

A BILL FOR AN ACT

To enact a new Title 11, Chapter 7 of the Kosrae State Code to provide for and regulate the partition of real property in the State of Kosrae.

BE IT ENACTED BY THE KOSRAE STATE LEGISLATURE:

1 Section 1. Findings and Purpose. There have been many disputes between  
2 family members arising out of joint ownership of land that has been acquired through  
3 inheritance. It is therefore necessary for the State of Kosrae to provide a mechanism  
4 whereby each party's interests in the real property in question may be judicially  
5 determined and partitioned in order to resolve any disputes or impasses concerning the  
6 disposition of the real property. The Land Court shall retain exclusive jurisdiction of all  
7 matters concerning title to real property.

8 Section 2. New Coding. New coding is proposed for Title 11, Chapter 7 of the  
9 Kosrae State Code to read as follows:

10 "11.701 Short Title. This Act shall be known and may be cited as the  
11 Partition Act of 2006.

12 11.702 Definitions. In addition to the definitions contained in Kosrae  
13 State Code Section 11.602, the additional items defined below are applicable to  
14 this Act.

15 (1) "Estate" means the degree, quantity nature and extent of interest  
16 which a person has in real property.

17 (2) "Interest in land" means every interest or estate, tenure or right in  
18 land, including but to limited to, fee simple, easements or  
19 covenants that run with the land, riparian rights, leaseholds, life  
20 estates.

21 (3) "Joint tenancy" means ownership of land in common by two or  
22 more persons, where there is a right of survivorship, where upon

1 the death of one joint owner, the land as a whole vests in the  
2 survivors and can only be disposed by will of the last surviving  
3 owner, or by intestate succession by his heirs. Each joint tenant  
4 must: 1. be entitled to possess the whole of the land; 2. have the  
5 same estate or interest in land; 3. must have the same title through  
6 the same instrument; and 4. must have the estate for the same time  
7 as the other joint tenants.

8 (4) “Land” means all forms of real property, and including all  
9 permanent improvements and attachments thereto.

10 (5) “Life estate” means an estate in land whose duration is limited to  
11 the life of the party holding it.

12 (6) “Tenancy in common” means ownership of land where two or  
13 more persons are entitled to the land so that they have undivided  
14 possession. No one of them is entitled to exclusive possession of  
15 any part of the land, each being entitled to occupy the whole in  
16 common with other title holders. There is no right of survivorship  
17 and the deceased’s heirs inherit the in common share of property  
18 pursuant to a will or upon the tenant’s intestate death.

19 11.703 Partition. When two or more persons are interested, as joint  
20 tenants or as tenants in common, in real property in which one or more of them  
21 have an estate of inheritance for life or for years, an action may be brought by one  
22 or more of such persons against the others for a partition thereof according to the  
23 respective rights and interests of the parties interested therein, or for a sale of such  
24 property, or a part thereof, if it appears that a partition cannot be made without  
25 great prejudice to the owners.

1           11.704           Jurisdiction. Any action for partition of real property must be  
2           commenced in the Kosrae State Court.

3                   (1)           The Kosrae State Court shall issue orders concerning the partition  
4                           of real property.

5                   (2)           The Land Court shall retain exclusive jurisdiction over all matters  
6                           concerning the title of land.

7           11.705           Land Court proceedings. A final judgment for partition issued  
8           by the Kosrae State Court shall be admissible in Land Court proceedings and shall  
9           be conclusive evidence of the respective claims of each party to real property that  
10           is the subject of the Kosrae State Court's judgment for partition.

11           11.706           Application of Rules of Civil Procedure. The Rules of Civil  
12           Procedure for the Kosrae State Court shall be applicable for an action for partition  
13           except where a defendant is not inhabitant of or found within the State.

14           11.707           Commencement of action. An action for partition shall be  
15           commenced by filing a verified complaint with the court.

16           11.708           Notice to the Land Court           The plaintiff shall, within seven (7)  
17           days after the commencement of the action, give notice of the pendency of the  
18           action, by filing a copy of the verified Complaint with the Land Court.

19           11.709           Summons. The summons shall be addressed by name to all the  
20           owners and lienholders who are known, and may also be addressed "to all other  
21           persons unknown having or claiming an interest in the property described in the  
22           complaint herein."

23                   (1)           Service of the summons may be had upon all such unknown  
24                           persons by publication in the same manner as against nonresident  
25                           parties, upon the filing of the complaint, in which case the

1 procedure for service shall be as specified in Section 11.711 below.

2 11.710 Complaint. The complaint shall particularly set forth the interest  
3 of all persons in the property, whether by way of ownership or lien, so far as is  
4 known to the plaintiff; and if any such person, or the person's share or interest, is  
5 unknown to the plaintiff, or is uncertain or contingent, or there is a contingent  
6 remainder, so that such person cannot be named, that fact shall be set forth. The  
7 complaint shall also state a good faith estimate of the cash value of the property,  
8 and shall be verified.

