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**SUBSTITUTE SENATE BILL 5005**

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**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)

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

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

**PART I**

**UNIFORM PARTITION OF HEIRS PROPERTY ACT**

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

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

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

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

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

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

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

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

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

(c) Any of the following applies:

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

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

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

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

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

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

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

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

(2) In an action to partition real property under chapter 7.52 RCW, the court shall determine whether the property is heirs property. If the court determines that the property is heirs property, the property must be partitioned under this chapter unless all of the cotenants otherwise agree in a record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Not later than 20 days after the court gives notice pursuant to subsection (5)(c) of this section, any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After the 20-day period, the following rules apply:

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  CONSIDERATIONS FOR PARTITION IN KIND. (1) In determining under section 108(1) of this act whether partition in kind would result in great prejudice to the cotenants as a group, the court shall consider the following:

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

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

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

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

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

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

(g) Any other relevant factor.

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

NEW SECTION. **Sec.**  OPEN MARKET SALE, SEALED BIDS, OR AUCTION. (1) If the 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.

(2) If the court orders an open market sale and the parties, not later than 10 days after the entry of the order, agree on a real estate broker licensed in this state to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this state to offer the property for sale and shall establish a reasonable commission. The broker shall 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.

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

(a) The broker shall comply with the reporting requirements in section 111 of this act; and

(b) The sale may be completed in accordance with state law other than this chapter.

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

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

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

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

(5) If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted under chapter 7.52 RCW.

(6) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

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

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

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

(b) The name of each buyer;

(c) The proposed purchase price;

(d) The terms and conditions of the proposed sale, including the terms of any owner financing;

(e) The amounts to be paid to lienholders;

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

(g) Other material facts relevant to the sale.

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

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

NEW SECTION. **Sec.**  Sections 101 through 113 of this act constitute a new chapter in Title 7 RCW.

**PART II**

**UNIFORM EASEMENT RELOCATION ACT**

NEW SECTION. **Sec.**  SHORT TITLE. Sections 202 through 214 of this act may be known and cited as the uniform easement relocation act.

NEW SECTION. **Sec.**  DEFINITIONS. The following definitions apply throughout the section unless the context clearly requires otherwise.

(1) "Appurtenant easement" means an easement tied to or dependent on ownership or occupancy of a unit or a parcel of real property.

(2) "Conservation easement" means a nonpossessory property interest created for one or more of the following conservation purposes:

(a) Retaining or protecting the natural, scenic, wildlife, wildlife habitat, biological, ecological, or open space values of real property;

(b) Ensuring the availability of real property for agricultural, forest, outdoor recreational, or open space uses;

(c) Protecting natural resources, including wetlands, grasslands, and riparian areas;

(d) Maintaining or enhancing air or water quality; or

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

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

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

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

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

(5) "Easement holder" means:

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

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

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

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

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

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

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

(11) "Real property" means an estate or interest in, over, or under land, including structures, fixtures, and other things that by custom, usage, or law pass with a conveyance of land whether or not described or mentioned in the contract of sale or instrument of conveyance. The term includes the interest of a lessor and lessee and, unless the interest is personal property under law of this state other than this chapter, an interest in a common interest community.

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  SCOPE—EXCLUSIONS. (1) Except as otherwise provided in subsection (2) of this section, this chapter applies to an easement established by express grant or reservation or by prescription, implication, necessity, estoppel, or other method.

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

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

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

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

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

(1) Lessen the utility of the easement;

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

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

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

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

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

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

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

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

(a) Shall serve a summons and complaint on:

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

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

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

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

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

(3) A complaint under this section must state:

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

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

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

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

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

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

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

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

(a) Establishes that the easement is eligible for relocation under section 203 of this act; and

(b) Satisfies the conditions for relocation under section 204 of this act.

(2) An order under this chapter approving relocation of an easement must:

(a) State that the order is issued in accordance with this chapter;

(b) Recite the recording data of the instrument creating the easement, if any, any amendments, and any preservation notice;

(c) Identify the immediately preceding location of the easement;

(d) Describe in a legally sufficient manner the new location of the easement;

(e) Describe mitigation required of the servient estate owner during relocation;

(f) Refer in detail to the plans and specifications of improvements necessary for the easement holder to enter, use, and enjoy the easement in the new location;

(g) Specify conditions to be satisfied by the servient estate owner to relocate the easement and construct improvements necessary for the easement holder to enter, use, and enjoy the easement in the new location;

(h) Include a provision for payment by the servient estate owner of expenses under section 207 of this act;

(i) Include a provision for compliance by the parties with the obligation of good faith under section 208 of this act; and

(j) Instruct the servient estate owner to record an affidavit, if required under section 209(1) of this act, when the servient estate owner substantially completes relocation.

(3) An order under subsection (2) of this section may include any other provision consistent with this chapter for the fair and equitable relocation of the easement.

(4) Before a servient estate owner proceeds with relocation of an easement under this chapter, the owner must record, in the land records of each jurisdiction where the servient estate is located, a certified copy of the order under subsection (2) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  LIMITED EFFECT OF RELOCATION. (1) Relocation of an easement under this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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