

**This document is an unofficial compilation of the Oregon Probate Law incorporating amendments made by 2016 Oregon Laws Ch 42 and 2016 Oregon Laws Ch 19. The Revised Uniform Fiduciary Access to Digital Assets Act (2016 Oregon Laws Ch 19) has not yet been allocated ORS sections by Legislative Counsel and is for convenience included at the end of ORS Title 12 herein. Note that under 2016 Oregon Laws Ch 42, §25, the amendments to ORS 111.005, 111.015, 111.095, 111.115, 111.175, 111.185, 111.275, 112.025, 112.035, 112.045, 112.058, 112.065, 112.135, 112.145, 112.155, 112.175, 113.005, 113.242, 114.305, 115.125 and 179.610 and the repeal of ORS 112.390 apply to estates of decedents dying after January 1, and the amendments to ORS 112.238 apply to estates of decedents dying after March 14, 2016.**

ORS TITLE 12  
PROBATE LAW  
2016 EDITION

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Chapter 111 — General Provisions

2016 EDITION

GENERAL PROVISIONS

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DEFINITIONS AND APPLICATION OF PROBATE LAW

**111.005 Definitions for probate law.** As used in ORS chapters 111, 112, 113, 114, 115, 116 and 117, unless the context requires otherwise:

(1) “Abate” means to reduce a devise on account of the insufficiency of the estate to pay all claims, expenses and devises in full.

(2) “Action” includes suits and legal proceedings.

(3) “Administration” means any proceeding relating to the estate of a decedent, whether the decedent died testate, intestate or partially intestate.

(4) “Advancement” means a gift by a decedent to an heir or devisee with the intent that the gift satisfy in whole or in part the heir’s share of an intestate estate or the devisee’s share of a testate estate.

(5) “Assets” includes real, personal and intangible property.

(6) “Claim” includes liabilities of a decedent, whether arising in contract, in tort or otherwise.

(7) “Court” or “probate court” means the court in which jurisdiction of probate matters, causes and proceedings is vested as provided in ORS 111.075.

(8) “Decedent” means a person who has died.

(9)(a) “Descendant” means a person who is descended from a specific ancestor and includes an adopted child and the adopted child’s descendants.

(b) When used to refer to persons who take by intestate succession, “descendant” does not include a person who is the descendant of a living descendant.

(10) “Devise,” when used as a noun, means property disposed of by a will.

(11) “Devise,” when used as a verb, means to dispose of property by a will.

(12) “Devisee” means a person designated in a will to receive a devise.

(13) “Distributee” means a person entitled to any property of a decedent under the will of the decedent or under intestate succession.

(14) “Domicile” means the place of abode of a person, where the person intends to remain and to which, if absent, the person intends to return.

(15) “Estate” means the real and personal property of a decedent, as from time to time changed in form by sale, reinvestment, substitutions or otherwise, augmented by any accretions or additions or diminished by any decreases or distributions.

(16) “Funeral” includes the burial or other disposition of the remains of a decedent, any plot or tomb and other necessary incidents to the disposition of the remains, any memorial ceremony or other observance and related expenses.

(17) “General devise” means a devise chargeable generally on the estate of a testator so that the devise is not distinguishable from other parts of the estate and does not constitute a specific devise.

(18) “Heir” means any person who is or would be entitled under intestate succession to property of a person upon that person’s death.

(19) “Interested person” includes heirs, devisees, children, spouses, creditors and any others having a property right or claim against the estate of a decedent that may be affected by the proceeding. “Interested person” also includes fiduciaries representing interested persons.

(20) “Intestate” means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all the estate.

(21) “Intestate succession” means succession to property of a decedent who dies intestate or partially intestate.

(22) “Issue” means a descendant or descendants.

(23) “Net estate” means the real and personal property of a decedent, except property used for the support of the surviving spouse and children and for the payment of expenses of administration, funeral expenses, claims and taxes.

(24) “Net intestate estate” means any part of the net estate of a decedent not effectively disposed of by the will.

(25) “Personal property” includes all property other than real property.

(26) “Personal representative” includes executor, administrator, administrator with will annexed and administrator de bonis non, but does not include special administrator.

(27) “Property” includes both real and personal property.

(28) “Real property” includes all legal and equitable interests in land, in fee and for life.

(29) “Settlement” includes, as to the estate of a decedent, the full process of administration, distribution and closing.

(30) “Specific devise” means a devise of a specific thing or specified part of the estate of a testator that is so described as to be capable of identification. A specific devise is a gift of a part of the estate identified and differentiated from all other parts.

(31) “Will” includes codicil and also includes a testamentary instrument that merely appoints an executor or that merely revokes or revives another will. [1969 c.591 §1; 2015 c.387 §31; 2016 Oregon Laws Ch 42 §1]

111.010 [Repealed by 1969 c.591 §305]

**111.015 Application of chapter 591, Oregon Laws 1969.** Except as specifically provided otherwise in chapter 591, Oregon Laws 1969, on July 1, 1970, chapter 591, Oregon Laws 1969, applies to wills of decedents dying thereafter, and a will executed before July 1, 1970, shall be considered lawfully executed if the application of ORS 112.255 would make it so, but the construction of a will executed before July 1, 1970, shall be governed by the law in effect on the date of execution unless a contrary intent is established by the will. [1969 c.591 §303; 2016 Oregon Laws Ch 42 §12]

111.020 [Repealed by 1969 c.591 §305]

**111.025 Oregon Tax Court jurisdiction.** For purposes of ORS chapters 111 to 116, the Oregon Tax Court is not a court having probate jurisdiction and is limited to the trial of appeals on inheritance or estate tax matters. [1971 c.567 §3; 1997 c.99 §25; 2011 c.526 §17; 2016 Oregon Laws Ch 42 §2]

111.030 [Repealed by 1969 c.591 §305]

111.040 [Repealed by 1969 c.591 §305]

111.050 [Repealed by 1969 c.591 §305]

## PROBATE COURTS AND COMMISSIONERS

**111.055 Transfer of probate jurisdiction.** (1) All probate jurisdiction, authority, powers, functions and duties of the county courts and the judges thereof are transferred to the circuit courts and the judges thereof in all counties except Gilliam, Grant, Harney, Malheur, Sherman and Wheeler Counties.

(2) All probate jurisdiction, authority, powers, functions and duties of the circuit courts and the judges thereof are transferred to the county courts and the judges thereof in Gilliam, Grant, Harney, Malheur, Sherman and Wheeler Counties. [1969 c.591 §2; 1995 c.658 §71]

111.060 [Repealed by 1969 c.591 §305]

111.065 [1969 c.591 §3; 1979 c.683 §34; repealed by 1983 c.740 §12]

111.070 [Repealed by 1969 c.591 §305]

**111.075 Probate jurisdiction vested.** Jurisdiction of all probate matters, causes and proceedings is vested in the county courts of Gilliam, Grant, Harney, Malheur, Sherman and Wheeler Counties and in the circuit court for each other county and as provided in ORS 111.115. [1969 c.591 §4]

**111.085 Probate jurisdiction described.** The jurisdiction of the probate court includes, but is not limited to:

- (1) Appointment and qualification of personal representatives.
- (2) Probate and contest of wills.
- (3) Determination of heirship.
- (4) Determination of title to and rights in property claimed by or against personal representatives, guardians and conservators.
- (5) Administration, settlement and distribution of estates of decedents.
- (6) Construction of wills, whether incident to the administration or distribution of an estate or as a separate proceeding.
- (7) Guardianships and conservatorships, including the appointment and qualification of guardians and conservators and the administration, settlement and closing of guardianships and conservatorships.
- (8) Supervision and disciplining of personal representatives, guardians and conservators.
- (9) Appointment of a successor testamentary trustee where the vacancy occurs prior to, or during the pendency of, the probate proceeding. [1969 c.591 §5; 1973 c.177 §1]

**111.095 Powers of probate court.** (1) The general legal and equitable powers of a circuit court apply to a probate court.