9 11.711 Service on nonresident parties. Nonresident parties may be  
10 personally served as set out in the Rules of Civil Procedure for the Kosrae State  
11 Court or may be served by mail or by publication. The summons and complaint  
12 shall be served together.

13 (1) Service by mail shall be by sending copies of the summons and  
14 complaint to the last known address of the nonresident party by  
15 Certified mail, return receipt requested.

16 (2) Service by publication shall be by posting copies of the summons  
17 and complaint on the public notice boards located at:

18 (a) The FSM Post Office, Kosrae Station; and

19 (b) The Municipal Administration Buildings for each  
20 municipality in the State of Kosrae.

21 (3) If within 60 days from the date of mailing, or within 45 days from  
22 the date of publication, the nonresident party does not respond to the  
23 summons, then the court shall, upon the motion of the plaintiff, make  
24 a finding of fact and conclusion of law that the plaintiff has made  
25 reasonable efforts to serve the nonresident party and the party shall

1 be deemed to have been served.

2 (a) The court may make such further orders to the plaintiff as it  
3 deems necessary to comply with the requirements for  
4 reasonable efforts to effect service.

5 11.712 Evidence. Except as provided in Section 11.713 below, title to  
6 the property and the rights of the parties shall be established by evidence or by the  
7 written stipulation of the parties to be effected thereby; and thereupon, in a proper  
8 case, the court shall render judgment that partition be made accordingly.

9 (1) In determining the rights of the respective parties, the court shall  
10 not take into account the age or sex of the parties, except in relation  
11 to the capacity or infancy of a party.

12 11.713 Dispute between defendants; no defense. If the title of the  
13 plaintiff to a certain undivided share of the property is proved or admitted, it shall  
14 not be a defense that there is a dispute or litigation undetermined between some of  
15 the defendants as to the right or title of such defendants in or to any undivided  
16 shares of the property claimed by them; but in such case the court shall render  
17 judgment that partition be made, or that the property be sold as in other cases, and  
18 shall cause the portion of the property or of the proceeds thereof pertaining to  
19 such undivided shares in dispute to be allotted to the defendants claiming the  
20 same, without determining their respective rights thereto, and, in case of sale, may  
21 order the portion of the proceeds pertaining to such shares to be paid into court to  
22 abide the result of any existing or subsequent litigation between such defendants.

23 11.714 Judgment for partition. When partition is to be made, the  
24 court shall divide the property, and allot the several portions thereof to the  
25 respective parties, quantity and quality relatively considered, according to their

1 respective rights, designating the several portions by proper landmarks, and may  
2 employ a surveyor, with necessary assistants, to aid the court therein. The court  
3 shall issue a judgment describing the property and the share allotted to each party,  
4 with a particular description thereof.

5 (1) The expenses of any surveyor and assistants, when employed, shall  
6 be paid by the plaintiff, and may be allowed as part of the charges.

7 (2) Final judgment shall be rendered that such partition be effectual  
8 forever and such judgment shall be binding:

9 (a) On all the parties named therein, and their legal  
10 representatives, who had at the time any interest in the  
11 property divided, as owners in fee or as tenants for years, or  
12 as entitled to the remainder, reversion, or inheritance  
13 thereof, after the determination of a particular estate  
14 therein, or who by any contingency may be entitled to a  
15 beneficial interest therein, or who have an interest in an  
16 undivided share thereof as tenants for years or for life; and

17 (b) On all persons interested in the property who may be  
18 unknown, and to whom notice has been given by  
19 publication of the summons; and

20 (c) On all persons claiming from such parties or persons, or  
21 either of them.

22 (3) Such judgment shall not affect tenants or persons having claims as  
23 tenants for life to the whole of the property which is subject of the  
24 partition; nor shall such judgment preclude any persons except  
25 such as are specified in subsection 2 from claiming title to such

1                   property, or from disputing the title of the parties between whom  
2                   partition is made.

3           11.715           Liens, how affected.           When there is a lien on an undivided  
4           interest or estate of any of the parties, if partition is made such lien is thenceforth  
5           a charge only on the share allotted to such party; but such share shall first be  
6           charged with its just proportion of the costs and charges of the partition, in  
7           preference to such lien.

8           11.716           Costs apportioned.           The costs, charges, and disbursements of  
9           partition shall be paid by the parties respectively entitled to share in the land, and  
10          the amounts to be paid by each shall be determined by the court, and specified in  
11          the final judgment. Such judgment may be docketed, and payment of such  
12          amounts may be enforced by execution against the property of the respective  
13          judgment debtors as in the case of other judgments for money.

