
SUBSTITUTE SENATE BILL 5005

State of Washington

68th Legislature

2023 Regular Session

By Senate Law & Justice (originally sponsored by Senators Pedersen, Padden, Dhingra, and Nobles; by request of Uniform Law Commission)

READ FIRST TIME 01/27/23.

1 AN ACT Relating to real property; adding a new chapter to Title 7
2 RCW; and adding a new chapter to Title 64 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **PART I**

5 **UNIFORM PARTITION OF HEIRS PROPERTY ACT**

6 NEW SECTION. **Sec. 101.** SHORT TITLE. Sections 102 through 113 of
7 this act may be known and cited as the uniform partition of heirs
8 property act.

9 NEW SECTION. **Sec. 102.** DEFINITIONS. The definitions in this
10 section apply throughout this chapter unless the context clearly
11 requires otherwise.

12 (1) "Ascendant" means an individual who precedes another
13 individual in lineage, in the direct line of ascent from the other
14 individual.

15 (2) "Collateral" means an individual who is related to another
16 individual under the law of intestate succession of this state but
17 who is not the other individual's ascendant or descendant.

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

4 (4) "Determination of value" means a court order determining the
5 fair market value of heirs property under section 106 or 110 of this
6 act or adopting the valuation of the property agreed to by all
7 cotenants.

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

11 (a) There is no agreement in a record binding all the cotenants
12 which governs the partition of the property;

13 (b) One or more of the cotenants acquired title from a relative,
14 whether living or deceased; and

15 (c) Any of the following applies:

16 (i) Twenty percent or more of the interests are held by cotenants
17 who are relatives;

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

21 (iii) Twenty percent or more of the cotenants are relatives.

22 (6) "Partition by sale" means a court-ordered sale of the entire
23 heirs property, whether by auction, sealed bids, or open market sale
24 conducted under section 110 of this act.

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

27 (8) "Record" means information that is inscribed on a tangible
28 medium or that is stored in an electronic or other medium and is
29 retrievable in perceivable form.

30 (9) "Relative" means an ascendant, descendant, or collateral or
31 an individual otherwise related to another individual by blood,
32 marriage, adoption, or law of this state.

33 NEW SECTION. **Sec. 103.** APPLICABILITY—RELATION TO OTHER LAW. (1)
34 This chapter applies to partition actions filed on or after the
35 effective date of this section.

36 (2) In an action to partition real property under chapter 7.52
37 RCW, the court shall determine whether the property is heirs
38 property. If the court determines that the property is heirs

1 property, the property must be partitioned under this chapter unless
2 all of the cotenants otherwise agree in a record.

3 (3) This chapter supplements chapter 7.52 RCW and, if an action
4 is governed by this chapter, replaces provisions of chapter 7.52 RCW
5 that are inconsistent with this chapter.

6 NEW SECTION. **Sec. 104.** SERVICE—NOTICE BY POSTING. (1) This
7 chapter does not limit or affect the method by which service of a
8 complaint in a partition action may be made.

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

19 NEW SECTION. **Sec. 105.** REFEREES. If the court appoints referees
20 pursuant to chapter 7.52 RCW, each referee, in addition to the
21 requirements and disqualifications applicable to referees in chapter
22 7.52 RCW, must be disinterested and impartial and not a party to or a
23 participant in the action.

24 NEW SECTION. **Sec. 106.** DETERMINATION OF VALUE. (1) Except as
25 otherwise provided in subsections (2) and (3) of this section, if the
26 court determines that the property that is the subject of a partition
27 action is heirs property, the court shall determine the fair market
28 value of the property by ordering an appraisal pursuant to subsection
29 (4) of this section.

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

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

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

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

11 (a) The appraised fair market value of the property;

12 (b) That the appraisal is available at the clerk's office; and

13 (c) That a party may file with the court an objection to the
14 appraisal not later than 30 days after the notice is sent, stating
15 the grounds for the objection.

