

A BILL FOR AN ACT

To amend the Kosrae State Code by adding a new Chapter 10 under Part I of Title 11 of the Kosrae State Code, to establish the Land Partition Act of 2023.

BE IT ENACTED BY THE KOSRAE STATE LEGISLATURE

1 Section 1. Purpose. The purpose of this Act is to enact into law the Kosrae Land  
2 Partition Act of 2023, to basically give clarity when dealing with partition of land in the  
3 State of Kosrae.

4 Section 2. Amendment. Part I, Title 11 of the Kosrae State Code is hereby  
5 amended by adding thereunder a new Chapter 10 to read as follows:

6 “Chapter 10. Partition of Land

7 Section 11.1001. Short title. This chapter may be known and cited as the “Land Partition  
8 Act of 2023.”

9 Section 11. 1002. Definitions. As used in this Chapter, unless the context requires  
10 otherwise, the term:

11 (1) “Partition” means the dividing of common interests in real property owned  
12 jointly by two or more persons. Partition can be voluntary by all joint owners  
13 or by order of the Kosrae Land Court.

14 (2) “Owner” means all persons listed by name as the “owner(s) of estate in fee  
15 simple,” “joint owners,” “tenants-in-common” or “tenancy-in-common” on a  
16 certificate of title.

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1           (3) “Court ordered partition” means partition of a parcel decreed through  
2                     proceedings before the Kosrae Land Court, pursuant to this chapter.

3           (4) “Voluntary partition” means partition of a parcel made by written agreement  
4                     by all joint owners or tenants-in-common of a parcel.

5     Section 11.1003. Voluntary Partition. Voluntary partition of a parcel shall be made by  
6     written agreement shared signed by each joint owner of the parcel with each signature  
7     acknowledged by a notary public. The partition agreement shall be filed in the Kosrae  
8     State Court and shall include a copy of the plat map on which the size and location of each  
9     partitioned area is marked and the agreed owner of each partitioned area.

10    Section 11.1004. Action for Partition. When two or more persons hold fee simple  
11    ownership interests in a parcel as joint tenants or as tenants-in-common, as listed by name  
12    on the certificate of title, any one or more of such persons may bring an action in the  
13    Kosrae State Court for a partition of the parcel, according to the respective rights of the  
14    persons listed on the certificate of title.

15    Section 11.1005. Necessary Parties. The plaintiff shall name in the complaint as a  
16    respondent every other person who holds a fee simple ownership interest in the parcel as  
17    listed on the certificate of title, including each joint owner and tenant-in-common, and  
18    every lienholder that is annotated on the certificate of title including but not limited to  
19    leases, easements, and mortgages.

20    Section 11.1006. Complaint for Partition. The complaint shall describe the parcel sought  
21    to be partitioned, and shall set forth the title and rights of all parties interested herein and

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1 the extent of their respective interests. In the event of death of a party, the heirs of the  
2 decendent party may be substituted, as determined by the court.

3 Section 11.1007. Summons and Service. The summons shall be directed to all persons  
4 named in the complaint or joint as ordered by the court and may be directed generally to  
5 all persons unknown having or claiming an interest in the parcel described in the  
6 complaint including but not limited to lease, easement, and mortgage liens and shall be  
7 served with process with the State as provided by Kosrae Civil Rule 4. Unknown persons  
8 and any known persons holding an interest in the parcel who do not reside within Kosrae  
9 State or cannot for any reason be served with process within the State, shall have notice of  
10 the action as provided by Kosrae Civil Rule 4 or alternatively, the Kosrae Land Court may  
11 order notice of the action by posting of the summons at the Kosrae Post Office, at the  
12 municipal office in the municipality where the parcel is located, on the subject parcel  
13 and/or publication of the summons in a newspaper of general circulation in Kosrae State.  
14 If the summon has been directed generally to all persons unknown and who do not reside  
15 in Kosrae State as provided above, and if service has been made as ordered, the court shall  
16 have jurisdiction to proceed as though all persons having or claiming a fee simple interest  
17 in the parcel were in being and personally served.

18 Section 11.1008. Powers of the Kosrae Land Court in Actions for Partition.

19 The court shall have power to:

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- 1           (1) To hear, investigate, and determine any and all questions of conflicting or  
2                   controverted titles or claims either as to the whole of the parcel or as to any  
3                   share or interest therein;
- 4           (2) To vest titles by judgements and issue certificates of title to known owners and  
5                   unknown or absent owners;
- 6           (3) To cause the parcel to be equitably divided between the parties according to  
7                   their respective proportionate interests therein;
- 8           (4) To set apart any particular portion(s) of the parcel to any particular party or  
9                   parties who by prior occupation or improvement or otherwise may be equitably  
10                  entitled thereto, and make any adjustment or equalization thereof;
- 11          (5) To divide and allot portions of the parcel to some or all of the parties, or to  
12                  deny partition of a parcel where it would be impracticable in whole or in part,  
13                  or be greatly prejudicial to the interested parties;
- 14          (6) When partition of two or more separate parcels of land is sought, the whole  
15                  share of any party in all of them may be set apart to the party in any one or  
16                  more of the parcels;
- 17          (7) To exercise any other power of the court.

18   Section 11.1009. Absent Owners. The court shall in all cases provide for the protection of  
19   the interests of all absent owners and other owners who do not appear in the action, in the  
20   same manner as far as may be as if they were known and had appeared in the action. In  
21   every case their rights must appear to the satisfaction of the court, but the court may

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1 consider them together in the action without considering them separately. If there are any  
2 unknown owners of a fee simple interest in the parcel, absent owners or any other owners  
3 served but who do not appear in the action, the court shall have the power in making the  
4 general partition to allot and set apart for such share a portion or portions of the parcel as  
5 the owners thereof would respectively be entitled to receive in the partition were they  
6 known and had appeared in the action. The portion so set apart for such share shall  
7 thereafter alone be the subject of ownership by such owner if the owner has been served.  
8 The remaining portions of the property shall be regarded as belonging to the other parties  
9 interested therein.

10 Section 11.1010. Liens and Encumbrances. Where partition is requested of any parcel  
11 which is subject as a whole to any lien or encumbrance, the court may with the written  
12 consent of the lienholder, apportion the lien or encumbrance against the separate portions  
13 as partitioned to the parties. The lien or encumbrance shall be registered on all partitioned  
14 portions of the parcel unless otherwise consented in writing by the lienholder.

15 Section 11.1011. Default. All parties who have failed to plead or otherwise defend as  
16 provided by the rules of court shall, when the fact is made to appear by affidavit, be  
17 deemed to be in default, and their default shall be entered. Such parties shall be deemed to  
18 have consented to such partition as may be decreed in accordance with this chapter."

19 Section 3. Effective Date. This Act takes effect upon the approval of the Governor  
20 or upon its becoming law without such approval.

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Date: 9/13/23

Introduced by: 

Moses M. Thomson