(2) The same validity, finality and presumption of regularity shall be accorded to the determinations, orders and judgments of a probate court as to those of a circuit court.

(3) A probate court has full, legal and equitable powers to make declaratory judgments, as provided in ORS 28.010 to 28.160, in all matters involved in the administration of an estate, including matters pertaining to the title of real property and ownership of personal property, the determination of heirship and the distribution of the estate. [1969 c.591 §6; 1979 c.284 §102; 2016 Oregon Laws Ch 42 §13]

**111.105 Appeals from probate court; reexamination of issues.** (1) Except as otherwise provided in this section, no issue determined in a probate court shall be tried again on appeal or otherwise reexamined in a manner other than those appropriate to issues determined by a court of record with general jurisdiction.

(2) Appeals from a circuit court sitting in probate shall be taken to the Court of Appeals in the manner provided by law for appeals from the circuit court.

(3) Appeals from a county court sitting in probate shall be taken to the circuit court and Court of Appeals in the manner provided by ORS 5.120. [1969 c.591 §7; 1979 c.284 §103]

111.110 [Repealed by 1969 c.591 §305]

**111.115 Transfer of estate proceeding from county court to circuit court.** (1) An estate proceeding may be transferred at any time from a county court to the circuit court for the county by order of the county court.

(2) An estate proceeding commenced in a county court and in which the county judge is a party or directly interested must be transferred from the county court to the circuit court for the county by order of the county court.

(3) Upon transfer of an estate proceeding from a county court to the circuit court for the county under this section:

(a) The county clerk shall certify and cause to be filed in the records of the circuit court all original papers and proceedings pertaining to the estate proceeding; and

(b) Jurisdiction over the estate proceeding vests in the circuit court as if the jurisdiction had been originally and exclusively vested in the circuit court. [1969 c.591 §8; 2016 Oregon Laws Ch 42 §14]

111.120 [Repealed by 1969 c.591 §305]

111.130 [Repealed by 1969 c.591 §305]

111.140 [Repealed by 1969 c.591 §305]

111.150 [Repealed by 1969 c.591 §305]

111.160 [Repealed by 1969 c.591 §305]

111.165 [1969 c.591 §9; repealed by 1995 c.658 §127]

111.170 [Repealed by 1969 c.591 §305]

**111.175 Appointment of probate commissioner.** The presiding judge of a circuit court or the county judge of a county court may appoint a probate commissioner and one or more deputy probate commissioners and, if such appointments are made, shall prescribe, by rule or order, the duties and responsibilities of the probate commissioner and deputy probate commissioners, subject to ORS 111.185. [1969 c.591 §10; 2016 Oregon Laws Ch 42 §15]

**111.185 Powers of probate commissioner.** (1) To the extent prescribed or otherwise authorized by rule or order made under ORS 111.175, a probate commissioner or deputy probate commissioner may:

(a) Act upon uncontested petitions for appointment of special administrators, for probate of wills and for appointment of personal representatives, guardians and conservators;

(b) Make and enter orders and judgments admitting wills to probate and appointing and setting the amount of the bonds of special administrators, personal representatives, guardians and conservators; and

(c) Appoint court visitors.

(2) Any matter presented to the probate commissioner or deputy probate commissioner may be referred to the judge of the court.

(3) Any order or judgment made by a probate commissioner or deputy probate commissioner is subject to being set aside or modified by the judge of the court within 30 days after the date of the order or judgment.

(4) Any interested person may object to an order or judgment of a probate commissioner or deputy probate commissioner within 30 days after the date of the order or judgment, and the judge of the court may set aside or modify the order or judgment.

(5) Unless set aside or modified by the judge of the court, the orders and judgments of the probate commissioner or deputy probate commissioner have the same effect as if made by the judge of the court. [1969 c.591 §11; 2016 Oregon Laws Ch 42 §16]

## PROBATE PROCEDURE GENERALLY

**111.205 Pleadings and mode of procedure.** No particular pleadings or forms thereof are required in the exercise of jurisdiction of probate courts. The mode of procedure in the exercise of jurisdiction is in the nature of an action not triable by right to a jury except as otherwise provided by statute. The proceedings shall be in writing and upon the petition of a party in interest or the order of the court. All petitions, reports and accounts in proceedings before a probate court must include a declaration under penalty of perjury in the form required by ORCP 1 E, or an unsworn declaration under ORS 194.800 to 194.835, if the declarant is physically outside the

boundaries of the United States, made by at least one of the persons making the petitions, reports and accounts or by the attorney for the person, or in case of a corporation by its agent. The court exercises its powers by means of:

(1) A petition of a party in interest.

(2) A notice to a party.

(3) A subpoena to a witness.

(4) Orders and judgments.

(5) An execution or warrant to enforce its orders and judgments. [1969 c.591 §12; 1979 c.284 §104; 2007 c.284 §1; 2013 c.218 §13]

111.210 [Repealed by 1969 c.591 §305]

111.212 [1953 c.650 §2; repealed by 1969 c.591 §305]

**111.215 Notice; method and time of giving.** (1) Except as otherwise specifically provided in ORS chapters 111, 112, 113, 114, 115, 116 and 117, whenever notice is required to be given of a hearing on any petition or other matter upon which an order is sought, the petitioner or other person filing the matter shall cause notice of the date, time and place of the hearing to be given to each person interested in the subject of the hearing or to the attorney of the person, if the person has appeared by attorney or requested that notice be sent to the attorney of the person, in any one or more of the following ways and within the following times:

(a) By mailing a copy thereof addressed to the person or the attorney of the person at least 14 days before the date set for the hearing.

(b) By delivering a copy thereof to the person personally or to the attorney of the person at least five days before the date set for the hearing.

(c) If the address of any person is not known or cannot be ascertained with reasonable diligence, by publishing a copy thereof once in each of three consecutive weeks in a newspaper of general circulation in the county where the hearing is to be held, the last publication of which shall be at least 10 days before the date set for the hearing.

(2) Upon good cause shown the court may change the requirements as to the method or time of giving notice for any hearing.

(3) Proof of the giving of notice must be made at or before the hearing and filed in the proceeding. [1969 c.591 §13; 2007 c.284 §8]

**111.218 Proof of mailing or other delivery; proof of publication.** (1) When proof of mailing, or other delivery of notice or other documents, is required to be filed in probate court, proof shall be made in the form required by ORCP 9 C.

(2) When proof of publication is required to be filed in probate court, proof shall be made in the form required by ORCP 7 F. [2007 c.284 §7]

111.220 [Repealed by 1957 c.411 §7]

**111.225 Waiver of notice.** When any notice or information is required to be given under ORS chapters 111, 112, 113, 114, 115, 116 and 117, a guardian, a guardian ad litem, a conservator or a person who is neither incompetent nor a minor may waive notice by a writing signed by the guardian, guardian ad litem, conservator or person or the attorney of the guardian, guardian ad litem, conservator or person and filed in the proceeding, or by the appearance of the guardian, guardian ad litem, conservator or person at the hearing. [1969 c.591 §14; 1973 c.506 §5]

111.230 [Repealed by 1957 c.411 §7]

111.231 [1957 c.411 §3; repealed by 1969 c.591 §305]

**111.235 Filing objections to petition.** Any interested person, on or before the date set for a hearing, may file written objections to a petition previously filed. [1969 c.591 §15]

111.240 [Repealed by 1957 c.411 §7]

**111.245 Proof of documents; certification.** (1) Proof of documents pursuant to ORS chapters 111, 112, 113, 114, 115, 116 and 117 may be made as follows:

(a) Of a will, by a certified copy thereof.

(b) That a will has been probated or established in a foreign jurisdiction, by a certified copy of the order admitting the will to probate or evidencing its establishment.

(c) Of letters testamentary or of administration, by a certified copy thereof. The certification may include a statement that the letters have not been revoked.