16 (6) If an appraisal is filed with the court pursuant to
17 subsection (4) of this section, the court shall conduct a hearing to
18 determine the fair market value of the property not sooner than 30
19 days after a copy of the notice of the appraisal is sent to each
20 party under subsection (5) of this section, whether or not an
21 objection to the appraisal is filed under subsection (5)(c) of this
22 section. In addition to the court-ordered appraisal, the court may
23 consider any other evidence of value offered by a party.

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

28 NEW SECTION. **Sec. 107.** COTENANT BUYOUT. (1) If any cotenant
29 requested partition by sale, after the determination of value under
30 section 106 of this act, the court shall send notice to the parties
31 that any cotenant except a cotenant that requested partition by sale
32 may buy all the interests of the cotenants that requested partition
33 by sale.

34 (2) Not later than 45 days after the notice is sent under
35 subsection (1) of this section, any cotenant except a cotenant that
36 requested partition by sale may give notice to the court that it
37 elects to buy all the interests of the cotenants that requested
38 partition by sale.

1 (3) The purchase price for each of the interests of a cotenant
2 that requested partition by sale is the value of the entire parcel
3 determined under section 106 of this act multiplied by the cotenant's
4 fractional ownership of the entire parcel.

5 (4) After expiration of the period in subsection (2) of this
6 section, the following rules apply:

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

10 (b) If more than one cotenant elects to buy all the interests of
11 the cotenants that requested partition by sale, the court shall
12 allocate the right to buy those interests among the electing
13 cotenants based on each electing cotenant's existing fractional
14 ownership of the entire parcel divided by the total existing
15 fractional ownership of all cotenants electing to buy and send notice
16 to all the parties of that fact and of the price to be paid by each
17 electing cotenant.

18 (c) If no cotenant elects to buy all the interests of the
19 cotenants that requested partition by sale, the court shall send
20 notice to all the parties of that fact and resolve the partition
21 action under section 108 (1) and (2) of this act.

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

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

31 (b) If no electing cotenant timely pays its apportioned price,
32 the court shall resolve the partition action under section 108 (1)
33 and (2) of this act as if the interests of the cotenants that
34 requested partition by sale were not purchased.

35 (c) If one or more but not all of the electing cotenants fail to
36 pay their apportioned price on time, the court, on motion, shall give
37 notice to the electing cotenants that paid their apportioned price of
38 the interest remaining and the price for all that interest.

39 (6) Not later than 20 days after the court gives notice pursuant
40 to subsection (5)(c) of this section, any cotenant that paid may

1 elect to purchase all of the remaining interest by paying the entire
2 price into the court. After the 20-day period, the following rules
3 apply:

4 (a) If only one cotenant pays the entire price for the remaining
5 interest, the court shall issue an order reallocating the remaining
6 interest to that cotenant. The court shall issue promptly an order
7 reallocating the interests of all of the cotenants and disburse the
8 amounts held by it to the persons entitled to them.

9 (b) If no cotenant pays the entire price for the remaining
10 interest, the court shall resolve the partition action under section
11 108 (1) and (2) of this act as if the interests of the cotenants that
12 requested partition by sale were not purchased.

13 (c) If more than one cotenant pays the entire price for the
14 remaining interest, the court shall reapportion the remaining
15 interest among those paying cotenants, based on each paying
16 cotenant's original fractional ownership of the entire parcel divided
17 by the total original fractional ownership of all cotenants that paid
18 the entire price for the remaining interest. The court shall issue
19 promptly an order reallocating all of the cotenants' interests,
20 disburse the amounts held by it to the persons entitled to them, and
21 promptly refund any excess payment held by the court.

22 (7) Not later than 45 days after the court sends notice to the
23 parties pursuant to subsection (1) of this section, any cotenant
24 entitled to buy an interest under this section may request the court
25 to authorize the sale as part of the pending action of the interests
26 of cotenants named as defendants and served with the complaint but
27 that did not appear in the action.