14          11.717           Compensation because of inequality. When it appears that partition  
15          cannot be made equal between the parties without prejudice to the rights or  
16          interests of some, the court may adjudge compensation to be made by one to  
17          another for equality of partition; but such compensation shall not be required to be  
18          made by an unknown owner, nor by an infant, unless it appear that the infant has  
19          personal property sufficient therefor, and that the infant's interest will be  
20          promoted thereby.

21          11.718           Indivisible property may be set off; occupancy assigned.           When  
22          the premises consist of a permanent building or other tenement which cannot be  
23          divided without damage to the owners, or when any specified part is of greater  
24          value than either party's share, and cannot be divided without damage to the  
25          owners, the whole premises or the part so incapable of division may be set off to

1 any party who will accept it, that party paying to one or more of the others such  
2 sums of money as the court may award to make the partition just and equal; or the  
3 court may assign the exclusive occupancy and enjoyment of the whole or of such  
4 part to each of the parties alternately for specified times, in proportion to their  
5 respective interests.

6 11.719 Sale may be ordered. Except as provided in section 11.720 below,  
7 if it is alleged in the complaint and established by evidence that the property, or  
8 any part of it, is so situated that partition cannot be had without great prejudice to  
9 the owners, the court may order a sale of the property or of such part, and for that  
10 purpose may appoint one or more referees; or when, without such allegation and  
11 proof, the court determines that the property, or any distinct part of it, is so  
12 situated that partition cannot be had without great prejudice to the owners it may  
13 order the referees to sell the property or such part.

14 11.720 Liens; new parties; no sale, when: Proof shall be made of the  
15 existence, amount, and priority of any liens on the property of which partition is  
16 sought in such manner and upon such notice to those interested as the court shall  
17 direct. When any person having a lien has not been made a party, the court may  
18 make an order requiring that person to appear and become a party defendant, and  
19 no such person can be affected by a sale unless made a party. If there are liens on  
20 the property amounting to more than its value as alleged in the complaint, or if it  
21 appears probable after examination that the property will not sell for a sum in cash  
22 equal to the amount of such liens, with costs and expenses, no sale shall be  
23 ordered; but, if such liens do not amount to the value of the property as admitted  
24 or proved, the court may order a sale, and in such case the sale shall not be  
25 delayed by the proceedings to ascertain the priority of the liens.

1           11.721           Proceeds, how applied.           The proceeds of the sale of the  
2 property shall be applied under the direction of the court as follows:  
3           (1) To pay its just proportion of the general costs of the action;  
4           (2) To pay the costs of the referee;  
5           (3) To satisfy and cancel of record the several liens, if any, in their  
6 order of priority, by payment of the sums due and to become due;  
7 the amount remaining due to be verified by affidavit at the time of  
8 payment;  
9           (4) The residue among the owners of the property sold, according to  
10 their respective shares.

11           11.722           Sale of real property under action for partition; notice.           The  
12 sale may be by public auction to the highest bidder for cash, upon published  
13 notice. The notice shall state the terms of the sale; and if the property, or any part  
14 of it, is to be sold subject to a prior estate, charge, or specific lien, the notice shall  
15 so state.

16           (1) Notice of the sale shall be published by posting copies of the notice  
17 on the public notice boards located at:  
18           (a) The FSM Post Office, Kosrae Station; and  
19           (b) The Municipal Administration Buildings for each  
20 municipality in the State of Kosrae; and  
21           (2) By causing a copy of the notice to be broadcast by radio.

22           11.723           Terms of Sale. The terms of sale shall be made known at the time  
23 thereof, and, if the premises consist of distinct farms or lots, they shall be sold  
24 separately. The court may, if it be for the best interests of the owners of the  
25 property, order such property sold by private sale. If a private sale be ordered the

1 real estate shall be appraised by two or more disinterested persons under order of  
2 the court, which appraisal shall be filed before the confirmation of the sale by the  
3 court. No real estate shall be sold at private sale for less than its value as fixed by  
4 such appraisal. The court may order sale of real estate for cash, part cash and a  
5 purchase money mortgage of not more than 50 percent of the purchase price, or  
6 on contract for deed.

7 11.724 Orders, interlocutory judgments; appeals. Any party to any  
8 partition proceedings may appeal from any order or interlocutory judgment made  
9 and entered pursuant to this Act, within 30 days after the making and filing of the  
10 order or interlocutory judgment. Any appeal shall be taken as in other civil cases  
11 under Title 6, Chapter 4 of the Kosrae State Code.

12 (1) All matters determined by any order or interlocutory judgment  
13 shall be conclusive and binding upon all parties to the proceedings  
14 and shall never be subject to review by the court unless appealed  
15 from as provided herein.