(2) A document or order filed or entered in a foreign jurisdiction may be proved by a copy thereof, certified by a clerk of the court in which the document or order was filed or entered or by any other official having legal custody of the original document or order. [1969 c.591 §16]

**111.255 Translation of documents.** If a document or part thereof is not in the English language, a translation certified by the translator to be accurate may be attached thereto and shall be regarded as sufficient evidence of the contents of the document, unless objection is made thereto. In the absence of objection, if any person relies in good faith on the accuracy of the translation the person shall not be prejudiced thereafter because of its inaccuracy. [1969 c.591 §17]

**111.265 Stenographic record.** The judge of the court may, on the motion of the judge or on the request of an interested person, direct the reporter of the court to attend any hearing and make a stenographic record of the same. [1969 c.591 §18]

**111.275 Limited judgments.** (1) The court in a probate proceeding under ORS chapters 111, 112, 113, 114, 115, 116 and 117 may enter a limited judgment only for the following decisions of the court:

(a) A decision on a petition for appointment or removal of a personal representative.

(b) A decision in a will contest filed in the probate proceeding.

(c) A decision on an objection to an accounting.

(d) A decision on a request made in the proceeding for a declaratory judgment under ORS 111.095.

(e) A decision on a request for an award of expenses under ORS 116.183.

(f) A decision on a petition filed under ORS 112.238 admitting a writing for probate or otherwise acknowledging the validity and intent of the writing.

(g) Such decisions of the court as may be specified by rules or orders of the Chief Justice of the Supreme Court under ORS 18.028.

(2) A court may enter a limited judgment under this section only if the court determines that there is no just reason for delay. The judgment document need not reflect the court's determination that there is no just reason for delay. [2005 c.568 §33; 2009 c.50 §1; 2016 Oregon Laws Ch 42 §18]

Chapter 112 — Intestate Succession and Wills

2015 EDITION

INTESTATE SUCCESSION AND WILLS

PROBATE LAW

INTESTATE SUCCESSION

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#### INTESTATE SUCCESSION

112.010 [Amended by 1969 c.591 §69; renumbered 112.575]

**112.015 Net intestate estate; effect of exclusion by will.** (1) Any part of the net estate of a decedent not effectively disposed of by the will of the decedent shall pass as provided in ORS 112.025 to 112.055.

(2) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed that individual's or member's intestate share. [1969 c.591 §19; 2015 c.387 §2]

112.017 [1993 c.598 §4; 1995 c.235 §1; repealed by 1999 c.133 §1]

112.020 [Amended by 1969 c.591 §70; renumbered 112.585]

**112.025 Share of surviving spouse if decedent leaves issue.** If the decedent leaves a surviving spouse and one or more descendants, the intestate share of the surviving spouse is:

(1) If there are one or more surviving descendants of the decedent all of whom are descendants of the surviving spouse also, the entire net intestate estate.

(2) If there are one or more surviving descendants of the decedent one or more of whom are not descendants of the surviving spouse, one-half of the net intestate estate. [1969 c.591 §20; 1987 c.329 §1]

112.030 [Amended by 1969 c.591 §71; renumbered 112.595]

**112.035 Share of surviving spouse if decedent leaves no issue.** If the decedent leaves a surviving spouse and no descendant, the intestate share of the surviving spouse is the entire net intestate estate. [1969 c.591 §21; 2016 Oregon Laws Ch 42 §3]

112.040 [Amended by 1969 c.591 §73; renumbered 112.615]

**112.045 Share of others than surviving spouse.** The part of the net intestate estate not passing to the surviving spouse shall pass:

(1) To the descendants of the decedent by representation as described in ORS 112.065.

(2) If there is no surviving descendant, to the surviving parents of the decedent.

(3) If there is no surviving descendant or parent, equally to the brothers and sisters of the decedent and by

representation as described in ORS 112.065 to the descendants of any deceased brother or sister of the decedent. If there is no surviving brother or sister, the descendants of brothers and sisters take equally if they are all of the same generation in relation to the decedent, but if of different generations, then those of later generations take by representation as described in ORS 112.065.

(4)(a) If there is no surviving descendant, parent or descendant of a parent, equally to the grandparents of the decedent and by representation as described in ORS 112.065 to the descendants of any deceased grandparent of the decedent who left descendants surviving at the time of the decedent's death. If one or more grandparents of the decedent do not survive the decedent, the descendants of each of the deceased grandparents take equally if they are all of the same generation in relation to the decedent, but if of different generations, then those of later generations take by representation as described in ORS 112.065.

(b) If there is no surviving grandparent, the descendants of grandparents take equally if they are all of the same generation in relation to the decedent, but if of different generations, then those of later generations take by representation as described in ORS 112.065.

(5) If, at the time of taking, surviving parents or grandparents of the decedent are married to each other, they shall take real property as tenants by the entirety and personal property as joint owners with the right of survivorship. [1969 c.591 §22; 2015 c.387 §3; 2016 c. 42 §§ 4 and 4a]

**112.047 Forfeiture of parent's share by reason of termination of parental rights or desertion or neglect.** (1) Property that would pass by intestate succession under ORS 112.045 from the estate of a decedent to a parent of the decedent shall pass and be vested as if the parent had predeceased the decedent if:

(a) The parental rights of the parent with respect to the decedent were terminated and the parent-child relationship between the parent and the decedent was not judicially reestablished.

(b) The decedent was an adult when the decedent died and:

(A) The parent of the decedent willfully deserted the decedent for the 10-year period immediately preceding the date on which the decedent became an adult; or

(B) The parent neglected without just and sufficient cause to provide proper care and maintenance for the decedent for the 10-year period immediately preceding the date on which the decedent became an adult.

(c) The decedent was a minor when the decedent died and:

(A) The parent of the decedent willfully deserted the decedent for the life of the decedent or for the 10-year period immediately preceding the date on which the decedent died; or

(B) The parent neglected without just and sufficient cause to provide proper care and maintenance for the decedent for the life of the decedent or for the 10-year period immediately preceding the date on which the decedent died.

(2) For the purposes of subsection (1) of this section, the court may disregard incidental visitations, communications and contributions in determining whether a parent willfully deserted the decedent or neglected without just and sufficient cause to provide proper care and maintenance for the decedent.

(3) For the purposes of subsection (1) of this section, in determining whether the parent willfully deserted the decedent or neglected without just and sufficient cause to provide proper care and maintenance for the decedent, the court may consider whether a custodial parent or other custodian attempted, without good cause, to prevent or to impede contact between the decedent and the parent whose intestate share would be forfeited under this section.

(4) The intestate share of a parent of a decedent may be forfeited under this section only pursuant to an order of the court entered after the filing of a petition under ORS 112.049. A petition filed under ORS 113.035 may not request the forfeiture of the intestate share of a parent of a decedent under this section. [2005 c.741 §2; 2015 c.387 §4]

**112.049 Petition for forfeiture of parent's share.** (1) A petition may be filed in probate proceedings to assert that the intestate share of a parent of a decedent is subject to forfeiture under ORS 112.047. A petition may be filed under this section only by a person who would be benefited by a forfeiture of the parent's share.

(2) A petition under this section must be filed not later than:

(a) Four months after the date of delivery or mailing of the information described in ORS 113.145 if that information was required to be delivered or mailed to the person on whose behalf the petition is filed; or

(b) Four months after the first publication of notice to interested persons if the person on whose behalf the petition is filed was not required to be named as an interested person in the petition for appointment of a personal representative.

(3) The petitioner has the burden of proving the facts alleged in a petition filed under this section by clear and convincing evidence. [2005 c.741 §3]

112.050 [Repealed by 1969 c.591 §305]

**112.055 Escheat.** (1) If, after diligent search and inquiry that is appropriate to the circumstances, taking into account the value of the decedent's estate, no person takes under ORS 112.025 to 112.045, the net intestate estate escheats to the State of Oregon.

(2) If a devisee or a person entitled to take under ORS 112.025 to 112.045 is not identified or found, the share of that person escheats to the State of Oregon.