28 (8) If the court receives a timely request under subsection (7)
29 of this section, the court, after hearing, may deny the request or
30 authorize the requested additional sale on such terms as the court
31 determines are fair and reasonable, subject to the following
32 limitations:

33 (a) A sale authorized under this subsection may occur only after
34 the purchase prices for all interests subject to sale under
35 subsections (1) through (6) of this section have been paid into court
36 and those interests have been reallocated among the cotenants as
37 provided in those subsections; and

38 (b) The purchase price for the interest of a nonappearing
39 cotenant is based on the court's determination of value under section
40 106 of this act.

1 NEW SECTION. **Sec. 108.** PARTITION ALTERNATIVES. (1) If all the
2 interests of all cotenants that requested partition by sale are not
3 purchased by other cotenants pursuant to section 107 of this act, or
4 if after conclusion of the buyout under section 107 of this act, a
5 cotenant remains that has requested partition in kind, the court
6 shall order partition in kind unless the court, after consideration
7 of the factors listed in section 109 of this act, finds that
8 partition in kind will result in great prejudice to the cotenants as
9 a group. In considering whether to order partition in kind, the court
10 shall approve a request by two or more parties to have their
11 individual interests aggregated.

12 (2) If the court does not order partition in kind under
13 subsection (1) of this section, the court shall order partition by
14 sale pursuant to section 110 of this act or, if no cotenant requested
15 partition by sale, the court shall dismiss the action.

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

22 (4) If the court orders partition in kind, the court shall
23 allocate to the cotenants that are unknown, unlocatable, or the
24 subject of a default judgment, if their interests were not bought out
25 pursuant to section 107 of this act, a part of the property
26 representing the combined interests of these cotenants as determined
27 by the court and this part of the property shall remain undivided.

28 NEW SECTION. **Sec. 109.** CONSIDERATIONS FOR PARTITION IN KIND.

29 (1) In determining under section 108(1) of this act whether partition
30 in kind would result in great prejudice to the cotenants as a group,
31 the court shall consider the following:

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

34 (b) Whether partition in kind would apportion the property in
35 such a way that the aggregate fair market value of the parcels
36 resulting from the division would be materially less than the value
37 of the property if it were sold as a whole, taking into account the
38 condition under which a court-ordered sale likely would occur;

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

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

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

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

16 (g) Any other relevant factor.

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

20 NEW SECTION. **Sec. 110.** OPEN MARKET SALE, SEALED BIDS, OR
21 AUCTION. (1) If the court orders a sale of heirs property, the sale
22 must be an open market sale unless the court finds that a sale by
23 sealed bids or an auction would be more economically advantageous and
24 in the best interest of the cotenants as a group.

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

36 (3) If the broker appointed under subsection (2) of this section
37 obtains within a reasonable time an offer to purchase the property
38 for at least the determination of value:

- 1 (a) The broker shall comply with the reporting requirements in
2 section 111 of this act; and
- 3 (b) The sale may be completed in accordance with state law other
4 than this chapter.
- 5 (4) If the broker appointed under subsection (2) of this section
6 does not obtain within a reasonable time an offer to purchase the
7 property for at least the determination of value, the court, after
8 hearing, may:
- 9 (a) Approve the highest outstanding offer, if any;
- 10 (b) Redetermine the value of the property and order that the
11 property continue to be offered for an additional time; or
- 12 (c) Order that the property be sold by sealed bids or at an
13 auction.
- 14 (5) If the court orders a sale by sealed bids or an auction, the
15 court shall set terms and conditions of the sale. If the court orders
16 an auction, the auction must be conducted under chapter 7.52 RCW.
- 17 (6) If a purchaser is entitled to a share of the proceeds of the
18 sale, the purchaser is entitled to a credit against the price in an
19 amount equal to the purchaser's share of the proceeds.