16 11.725 Claims to proceeds, how determined. When the proceeds of  
17 sale of any shares belonging to parties to the action who are known are paid into  
18 court the action may be continued as between them for the determination of their  
19 respective claims thereto. Further testimony may be taken in court or by a referee,  
20 at the discretion of the court, which may, if necessary, require the parties to  
21 present the facts in controversy by pleadings, as in an original action. The  
22 proceedings authorized by this section shall not delay or affect any party whose  
23 rights are not involved therein.

24 11.726 Sale of part; life estate or for years. When a part of the property  
25 only is ordered to be sold, if there is an estate for life or for years in an undivided

1 share of the property, the whole of such estate may be set off in any part of the  
2 property not ordered sold.

3 11.727 Estate for life or years, may be set off or sold. When the  
4 estate of a tenant for life or for years in the whole or any part of the property has  
5 been proved or admitted to exist at the time of the order for sale, and the person  
6 entitled thereto has been made a party, such estate may first be set off out of any  
7 part of the property, and a sale made of such part subject to such estate; but if, in  
8 the judgment of the court, a due regard to the interest of all parties requires that  
9 such estate be sold, the sale may be so ordered. If a sale of the property including  
10 such estate is ordered, such estate passes thereby, and the purchaser, the  
11 purchaser's heirs and assigns, shall hold the property discharged from all claim by  
12 virtue thereof, whether the same relate to the undivided share of a joint tenant or  
13 tenant in common, or to the whole or any part of the property sold.

14 11.728 Sum in lieu of estate; investing proceeds; unknown parties. Such  
15 person whose estate has been so sold shall be entitled to receive such sum in gross  
16 as may be deemed, upon principles of law applicable to annuities, a reasonable  
17 satisfaction therefor. That person's written consent to accept such sum in lieu of  
18 such estate, executed and acknowledged in the same manner as a conveyance,  
19 must be filed at or before the report of sale. If consent be not so given, the court  
20 shall direct that the whole proceeds of the sale of the property, or of the individual  
21 share thereof in which such estate may be, shall be deposited in court, and  
22 invested for the benefit of the person entitled to such estate during the period  
23 thereof; and, if any person entitled to any such estate is unknown, the court shall  
24 provide for the protection of the unknown person's rights in the same manner, so  
25 far as may be, as if that person were known and had appeared. In all cases the

1 proper proportion of expenses of the proceedings shall be deducted from the  
2 proceeds of sale.

3 11.729 Future estates. When it appears that any person has a vested  
4 or contingent future right or estate in any of the property divided or sold, the court  
5 shall ascertain and settle the proportionate value thereof according to the  
6 principles of law applicable to annuities and survivorships, and direct such  
7 proportion of the proceeds of sale to be invested, secured, or paid over in such  
8 manner as to protect the rights and interests of the parties.

9 11.730 Investment of proceeds. When there are proceeds of sale  
10 belonging to an unknown owner, or to a person outside of the state who has no  
11 representative within it, or when there are proceeds arising from the sale of  
12 property including the prior estate of a tenant for life or for years, which are paid  
13 into court or deposited with the court administrator, the same shall be invested in  
14 interest-bearing securities for the benefit of the persons entitled thereto. Except as  
15 in this chapter otherwise provided, such investment shall be made in the name of  
16 the court administrator and the court administrator's successors in office, who  
17 shall hold the same for the use and benefit of the persons interested, subject to the  
18 order of the court. The court administrator shall receive the interest and principal  
19 as it becomes due, apply and invest the same as the court may direct, file in the  
20 court administrator's office the securities taken, and keep an account of such  
21 investments and of the moneys received thereon and the disposition thereof, in a  
22 book kept for that purpose, which shall be open to inspection by all persons.

23 11.731 Share of infant, how paid. When the share of an infant is sold,  
24 that share of the proceeds may be paid by the referees making the sale to the  
25 infant's general guardian, or to the special guardian appointed for the infant in the

1 action, if the guardian has given the security required by law.  
2 11.732 Share of incapable person. When the share of an insane person,  
3 or other person adjudged incapable of conducting the person's own affairs, is sold,  
4 that person's share of the proceeds may be paid by the referees making the sale to  
5 the guardian who is entitled to the custody and management of that person's  
6 estate, if the guardian has executed an undertaking, approved by a judge of the  
7 court, to faithfully discharge the trust reposed in the guardian, and will render a  
8 true and just account to the person entitled thereto, or that person's  
9 representatives.

10 11.733 Proceedings when state a party. The state may be made a  
11 party to an action for the sale or partition of real property, in which case the  
12 summons and complaint shall be served upon the attorney general, who shall  
13 appear on behalf of the state.”

14 Section 3 Effective Date. This Act takes effect upon approval by the  
15 Governor or upon its becoming law without such approval.

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20 Date: \_\_\_\_\_ Introduced by: \_\_\_\_\_