(3) If a devisee or a person entitled to take under ORS 112.025 to 112.045 is not identified or found:

(a) The Department of State Lands has the same preference as the missing devisee or person for the purpose of appointment as personal representative under ORS 113.085;

(b) Title to property of the decedent that would vest in the missing devisee or person under ORS 114.215 vests in the Department of State Lands; and

(c) The Department of State Lands has all of the rights of the missing devisee or person for the purposes of ORS chapters 111, 112, 113, 114, 115, 116 and 117, including but not limited to the following:

(A) The right to contest any will of the decedent under ORS 113.075; and

(B) The right to information under ORS 113.145. [1969 c.591 §23; 2003 c.395 §2; 2015 c.387 §5]

**112.058 Preferences and presumptions in escheat proceedings.** (1) In any proceeding to determine the escheat share of the estate of a decedent whose estate is wholly or partially subject to probate in this state:

(a) No preference shall be given to any person over escheat; and

(b) After diligent search and inquiry appropriate to the circumstances, the following presumptions apply in a proceeding to determine whether a missing person has died:

(A) A missing person whose death cannot be proved by other means lives to 100 years of age.

(B) A missing person who was exposed to a specific peril at the time the person became missing has died if it is reasonable to expect from the nature of the peril that proof of death would be impractical.

(C) A missing person whose absence is unexplained has died if the character and habits of the person are inconsistent with a voluntary absence for the time that the person has been missing.

(D) A missing person known to have been alive who has not been seen or heard from for seven years has died if the person has been absent from the person's usual residence, the absence is unexplained, there are other persons who would have been likely to have heard from the missing person during that period were the missing person alive, and those other persons have not heard from the missing person.

(2) In any proceeding described by subsection (1) of this section, a missing person who is presumed to be dead is also presumed to have had two children in addition to any known descendants of the person unless the

presumption of death arises by reason of the application of subsection (1)(b)(B) or (C) of this section. [2003 c.395 §4; 2016 Oregon Laws Ch 42 §5]

112.060 [Amended by 1969 c.591 §74; renumbered 112.625]

**112.065 Representation defined.** “Representation” means the method of determining the passing of the net intestate estate when the distributees are of different generations in relation to the decedent. Representation is accomplished as follows:

(1) If a distributive share of a wholly or partially intestate estate passes by representation to a person’s descendants, the share is divided into as many equal shares as there are:

(a) Surviving descendants in the generation nearest to the person that contains one or more surviving descendants; and

(b) Deceased descendants, in the generation nearest to the person that contains one or more surviving descendants, who left surviving descendants, if any.

(2) Each share created for a surviving descendant in the nearest generation is distributed to that descendant. Each share created for a deceased descendant is distributed to the descendants of the deceased descendant by representation as described in this section. [1969 c.591 §24; 2015 c.387 §6; 2016 Oregon Laws Ch 42 §6]

112.070 [Amended by 1969 c.591 §75; renumbered 112.635]

112.075 [1969 c.591 §25; repealed by 2015 c.387 §1]

**112.077 Time of determining relationships; application to different circumstances of conception.** (1) For purposes of this section, an embryo that exists outside a person’s body is not considered to be conceived until the embryo is implanted into a person’s body.

(2) Except as provided in subsections (3) and (4) of this section, the relationships existing at the time of the death of a decedent govern the passing of the decedent’s estate.

(3) A person conceived before the death of the decedent and born alive thereafter inherits as though the person was a child of the decedent and alive at the time of the death of the decedent.

(4) A child conceived from the genetic material of a decedent who died before the transfer of the decedent’s genetic material into a person’s body is not entitled to an interest in the decedent’s estate unless:

(a) The decedent’s will or trust provided for posthumously conceived children; and

(b) The following conditions are satisfied:

(A) The decedent, in a writing signed by the decedent and dated, specified that the decedent’s genetic material may be used for the posthumous conception of a child of the decedent, and the person designated by the decedent to control use of the decedent’s genetic material gives written notice to the personal representative of the decedent’s estate, within four months of the date of the appointment of the personal representative, that the decedent’s genetic material is available for the purpose of posthumous conception; and

(B) The child using the decedent’s genetic material is in utero within two years after the date of the decedent’s death. [2015 c.387 §27]

112.080 [Amended by 1969 c.591 §76; renumbered 112.645]

112.085 [1969 c.591 §26; 1973 c.506 §6; 1975 c.244 §1; repealed by 1999 c.131 §11]

**112.095 Persons of the half blood.** Persons of the half blood inherit the same share that they would inherit if they were of the whole blood. [1969 c.591 §27]

**112.105 Succession where parents not married.** (1) For all purposes of intestate succession, full effect shall be given to all relationships as described in ORS 109.060, except as otherwise provided by law in case of

adoption.

(2) For all purposes of intestate succession and for those purposes only, before the relationship of father and child and other relationships dependent upon the establishment of paternity shall be given effect under subsection (1) of this section, the paternity of the child shall have been established under ORS 109.070 during the lifetime of the child. [1969 c.591 §28; 2015 c.387 §7]

**112.115 Persons related to decedent through two lines.** A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship which would entitle the person to the larger share. [1969 c.591 §29]

#### ADVANCEMENTS

**112.135 When gift is an advancement.** (1)(a) If a person dies intestate as to all or part of the estate of the person, property that the person gives during the lifetime of the person to an heir is treated as an advancement against the heir's share of the estate if declared in writing by the decedent or acknowledged in writing by the heir to be an advancement.

(b) For purposes of applying the gift against the heir's share of the intestate estate, the property advanced must be valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever occurs first, unless otherwise directed in the decedent's writing.

(2)(a) Except as provided in ORS 112.385, property that a testator gives during the testator's lifetime to a devisee is treated as an advancement of the devisee's share in whole or in part if:

(A) The will provides for deduction of the gift;

(B) The testator declared in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise; or

(C) The devisee acknowledges in writing, before or after the testator's death, that the gift was made in satisfaction of the devise or that its value was to be deducted from the value of the devise.

(b) For purposes of applying the gift against the devisee's share of the testate estate, the property advanced must be valued as of the time the devisee came into possession or enjoyment of the property or as of the time of the testator's death, whichever occurs first, unless otherwise directed in the testator's will or a writing described in paragraph (a)(B) of this subsection.

(3)(a) Property not subject to probate administration, the transfer of which is intended by the decedent to take effect on death, is treated as an advancement against the heir's share of the estate or the devisee's share under the will if declared in writing by the decedent, or acknowledged in writing by the heir or devisee, to be an advancement. Examples of transfers under this subsection include but are not limited to beneficiary designation, right of survivorship and transfer on death deed or transfer on death designation.

(b) The property transferred under this subsection must be valued as of the time of the decedent's death, unless otherwise directed in the testator's will or in a writing by the decedent. [1969 c.591 §30; 2016 Oregon Laws Ch 42 §8]

**112.145 Effect of advancement on distribution.** (1) If the value of an advancement exceeds the heir's or devisee's share of the estate, the heir or devisee shall be excluded from any further share of the estate, but the heir or devisee shall not be required to refund any part of the advancement. If the value of an advancement is less than the heir's or devisee's share, the heir or devisee shall be entitled upon distribution of the estate to such additional amount as will give the heir or devisee the heir's or devisee's share of the estate.

(2) The property advanced is not a part of the estate, but for the purpose of determining the shares of the heirs or devisees the advancement shall be added to the value of the estate, the sum then divided among the heirs or devisees according to the laws of intestate succession or the testator's will and the advancement then deducted from the share of the heir or devisee to whom the advancement was made. [1969 c.591 §31; 2016

Oregon Laws Ch 42 §9]

**112.155 Death of advancee before decedent.** If the recipient of the property advanced fails to survive the decedent, the amount of the advancement shall be taken into account in computing the share of the descendants of the recipient, whether or not the descendants take by representation. [1969 c.591 §32; 2016 Oregon Laws Ch 42 §10]

#### STATUS OF ADOPTED PERSONS

**112.175 Adopted persons.** (1) An adopted person, the descendants and kindred of the adopted person shall take by intestate succession from the adoptive parents, their descendants and kindred, and the adoptive parents, their descendants and kindred shall take by intestate succession from the adopted person, the descendants and kindred of the adopted person, as though the adopted person were the biological child of the adoptive parents.