20 NEW SECTION. **Sec. 111.** REPORT OF OPEN MARKET SALE. (1) Unless
21 required to do so within a shorter time under chapter 7.52 RCW, a
22 broker appointed under section 110(1) of this act to offer heirs
23 property for open market sale shall file a report with the court not
24 later than seven days after receiving an offer to purchase the
25 property for at least the value determined under section 106 or 110
26 of this act.

27 (2) The report required by subsection (1) of this section must
28 contain the following information:

- 29 (a) A description of the property to be sold to each buyer;
- 30 (b) The name of each buyer;
- 31 (c) The proposed purchase price;
- 32 (d) The terms and conditions of the proposed sale, including the
33 terms of any owner financing;
- 34 (e) The amounts to be paid to lienholders;
- 35 (f) A statement of contractual or other arrangements or
36 conditions of the broker's commission; and
- 37 (g) Other material facts relevant to the sale.

1 (e) Preserving the historical, architectural, archeological,
2 paleontological, or cultural aspects of real property.

3 (3) "Dominant estate" means an estate or interest in real
4 property benefited by an appurtenant easement.

5 (4) "Easement" means a nonpossessory property interest that:

6 (a) Provides a right to enter, use, or enjoy real property owned
7 by or in the possession of another; and

8 (b) Imposes on the owner or possessor a duty not to interfere
9 with the entry, use, or enjoyment permitted by the instrument
10 creating the easement or, in the case of an easement not established
11 by express grant or reservation, the entry, use, or enjoyment
12 authorized by law.

13 (5) "Easement holder" means:

14 (a) In the case of an appurtenant easement, the dominant estate
15 owner; or

16 (b) In the case of an easement in gross, public utility easement,
17 conservation easement, or negative easement, the grantee of the
18 easement or a successor.

19 (6) "Easement in gross" means an easement not tied to or
20 dependent on ownership or occupancy of a unit or a parcel of real
21 property.

22 (7) "Lessee of record" means a person holding a lessee's interest
23 under a recorded lease or memorandum of lease.

24 (8) "Negative easement" means a nonpossessory property interest
25 whose primary purpose is to impose on a servient estate owner a duty
26 not to engage in a specified use of the estate.

27 (9) "Person" means an individual, estate, business or nonprofit
28 entity, public corporation, government or governmental subdivision,
29 agency, or instrumentality, or other legal entity.

30 (10) "Public utility easement" means a nonpossessory property
31 interest in which the easement holder is a publicly regulated or
32 publicly owned utility under federal law or law of this state or a
33 municipality. The term includes an easement benefiting an intrastate
34 utility, an interstate utility, or a utility cooperative.

35 (11) "Real property" means an estate or interest in, over, or
36 under land, including structures, fixtures, and other things that by
37 custom, usage, or law pass with a conveyance of land whether or not
38 described or mentioned in the contract of sale or instrument of
39 conveyance. The term includes the interest of a lessor and lessee

1 and, unless the interest is personal property under law of this state
2 other than this chapter, an interest in a common interest community.

3 (12) "Record," used as a noun, means information that is
4 inscribed on a tangible medium or that is stored in an electronic or
5 other medium and is retrievable in perceivable form.

6 (13) "Security instrument" means a mortgage, deed of trust,
7 security deed, contract for deed, lease, or other record that creates
8 or provides for an interest in real property to secure payment or
9 performance of an obligation, whether by acquisition or retention of
10 a lien, a lessor's interest under a lease, or title to the real
11 property. The term includes:

12 (a) A security instrument that also creates or provides for a
13 security interest in personal property;

14 (b) A modification or amendment of a security instrument; and

15 (c) A record creating a lien on real property to secure an
16 obligation under a covenant running with the real property or owed by
17 a unit owner to a common interest community association.

18 (14) "Security interest holder of record" means a person holding
19 an interest in real property created by a recorded security
20 instrument.

