailing the appraised value of the property and a statement that the party may object to the appraisal no later than 30 days after the notice is sent. After 30 days have elapsed, the court must hold a hearing regardless of whether an objection is filed. Following the hearing, the court must determine the fair market value of the property and send notice of the value to the parties before considering the merits of the partition action.

*Cotenant Buyout.* If a cotenant requests partition by sale, the court must, after determining the fair market value of the property, send notice to the parties that any cotenant except the cotenant seeking the sale may buy all the interests of the cotenants that request partition by sale. Procedures are established to govern the purchase of these interests.

*Partition in Kind.* If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants, or if after the conclusion of the buyout process a cotenant remains that has requested partition in kind, the court must order partition in kind unless the court, after considering specified economic and non-economic factors, finds that partition in kind will result in great prejudice to the cotenants as a group. If a court orders partition in kind, the court may require one or more cotenants to pay one or more other cotenants amounts so that the payments taken together with the value of the in-kind distributions to the cotenants make the partition just and proportionate in value to the fractional interests held. The court must also allocate a part of the property representing the combined interests of cotenants that are unknown, unlocatable, or the subject of a default judgment, if their interests were not bought out.

*Partition by Sale.* If a court does not order partition in kind, the court shall order partition by sale unless no cotenant requested partition by sale. If a court orders a sale of heirs 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. If the court orders an open market sale, the court will appoint a disinterested real estate broker licensed in Washington if the parties cannot agree on one.

The disinterested real estate broker will offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court. A broker appointed to offer heirs property for open market sale must file a report with the court no later than seven days after receiving an offer to purchase the property for the court-approved value.

*Applicability.* The act applies to partitions filed on or after the effective date of the act.

Uniform Easement Relocation Act. *Scope.* Various easements created on, before, or after the effective date of the act may be relocated through civil action if the servient estate owner and the easement holder cannot mutually agree to the relocation of the easement. Exceptions include public utility easements, conservation easements, negative easements, and easements whose proposed location would encroach on an area of an estate burdened by a conservation easement or that would interfere with the use or enjoyment of a public utility easement or an easement appurtenant to a conservation easement.

*Right to Relocate Easement.* A servient estate owner may relocate an easement if the relocation does not materially:

- lessen the utility of the easement;
- increase the burden on the easement holder after the relocation;
- impair the purpose for which the easement was created;
- impair the safety of the easement holder or anyone entitled to use the easement during or after the relocation;
- disrupt the use and enjoyment of the easement by the easement holder or anyone entitled to use the easement during the relocation, unless the servient estate substantially mitigates the disruption;
- impair the physical condition, use, or value of the dominant estate or any of its improvements; or
- impair the collateral of a security interest holder in the servient or dominant estates, impair a real property interest of a lessee in the dominant estate, or impair a recorded real property interest of any other person in the servient or dominant estates.

*Civil Action.* A servient estate owner may file a civil action to relocate an easement. The servient estate owner must serve a summons and complaint on the easement holder, security interest holder, and any lessee of the dominant estate. Easement holders, lessees, and security interest holders may waive the right to contest the action.

*Relocation of Easement.* The court may not approve relocation of an easement unless the servient estate owner establishes the easement is eligible for relocation and the relocation satisfies the conditions for relocation. A court order approving relocation of an easement must contain specific details regarding the relocation process, conditions that the servient estate owner must satisfy, and compensation to the easement holder.

After the court approves relocation of an easement, all parties in the civil action shall act in

good faith to facilitate the relocation. After the relocation is substantially complete, the servient estate owner must file a land record and notify the easement holder via certified mail.

*Expenses of Relocation.* A servient estate owner is responsible for reasonable expenses related to the relocation of an easement, including construction costs, mitigation of disruption to the easement holder and other persons entitled to use the easement, required permits, recording, title work, insurance, necessary experts, and maintenance.

*Limited Effects of Relocation.* Easement relocation is not a new transfer or grant of an interest in the servient estate or the dominant estate; is not a breach or default of leases, transfer restrictions, or a recorded document; does not affect the priority of the easement; and is not a fraudulent conveyance or voidable transaction.

*Nonwaiver.* The right of a servient estate owner to relocate an easement may not be waived, excluded, or restricted by agreement.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):**

- Changes certain references from "commissioners" to "referees."

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: The Uniform Partition of Heirs Property Act (UPHPA) has been widely enacted throughout the country. It is important for racial equity. There is evidence that when families own property and have not been able to plan how that property is passed to the next generation, that tenancy in common is likely to lead to forced sales and destruction of generational wealth, especially among socially and economically disadvantaged property owners. This bill enhances the due process and private property rights for these owners. This bill will help improve the ability of families to maintain ownership of their heirs property and protects generational wealth. It gives co-tenants the right of first refusal if another co-tenant seeks a forced sale, and replaces forced sale procedures so that the procedures mimic sales on the open market. It also expands the range of factors a court can consider before issuing a partition in kind. The UPHPA is supported by a widespread number of organizations. The Uniform Easement Relocation Act (UERA) gives property owners burdened by an easement an opportunity to relocate the

easement at their own expense. The UERA outlines what easements can be subject to relocation and brings flexibility into the law of easements. Under this act, a servient estate owner can file a civil lawsuit that will allow them to demonstrate to a court that relocating an easement will not lessen the easement's utility or increase the burden on the easement holder. The UERA brings a fair, judicial path for a servient estate owner to request relocation if the dominant estate owner refuses to consent to a reasonable relocation request. This will bring economic and social benefits to Washington constituents.

**Persons Testifying:** PRO: Senator Jamie Pedersen, Prime Sponsor; Professor Thomas Mitchell, The Uniform Law Commission; John Lovett, Uniform Law Commission; Jane Sternecky, Uniform Law Commission.

**Persons Signed In To Testify But Not Testifying:** No one.