(2) An adopted person shall cease to be treated as the child of any person other than the adopted person's adoptive parents for all purposes of intestate succession except in the following circumstances:

(a) If a person is adopted by a stepparent or a domestic partner of a parent in a domestic partnership registered under ORS 106.300 to 106.340 or under a similar law in another state, the adopted person shall continue also to be treated, for all purposes of intestate succession, as the child of the parent who is the spouse of, or other domestic partner in the domestic partnership with, the adoptive parent.

(b) If a parent of a person dies, and the other parent of the person marries or enters into a domestic partnership registered under ORS 106.300 to 106.340 or under a similar law in another state, and the person is adopted by a stepparent or the other domestic partner, the adopted person shall continue also to be treated, for all purposes of intestate succession, as the child of the deceased parent.

(3) ORS chapters 111, 112, 113, 114, 115, 116 and 117 apply to adopted persons who were adopted in this state or elsewhere. [1969 c.591 §33; 2015 c.387 §8; 2016 Oregon Laws Ch 42 §11]

**112.185 Effect of more than one adoption.** For all purposes of intestate succession, a person who has been adopted more than once shall be treated as the child of the parents who have most recently adopted the person and, except as otherwise provided in this section, shall cease to be treated as the child of the previous adoptive parents. The person shall continue also to be treated as the child of a previous parent or previous adoptive parent other than the most recent adoptive parents only to the extent provided in ORS 112.175 (2), and for the purpose of applying that subsection with reference to a previous adoptive parent, "parent" in that subsection means the previous adoptive parent. [1969 c.591 §34; 2015 c.387 §9]

**112.195 References in wills, deeds and other instruments to accord with law of intestate succession.** Unless a contrary intent is established by the instrument, all references in a will, deed, trust instrument or other instrument to an individual or member of a class described generically in relation to a particular person as children, issue, grandchildren, descendants, heirs, heirs of the body, next of kin, distributees, grandparents, brothers, nephews or other relatives shall include any person who would be treated as so related for all purposes of intestate succession, except that an adopted person so included must have been adopted as a minor or after having been a member of the household of the adoptive parent while a minor. [1969 c.591 §35]

#### WILLS

**112.225 Who may make a will.** Any person who is 18 years of age or older or who has been lawfully married or who has been emancipated in accordance with ORS 419B.550 to 419B.558, and who is of sound mind, may make a will. [1969 c.591 §36; 2015 c.387 §10]

**112.227 Intention of testator expressed in will as controlling.** The intention of a testator as expressed in the will of the testator controls the legal effect of the dispositions of the testator. The rules of construction expressed in this section, ORS 112.230 and 112.410 apply unless a contrary intention is indicated by the will.

[1973 c.506 §10]

**112.230 Local law of state selected by testator controlling unless against public policy.** The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in the instrument of the testator unless the application of that law is contrary to the public policy of this state. [1973 c.506 §11]

**112.232 Uniform International Wills Act.** (1) As used in this section:

(a) “International will” means a will executed in conformity with subsections (2) to (5) of this section.

(b) “Authorized person” and “person authorized to act in connection with international wills” means a person who by subsection (9) of this section, or by the laws of the United States including members of the diplomatic and consular service of the United States designated by foreign service regulations, is empowered to supervise the execution of international wills.

(2)(a) A will is valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the requirements of this section.

(b) The invalidity of the will as an international will does not affect its formal validity as a will of another kind.

(c) This section does not apply to the form of testamentary dispositions made by two or more persons in one instrument.

(3)(a) The will must be made in writing. It need not be written by the testator. It may be written in any language, by hand or by any other means.

(b) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is the will of the testator and that the testator knows the contents thereof. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

(c) In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if the testator has previously signed it, shall acknowledge the signature.

(d) If the testator is unable to sign, the absence of that signature does not affect the validity of the international will if the testator indicates the reason for inability to sign and the authorized person makes note thereof on the will. In that case, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator’s name for the testator if the authorized person makes note of this on the will, but it is not required that any person sign the testator’s name for the testator.

(e) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

(4)(a) The signatures must be placed at the end of the will. If the will consists of several sheets, each sheet must be signed by the testator or, if the testator is unable to sign, by the person signing on behalf of the testator or, if there is no such person, by the authorized person. In addition, each sheet must be numbered.

(b) The date of the will must be the date of its signature by the authorized person. That date must be noted at the end of the will by the authorized person.

(c) The authorized person shall ask the testator whether the testator wishes to make a declaration concerning the safekeeping of the will. If so and at the express request of the testator, the place where the testator intends to have the will kept must be mentioned in the certificate provided for in subsection (5) of this section.

(d) A will executed in compliance with subsection (3) of this section is not invalid merely because it does



not comply with this subsection.

(5) The authorized person shall attach to the will a certificate to be signed by the authorized person establishing that the requirements of this section for valid execution of an international will have been fulfilled. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate must be substantially in the following form:

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CERTIFICATE

(Convention of October 26, 1973)

1. I, \_\_\_\_\_ (name, address and capacity), a person authorized to act in connection with international wills,
2. certify that on \_\_\_\_\_ (date) at \_\_\_\_\_ (place)
3. (testator) \_\_\_\_\_ (name, address, date and place of birth) in my presence and that of the witnesses
4. (a) \_\_\_\_\_ (name, address, date and place of birth)  
(b) \_\_\_\_\_ (name, address, date and place of birth) has declared that the attached document is the will of the testator and that the testator knows the contents thereof.
5. I furthermore certify that:
6. (a) in my presence and in that of the witnesses
  - (1) the testator has signed the will or has acknowledged the testator's signature previously affixed.
  - \*(2) following a declaration of the testator stating that the testator was unable to sign the will for the following reason \_\_\_\_\_, I have mentioned this declaration on the will, \*and the signature has been affixed by \_\_\_\_\_ (name and address)
7. (b) the witnesses and I have signed the will;
8. \*(c) each page of the will has been signed by \_\_\_\_\_ and numbered;
9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;
10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;
11. \*(f) the testator has requested me to include the following statement concerning the safekeeping of the will: \_\_\_\_\_
12. PLACE OF EXECUTION
13. DATE
14. SIGNATURE and, if necessary, SEAL \*to be completed if appropriate

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(6) In the absence of evidence to the contrary, the certificate of the authorized person is conclusive of the formal validity of the instrument as a will under this section. The absence or irregularity of a certificate does not affect the formal validity of a will under this section.

(7) An international will is subject to the ordinary rules of revocation of wills.

(8) Subsections (1) to (7) of this section derive from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying this section, regard shall be had to its international origin and to the need for uniformity in its interpretation.

(9) Individuals who have been admitted to practice law before the courts of this state and are currently licensed so to do are authorized persons in relation to international wills.

(10) This section may be referred to and cited as the Uniform International Wills Act. [1981 c.481 §2; 1993 c.98 §2]

**112.235 Execution of a will.** (1) Except as provided in ORS 112.238, a will shall be in writing and shall be executed in accordance with the following formalities:

(a) The testator, in the presence of each of the witnesses, shall:

(A) Sign the will;

(B) Direct one of the witnesses or some other person to sign the name of the testator and the signer's own name on the will; or

(C) Acknowledge the signature previously made on the will by the testator or at the testator's direction.

(b) At least two witnesses shall each:

(A)(i) See the testator sign the will;

(ii) Hear the testator acknowledge the signature on the will; or

(iii) Hear or observe the testator direct some other person to sign the name of the testator; and

(B) Attest the will by signing the witness' name to the will within a reasonable time before the testator's death.

(2) The signature by a witness on an affidavit executed contemporaneously with execution of a will is considered a signature by the witness on the will in compliance with subsection (1)(b)(A)(iii) of this section if necessary to prove the will was duly executed in compliance with this section.

(3) A will executed in compliance with the Uniform International Wills Act shall be deemed to have complied with the formalities of this section.