21 (15) "Servient estate" means an estate or interest in real
22 property that is burdened by an easement.

23 (16) "Title evidence" means a title insurance policy, preliminary
24 title report or binder, title insurance commitment, abstract of
25 title, attorney's opinion of title based on examination of public
26 records or an abstract of title, or any other means of reporting the
27 state of title to real property which is customary in the locality.

28 (17) "Unit" means a physical portion of a common interest
29 community designated for separate ownership or occupancy with
30 boundaries described in a declaration establishing the common
31 interest community.

32 (18) "Utility cooperative" means a nonprofit entity whose purpose
33 is to deliver a utility service, such as electricity, oil, natural
34 gas, water, sanitary sewer, stormwater, or telecommunications, to its
35 customers or members and includes an electric cooperative, rural
36 electric cooperative, rural water district, and rural water
37 association.

38 NEW SECTION. **Sec. 203.** SCOPE—EXCLUSIONS. (1) Except as
39 otherwise provided in subsection (2) of this section, this chapter

1 applies to an easement established by express grant or reservation or
2 by prescription, implication, necessity, estoppel, or other method.

3 (2) This chapter may not be used to relocate:

4 (a) A public utility easement, conservation easement, or negative
5 easement; or

6 (b) An easement if the proposed location would encroach on an
7 area of an estate burdened by a conservation easement or would
8 interfere with the use or enjoyment of a public utility easement or
9 an easement appurtenant to a conservation easement.

10 (3) This chapter does not apply to relocation of an easement by
11 consent.

12 NEW SECTION. **Sec. 204.** RIGHT OF SERVIENT ESTATE OWNER TO
13 RELOCATE EASEMENT. A servient estate owner may relocate an easement
14 under this chapter only if the relocation does not materially:

15 (1) Lessen the utility of the easement;

16 (2) After the relocation, increase the burden on the easement
17 holder in its reasonable use and enjoyment of the easement;

18 (3) Impair an affirmative, easement-related purpose for which the
19 easement was created;

20 (4) During or after the relocation, impair the safety of the
21 easement holder or another entitled to use and enjoy the easement;

22 (5) During the relocation, disrupt the use and enjoyment of the
23 easement by the easement holder or another entitled to use and enjoy
24 the easement, unless the servient estate owner substantially
25 mitigates the duration and nature of the disruption;

26 (6) Impair the physical condition, use, or value of the dominant
27 estate or improvements on the dominant estate; or

28 (7) Impair the value of the collateral of a security interest
29 holder of record in the servient estate or dominant estate, impair a
30 real property interest of a lessee of record in the dominant estate,
31 or impair a recorded real property interest of any other person in
32 the servient estate or dominant estate.

33 NEW SECTION. **Sec. 205.** COMMENCEMENT OF CIVIL ACTION. (1) To
34 obtain an order to relocate an easement under this chapter, a
35 servient estate owner must commence a civil action.

36 (2) A servient estate owner that commences a civil action under
37 subsection (1) of this section:

38 (a) Shall serve a summons and complaint on:

1 (i) The easement holder whose easement is the subject of the
2 relocation;

3 (ii) A security interest holder of record of an interest in the
4 servient estate or dominant estate;

5 (iii) A lessee of record of an interest in the dominant estate;
6 and

7 (iv) Except as otherwise provided in (b) of this subsection, any
8 other owner of a recorded real property interest if the relocation
9 would encroach on an area of the servient estate or dominant estate
10 burdened by the interest; and

11 (b) Is not required to serve a summons and complaint on the owner
12 of a recorded real property interest in oil, gas, or minerals unless
13 the interest includes an easement to facilitate oil, gas, or mineral
14 development.

15 (3) A complaint under this section must state:

16 (a) The intent of the servient estate owner to seek the
17 relocation;

18 (b) The nature, extent, and anticipated dates of commencement and
19 completion of the proposed relocation;

20 (c) The current and proposed locations of the easement;

21 (d) The reason the easement is eligible for relocation under
22 section 203 of this act;

23 (e) The reason the proposed relocation satisfies the conditions
24 for relocation under section 204 of this act; and

25 (f) That the servient estate owner has made a reasonable attempt
26 to notify the holders of any public utility easement, conservation
27 easement, or negative easement on the servient estate or dominant
28 estate of the proposed relocation.

29 (4) At any time before the court renders a final order in an
30 action under subsection (1) of this section, a person served under
31 subsection (2)(a)(ii), (iii), or (iv) of this section may file a
32 document, in recordable form, that waives its rights to contest or
33 obtain relief in connection with the relocation or subordinates its
34 interests to the relocation. On filing of the document, the court may
35 order that the person is not required to answer or participate
36 further in the action.

37 NEW SECTION. **Sec. 206.** REQUIRED FINDINGS—ORDER. (1) The court
38 may not approve relocation of an easement under this chapter unless
39 the servient estate owner:

1 (a) Establishes that the easement is eligible for relocation
2 under section 203 of this act; and
3 (b) Satisfies the conditions for relocation under section 204 of
4 this act.
5 (2) An order under this chapter approving relocation of an
6 easement must:
7 (a) State that the order is issued in accordance with this
8 chapter;
9 (b) Recite the recording data of the instrument creating the
10 easement, if any, any amendments, and any preservation notice;
11 (c) Identify the immediately preceding location of the easement;
12 (d) Describe in a legally sufficient manner the new location of
13 the easement;
14 (e) Describe mitigation required of the servient estate owner
15 during relocation;
16 (f) Refer in detail to the plans and specifications of
17 improvements necessary for the easement holder to enter, use, and
18 enjoy the easement in the new location;
19 (g) Specify conditions to be satisfied by the servient estate
20 owner to relocate the easement and construct improvements necessary
21 for the easement holder to enter, use, and enjoy the easement in the
22 new location;
23 (h) Include a provision for payment by the servient estate owner
24 of expenses under section 207 of this act;
25 (i) Include a provision for compliance by the parties with the
26 obligation of good faith under section 208 of this act; and
27 (j) Instruct the servient estate owner to record an affidavit, if
28 required under section 209(1) of this act, when the servient estate
29 owner substantially completes relocation.
30 (3) An order under subsection (2) of this section may include any
31 other provision consistent with this chapter for the fair and
32 equitable relocation of the easement.
33 (4) Before a servient estate owner proceeds with relocation of an
34 easement under this chapter, the owner must record, in the land
35 records of each jurisdiction where the servient estate is located, a
36 certified copy of the order under subsection (2) of this section.

37 NEW SECTION. **Sec. 207.** EXPENSES OF RELOCATION. A servient
38 estate owner is responsible for reasonable expenses of relocation of
39 an easement under this chapter, including the expense of:

1 (1) Constructing improvements on the servient estate or dominant
2 estate in accordance with an order under section 206 of this act;

3 (2) During the relocation, mitigating disruption in the use and
4 enjoyment of the easement by the easement holder or another person
5 entitled to use and enjoy the easement;

6 (3) Obtaining a governmental approval or permit to relocate the
7 easement and construct necessary improvements;

8 (4) Preparing and recording the certified copy required by
9 section 206(4) of this act and any other document required to be
10 recorded;

11 (5) Any title work required to complete the relocation or
12 required by a party to the civil action as a result of the
13 relocation;

14 (6) Applicable premiums for title insurance related to the
15 relocation;

16 (7) Any expert necessary to review plans and specifications for
17 an improvement to be constructed in the relocated easement or on the
18 dominant estate and to confirm compliance with the plans and
19 specifications referred to in the order under section 206(2)(f) of
20 this act;

21 (8) Payment of any maintenance cost associated with the relocated
22 easement which is greater than the maintenance cost associated with
23 the easement before relocation; and

24 (9) Obtaining any third-party consent required to relocate the
25 easement.