(4) As used in this section, "writing" does not include an electronic record, document or image. [1969 c.591 §37; 1973 c.506 §7; 1981 c.481 §4; 2015 c.387 §11]

112.237 [1981 c.481 §3; repealed by 1993 c.98 §26]

**112.238 Exception to will execution formalities; petition; notice; written objections; hearing; fee.** (1) Although a writing was not executed in compliance with ORS 112.235, the writing may be treated as if it had been executed in compliance with ORS 112.235 if the proponent of the writing establishes by clear and convincing evidence that the decedent intended the writing to constitute:

(a) The decedent's will;

(b) A partial or complete revocation of the decedent's will; or

(c) An addition to or an alteration of the decedent's will.

(2) A writing described in subsection (1) of this section may be filed with the court for administration as the decedent's will pursuant to ORS 113.035. The proponent of the writing shall give notice of the filing of the petition to those persons identified in ORS 113.035 (5), (7), (8) and (9). Persons receiving notice under this subsection shall have 20 days after the notice was given to file written objections to the petition. The court may make a determination regarding the decedent's intent after a hearing or on the basis of affidavits.

(3) The proponent of a writing described in subsection (1) of this section may file a petition with the court to establish the decedent's intent that the writing was to be a partial or complete revocation of the decedent's will, or an addition to or an alteration of the decedent's will. The proponent shall give notice of the filing to any personal representative appointed by the court, the devisees named in any will admitted to probate and those persons identified in ORS 113.035 (5). Persons receiving notice under this subsection shall have 20 days after the notice was given to file written objections to the petition. The court may make a determination regarding the decedent's intent after a hearing or on the basis of affidavits.

(4)(a) If the court determines that clear and convincing evidence exists showing that a writing described in subsection (1) of this section was intended by the decedent to accomplish one of the purposes set forth in subsection (1) of this section, the court shall:

(A) Prepare written findings of fact in support of the determination; and

(B) Enter a limited judgment that admits the writing for probate as the decedent's will or otherwise acknowledges the validity and intent of the writing.

(b) A determination under this subsection does not preclude the filing of a will contest under ORS 113.075, except that the will may not be contested on the grounds that the will was not executed in compliance with ORS 112.235.

(5) The fee imposed and collected by the court for the filing of a petition under this section shall be in accordance with ORS 21.135. [2015 c.387 §29; 2016 c. 42 §17]

**112.245 Witness as beneficiary.** A will attested by an interested witness is not thereby invalidated. An interested witness is one to whom is devised a personal and beneficial interest in the estate. [1969 c.591 §38; 1973 c.506 §8]

**112.255 Validity of execution of a will; incorporation by reference.** (1) A will is lawfully executed if it is in writing, signed by or at the direction of the testator and otherwise executed in accordance with the law of:

(a) This state at the time of execution or at the time of death of the testator;

(b) The domicile of the testator at the time of execution or at the time of the testator's death; or

(c) The place of execution at the time of execution.

(2) A will is lawfully executed if it complies with the Uniform International Wills Act.

(3) A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

(4) A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether the events occur before or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event. [1969 c.591 §39; 1981 c.481 §5; 2015 c.27 §11; 2015 c.387 §12]

**112.260 Reference in will to statement or list disposing of certain effects; admissibility; alteration.**

(1) Except as otherwise provided in a valid will, a will may refer to a writing that contains a statement or list disposing of household items, furniture, furnishings and personal effects. Money, property used in trade or business and items evidenced by documents or certificates of title may not be disposed of under this section.

(2) To be admissible under this section as evidence of the intended disposition, the writing must:

(a) Be referred to in the testator's will;

(b) Be signed by the testator; and

(c) Describe the household items, furniture, furnishings, personal effects and the devisees with reasonable certainty.

(3) A writing under this section may be referred to as a writing that is or will be in existence at the time of the testator's death and may be prepared before or after the execution of the testator's will.

(4) A writing under this section may be altered by the testator one or more times after the initial creation of the writing and may be a writing that has no significance apart from the writing's effect on the dispositions made by the will.

(5) As used in this section, "writing" includes an electronic record, document or image. [2015 c.387 §30]

**112.265 Testamentary additions to trusts.** (1) A devise may be made by a will to the trustee or trustees

of a trust, regardless of the existence, size or character of the corpus of the trust, if:

(a) The trust is established or will be established by the testator, or by the testator and some other person or persons, or by some other person or persons;

(b) The trust is identified in the testator's will; and

(c) The terms of the trust are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will, or in the valid last will of a person who has predeceased the testator.

(2) The trust may be funded during the testator's lifetime or upon the testator's death by the testator's devise to the trustee or trustees. The trust may be a funded or unfunded life insurance trust, although the trustor has reserved any or all of the rights of ownership of the insurance contracts.

(3) The devise shall not be invalid because the trust:

(a) Is amendable or revocable, or both; or

(b) Was amended after the execution of the testator's will or after the death of the testator.

(4) Unless the testator's will provides otherwise, the property so devised:

(a) Shall not be considered to be held under a testamentary trust of the testator, but shall become a part of the trust to which it is given; and

(b) Shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before or after the death of the testator, regardless of whether made before or after the execution of the testator's will.

(5) Unless the testator's will provides otherwise, a revocation or termination of the trust before the death of the testator shall cause the devise to lapse.

(6) This section shall not be construed as providing an exclusive method for making devises to the trustee or trustees of a trust established otherwise than by the will of the testator making the devise.

(7) This section shall be so construed as to effectuate its general purpose to make uniform the law of those states that enact the same or similar provisions. [1969 c.591 §40; 1999 c.132 §1]

**112.270 Procedure to establish contract to make will or devise or not to revoke will or devise.** (1) A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, executed after January 1, 1974, shall be established only by:

(a) Provisions of a will stating material provisions of the contract;

(b) An express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or

(c) A writing signed by the decedent evidencing the contract.

(2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills. [1973 c.506 §13]

**112.272 In terrorem clauses valid and enforceable; exceptions.** (1) Except as provided in this section, an in terrorem clause in a will is valid and enforceable. If a devisee contests a will that contains an in terrorem clause that applies to the devisee, the court shall enforce the clause against the devisee even though the devisee establishes that there was probable cause for the contest.

(2) The court shall not enforce an in terrorem clause:

(a) If the devisee contesting the will establishes that:

(A) The devisee has probable cause to believe that the will is a forgery;

(B) The will has been revoked; or

(C) The will is invalid in whole or in part.

(b) If the devisee is only making objections to the acts of the personal representative in the administration of the decedent's estate.

(3) The court shall not enforce an in terrorem clause if the contest is brought by a fiduciary acting on behalf of a protected person under the provisions of ORS chapter 125, a guardian ad litem appointed for a minor, or a guardian ad litem appointed for an incapacitated or financially incapable person.

(4) For the purposes of this section, "in terrorem clause" means a provision in a will that reduces or eliminates a devise to a devisee if the devisee contests the will in whole or in part.

(5) This section is not intended as a complete codification of the law governing enforcement of an in terrorem clause. The common law governs enforcement of an in terrorem clause to the extent the common law is not inconsistent with the provisions of this section. [1997 c.151 §2; 2015 c.387 §13]

**112.275 Manner of revocation or alteration exclusive.** A will may be revoked or altered only as provided in ORS 112.238, 112.260 or 112.285 to 112.315. [1969 c.591 §41; 2015 c.387 §14]

**112.285 Express revocation or alteration; partial revocation not valid.** (1) A will may be revoked or altered by another will.

(2) A will may be revoked by one or more physical acts by being burned, torn, canceled, obliterated or destroyed, with the intent and purpose of the testator of revoking the will, by the testator, or by another person at the direction of the testator and in the presence of the testator. The injury or destruction of the will by a person other than the testator at the direction and in the presence of the testator shall be proved by at least two witnesses.