26 NEW SECTION. **Sec. 208.** DUTY TO ACT IN GOOD FAITH. After the
27 court, under section 206 of this act, approves relocation of an
28 easement and the servient estate owner commences the relocation, the
29 servient estate owner, the easement holder, and other parties in the
30 civil action shall act in good faith to facilitate the relocation in
31 compliance with this chapter.

32 NEW SECTION. **Sec. 209.** RELOCATION AFFIDAVIT. (1) If an order
33 under section 206 of this act requires the construction of an
34 improvement as a condition for relocation of an easement, relocation
35 is substantially complete, and the easement holder is able to enter,
36 use, and enjoy the easement in the new location, the servient estate
37 owner shall:

1 (a) Record, in the land records of each jurisdiction where the
2 servient estate is located, an affidavit certifying that the easement
3 has been relocated; and

4 (b) Send, by certified mail, a copy of the recorded affidavit to
5 the easement holder and parties to the civil action.

6 (2) Until an affidavit under subsection (1) of this section is
7 recorded and sent, the easement holder may enter, use, and enjoy the
8 easement in the current location, subject to the court's order under
9 section 206 of this act approving relocation.

10 (3) If an order under section 206 of this act does not require an
11 improvement to be constructed as a condition of the relocation,
12 recording the order under section 206(4) of this act constitutes
13 relocation.

14 NEW SECTION. **Sec. 210.** LIMITED EFFECT OF RELOCATION. (1)

15 Relocation of an easement under this chapter:

16 (a) Is not a new transfer or a new grant of an interest in the
17 servient estate or the dominant estate;

18 (b) Is not a breach or default of, and does not trigger, a due-
19 on-sale clause or other transfer-restriction clause under a security
20 instrument, except as otherwise determined by a court under law other
21 than this chapter;

22 (c) Is not a breach or default of a lease, except as otherwise
23 determined by a court under law other than this chapter;

24 (d) Is not a breach or default by the servient estate owner of a
25 recorded document affected by the relocation, except as otherwise
26 determined by a court under law other than this chapter;

27 (e) Does not affect the priority of the easement with respect to
28 other recorded real property interests burdening the area of the
29 servient estate where the easement was located before the relocation;
30 and

31 (f) Is not a fraudulent conveyance or voidable transaction under
32 law.

33 (2) This chapter does not affect any other method of relocating
34 an easement permitted under law of this state other than this
35 chapter.

36 NEW SECTION. **Sec. 211.** NONWAIVER. The right of a servient
37 estate owner to relocate an easement under this chapter may not be
38 waived, excluded, or restricted by agreement even if:

1 (1) The instrument creating the easement prohibits relocation or
2 contains a waiver, exclusion, or restriction of this chapter;

3 (2) The instrument creating the easement requires consent of the
4 easement holder to amend the terms of the easement; or

5 (3) The location of the easement is fixed by the instrument
6 creating the easement, another agreement, previous conduct,
7 acquiescence, estoppel, or implication.

8 NEW SECTION. **Sec. 212.** UNIFORMITY OF APPLICATION AND
9 CONSTRUCTION. In applying and construing this uniform act,
10 consideration must be given to the need to promote uniformity of the
11 law with respect to its subject matter among the states that enact
12 it.

13 NEW SECTION. **Sec. 213.** RELATION TO ELECTRONIC SIGNATURES IN
14 GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or
15 supersedes the electronic signatures in global and national commerce
16 act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or
17 supersede section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or
18 authorize electronic delivery of any of the notices described in
19 section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

20 NEW SECTION. **Sec. 214.** TRANSITIONAL PROVISION. This chapter
21 applies to an easement created before, on, or after the effective
22 date of this section.

23 NEW SECTION. **Sec. 215.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 216.** Sections 201 through 214 of this act
28 constitute a new chapter in Title 64 RCW.

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