(3) A partial revocation of a provision in a will by one or more physical acts as described in subsection (2) of this section is not a valid revocation. One or more physical acts that affect one or more provisions of a will but not the entirety of the will are not effective to revoke those provisions, but clear and convincing evidence may show that the testator intended by the physical act or acts to revoke the entirety of the will. [1969 c.591 §42; 2015 c.387 §15]

**112.295 Revival of revoked or invalid will.** If a will or a part thereof has been revoked or is invalid, it can be revived only by a re-execution of the will or by the execution of another will in which the revoked or invalid will or part thereof is incorporated by reference. [1969 c.591 §43]

**112.305 Revocation by marriage; exceptions.** A will is revoked by the subsequent marriage of the testator if the testator is survived by a spouse, unless:

(1) The will evidences an intent that it not be revoked by the subsequent marriage or was drafted under circumstances establishing that it was in contemplation of the marriage;

(2) The testator and spouse entered into a written contract before the marriage that either makes provision for the spouse or provides that the spouse is to have no rights in the estate of the testator; or

(3) The testator executed the will after entering into a registered domestic partnership under ORS 106.300 to 106.340 or a similar law in another state and the testator subsequently marries the domestic partner. [1969 c.591 §44; 2015 c.387 §16]

**112.315 Revocation by divorce or annulment.** Unless a will evidences a different intent of the testator, the divorce or annulment of the marriage of the testator after the execution of the will revokes all provisions in the will in favor of the former spouse of the testator and any provision therein naming the former spouse as executor, and the effect of the will is the same as though the former spouse did not survive the testator. [1969 c.591 §45]

112.325 [1969 c.591 §46; repealed by 2015 c.387 §1]

112.335 [1969 c.591 §47; repealed by 2015 c.387 §1]

**112.345 Devise of life estate.** A devise of property to any person for the term of the life of the person, and after the death of the person to the heirs of the person, vests an estate or interest for life only in the devisee and remainder in the heirs. [1969 c.591 §48; 2015 c.387 §17]

**112.355 Devise passes all interest of testator.** A devise of property passes all of the interest of the testator in the property at the time of the death of the testator, unless the will evidences the intent of the testator to devise a lesser interest. [1969 c.591 §49; 2015 c.387 §18]

**112.365 Property acquired after making will.** Any property acquired by the testator after the making of a will passes pursuant to the will as if title to the property were vested in the testator at the time of making the will, unless the intent expressed in the will is clear and explicit to the contrary. [1969 c.591 §50; 2015 c.387 §19]

112.375 [1969 c.591 §51; repealed by 1973 c.506 §46]

**112.385 Nonademption of specific devises in certain cases.** (1) In the situations and under the circumstances provided in and governed by this section, specific devises will not fail or be extinguished by the encumbrance, destruction, damage, sale, condemnation or change in form of the property specifically devised. This section is inapplicable if the intent that the devise fail under the particular circumstances appears in the will or if the testator during the lifetime of the testator gives property to the specific devisee with the intent of satisfying the specific devise.

(2) Whenever the subject of a specific devise is property only part of which is encumbered, destroyed, damaged, sold or condemned, the specific devise of any remaining interest in the property owned by the testator at the time of death is not affected by this section, but this section applies to the part which would have been adeemed under the common law by the destruction, damage, sale or condemnation.

(3) If insured property that is the subject of a specific devise is destroyed or damaged, the specific devisee has the right to receive, reduced by any amount expended or incurred by the testator in restoration or repair of the property:

(a) Any insurance proceeds paid to the personal representative after the death of the testator, with the incidents of the specific devise; and

(b) A general pecuniary legacy equivalent to any insurance proceeds paid to the testator within six months before the death of the testator.

(4) If property that is the subject of a specific devise is sold by the testator, the specific devisee has the right to receive:

(a) Any balance of the purchase price unpaid at the time of the death of the testator, including any security interest in the property and interest accruing before the death, if part of the estate, with the incidents of the specific devise; and

(b) A general pecuniary legacy equivalent to the amount of the purchase price paid to the testator within six months before the death of the testator. Acceptance of a promissory note of the purchaser or a third party is not considered payment, but payment on the note is payment on the purchase price. Sale by an agent of the testator or by a trustee under a revocable living trust created by the testator, the principal of which is to be paid to the personal representative or estate of the testator on the death of the testator, is a sale by the testator for purposes of this section.

(5) If property that is the subject of a specific devise is taken by condemnation before the death of the testator, the specific devisee has the right to receive:

(a) Any amount of the condemnation award unpaid at the time of the death, with the incidents of the specific devise; and

(b) A general pecuniary legacy equivalent to the amount of an award paid to the testator within six months before the death of the testator. In the event of an appeal in a condemnation proceeding, the award, for purposes of this section, is limited to the amount established on the appeal.

(6) If property that is the subject of a specific devise is sold by a conservator of the testator, or insurance proceeds or a condemnation award are paid to a conservator of the testator, the specific devisee has the right to receive a general pecuniary legacy equivalent to the proceeds of the sale, the insurance proceeds or the condemnation award, reduced by any amount expended or incurred in restoration or repair of the property. This subsection does not apply if the testator, after the sale, receipt of insurance proceeds or award, is adjudicated competent and survives such adjudication by six months.

(7) If securities are specifically devised, and after the execution of the will other securities in the same or another entity are distributed to the testator by reason of ownership of the specifically devised securities and as a result of a partial liquidation, stock dividend, stock split, merger, consolidation, reorganization, recapitalization, redemption, exchange or any other similar transaction, and if the other securities are part of the estate of the testator at death, the specific devise is considered to include the additional or substituted securities. Distributions prior to death with respect to a specifically devised security not provided for in this subsection are not part of the specific devise. As used in this subsection, "securities" means the same as defined in ORS 59.015.

(8) The amount a specific devisee receives as provided in this section is reduced by any expenses of the sale or of collection of proceeds of insurance, sale or condemnation award and by any amount by which the income tax of the decedent or the estate of the decedent is increased by reason of items provided for in this section. Expenses include legal fees paid or incurred. [1969 c.591 §52; 1973 c.506 §14; 1975 c.491 §6; 1995 c.664 §84; 2015 c.387 §20]

**112.390** [2015 c.387 §28; repealed by 2016 Oregon Laws ch 42 §7]

**112.395 When estate passes to issue of devisee; anti-lapse; class gifts.** When property is devised to any person who is related by blood or adoption to the testator and who dies before the testator leaving lineal descendants, the descendants take by representation the property the devisee would have taken if the devisee had survived the testator, unless otherwise provided in the will of the testator. Unless otherwise provided in the will of the testator, one who would have been a devisee under a class gift if the person had survived the testator is treated as a devisee for purposes of this section if death occurred after execution of the will. [1969 c.591 §53; 1973 c.506 §15]

**112.400 Effect of failure of devise.** Except as provided in ORS 112.395:

(1) If a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(2) If the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, the share passes to the other residuary devisee or to other residuary devisees in proportion to their interests in the residue. [1973 c.506 §17]

**112.405 Children born, adopted or conceived after execution of will; pretermitted children.** (1) As used in this section, "pretermitted child" means a child of a testator who is born, adopted, or conceived as described in ORS 112.077 (3) or (4), after the execution of the will of the testator, who is neither provided for in the will nor in any way mentioned in the will and who survives the testator.

(2) If a testator has one or more children living when the testator executes a will and no provision is made in the will for one or more of the living children, a pretermitted child shall not take a share of the estate of the testator disposed of by the will.

(3) If a testator has one or more children living when the testator executes a will and provision is made in the will for one or more of the living children, a pretermitted child is entitled to share in the estate of the testator disposed of by the will as follows:

(a) The pretermitted child may share only in the portion of the estate devised to the living children by the will.

(b) The share of each pretermitted child shall be the total value of the portion of the estate devised to the living children by the will divided by the number of pretermitted children plus the number of living children for whom provision, other than nominal provision, is made in the will.

(c) To the extent feasible, the interest of a pretermitted child in the estate is of the same character, whether equitable or legal, as the interest the testator gave to the living children by the will.

(4) If a testator has no child living when the testator executes a will, a pretermitted child shall take a share of the estate as though the testator had died intestate, unless the will devised all or substantially all of the estate to the other parent of the pretermitted child and that other parent survives the testator and is entitled to take under the will.

(5) A pretermitted child may recover the share of the estate to which the child is entitled, as provided in this section, either from the other children under subsection (3) of this section or from the testamentary beneficiaries under subsection (4) of this section, ratably, out of the portions of the estate passing to those persons under the will. In abating the interests of those beneficiaries, the character of the testamentary plan adopted by the testator must be preserved so far as possible. [1969 c.591 §54; 2015 c.387 §21]

**112.410 Effect of general disposition or residuary clause on testator's power of appointment.** A general residuary clause in a will or a will making general disposition of all of the testator's property does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power. [1973 c.506 §12]

**112.415 Persons not entitled to estate of testator.** Except as otherwise expressly provided by law, a person, including a child of the testator and a descendant of that child, shall not take or be entitled to take any portion of the estate of a testator disposed of by the will of the testator other than as provided in the will. [1969 c.591 §55]

112.425 [1969 c.591 §56; repealed by 1989 c.770 §11]

112.435 [1969 c.591 §57; repealed by 2015 c.387 §1]

## EFFECT OF HOMICIDE OR ABUSE ON INTESTATE SUCCESSION, WILLS, JOINT ASSETS, LIFE INSURANCE AND BENEFICIARY DESIGNATIONS

**112.455 Definitions for ORS 112.455 to 112.555.** As used in ORS 112.455 to 112.555:

(1) "Abuser" means a person who is convicted of a felony by reason of conduct that constitutes physical abuse as described in ORS 124.105 or financial abuse as described in ORS 124.110.

(2) "Decedent" means:

(a) A person whose life is taken by a slayer; or

(b) A person whose date of death is not later than five years after an abuser is convicted of a felony by reason of conduct against the person that constitutes physical abuse as described in ORS 124.105 or financial abuse as described in ORS 124.110.

(3) "Slayer" means a person who, with felonious intent, takes or procures the taking of the life of a decedent. [1969 c.591 §58; 2005 c.270 §1]

**112.457 Application to abuser.** ORS 112.455 to 112.555 apply to an abuser only if the decedent dies within five years after the abuser is convicted of a felony by reason of conduct that constitutes physical abuse of the decedent, as described in ORS 124.105, or financial abuse of the decedent, as described in ORS 124.110. [2005 c.671 §7]

**112.465 Slayer or abuser considered to predecease decedent.** (1) Property that would have passed by



reason of the death of a decedent to a person who was a slayer or an abuser of the decedent, whether by intestate succession, by will, by transfer on death deed, by trust, or otherwise, passes on death and vests as if the slayer or abuser had predeceased the decedent.

(2) Property that would have passed by reason of the death of an heir or devisee of a decedent to a person who was the slayer or abuser of the decedent, whether by intestate succession, by will, by transfer on death deed or by trust, passes and vests as if the slayer or abuser had predeceased the decedent unless the heir or devisee specifically provides otherwise in a will or other instrument executed after the death of the decedent. [1969 c.591 §59; 2005 c.270 §2; 2005 c.535 §1a; 2011 c.212 §26; 2015 c.387 §22]

**112.475 Jointly owned property.** (1) If a slayer of a decedent and the decedent, or an abuser of a decedent and the decedent, owned property as tenants by the entirety or with a right of survivorship, upon the death of the decedent, there exist two undivided equal interests in the property. One share passes to and is vested in the heirs or devisees of the decedent, and the other share passes to and is vested in the slayer or abuser.

(2) If a slayer of a decedent, the decedent and one or more other persons owned property with a right of survivorship, or if an abuser of a decedent, the decedent and one or more other persons owned property with a right of survivorship, upon the death of the decedent, the interest of the slayer or abuser remains as an undivided interest in the slayer or abuser for the lifetime of the slayer or abuser and subject to that interest, the property passes to and is vested in the other surviving owner or owners. [1969 c.591 §60; 2005 c.270 §3; 2015 c.387 §23]

112.485 [1969 c.591 §61; 2005 c.270 §4; repealed by 2015 c.387 §1]

**112.495 Reversions, vested remainders, contingent remainders and future interests.** (1) Property in which a slayer of a decedent, or an abuser of a decedent, owns a reversion or vested remainder subject to an estate for the lifetime of the decedent passes to the heirs or devisees of the decedent for a period of time equal to the normal life expectancy of a person of the sex and age of the decedent at the time of death. If the particular estate is owned by a third person for the lifetime of the decedent, the estate continues in the third person for a period of time equal to the normal life expectancy of a person of the sex and age of the decedent at the time of death.

(2) As to a contingent remainder or executory or other future interest owned by a slayer of a decedent or an abuser of a decedent that becomes vested in the slayer or abuser or increased in any way for the slayer or abuser upon the death of the decedent:

(a) If the interest would not have increased or become vested if the slayer or abuser had predeceased the decedent, the slayer or abuser is considered to have predeceased the decedent; and

(b) In any case, the interest shall not be so vested or increased during a period of time equal to the normal life expectancy of a person of the sex and age of the decedent at the time of death. [1969 c.591 §62; 2005 c.270 §5]

**112.505 Property appointed; powers of revocation or appointment.** (1) Property appointed by the will of the decedent to or for the benefit of a slayer of a decedent or an abuser of a decedent is distributed as if the slayer or abuser had predeceased the decedent.

(2) Property owned either presently or in remainder by a slayer of a decedent or an abuser of a decedent, subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment, passes to and is vested in the heirs or devisees of the decedent other than the slayer or abuser. Property so owned by the slayer or abuser, subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons, passes to the person or persons or in equal shares to the members of the class of persons to the exclusion of the slayer or abuser. [1969 c.591 §63; 2005 c.270 §6]

**112.515 Proceeds of insurance on life and other benefit plans of decedent.** (1) Except as provided

under subsection (2) of this section, proceeds payable under any of the following instruments to or for the benefit of a slayer of a decedent or an abuser of a decedent, as beneficiary or assignee of the decedent or as beneficiary or assignee of an heir or devisee of the decedent, must be paid to the secondary beneficiary or, if there is no secondary beneficiary, to the personal representative of the estate of the decedent or the decedent's heir or devisee:

- (a) A policy or certificate of insurance on the life of the decedent.
- (b) A certificate of membership in any benevolent association or organization on the life of the decedent.
- (c) Rights of the decedent as survivor of a joint life policy.
- (d) Proceeds under any pension, profit-sharing or other plan.

(2) Proceeds payable under any of the instruments specified in subsection (1) of this section to or for the benefit of a slayer of a decedent or an abuser of a decedent as beneficiary or assignee of an heir or devisee of the decedent shall be paid to the slayer or abuser if the heir or devisee specifically provides for that payment by written instrument executed after the death of the decedent. [1969 c.591 §64; 2005 c.270 §7; 2005 c.535 §2a]

**112.525 Proceeds of insurance on life of slayer or abuser.** If a decedent is beneficiary or assignee of any policy or certificate of insurance on the life of a slayer of the decedent or an abuser of the decedent, the proceeds shall be paid to the personal representative of the decedent's estate unless:

(1) The policy or certificate names some person other than the slayer or abuser, or the personal representative of the slayer or abuser, as the secondary beneficiary.

(2) The slayer or abuser, by naming a new beneficiary or assignee, performs an act which would have deprived the decedent of the interest of the decedent if the decedent had been living. [1969 c.591 §65; 2005 c.270 §8]

**112.535 Payment by insurance company, financial institution, trustee or obligor; no liability.** Any insurance company making payment according to the terms of its policy, or any financial institution, trustee or other person performing an obligation to a slayer of a decedent or an abuser of a decedent is not subject to liability because of ORS 112.455 to 112.555 if the payment or performance is made without written notice by a claimant of a claim arising under those sections. Upon receipt of written notice the person to whom it is directed may withhold any disposition of the property pending determination of the duties of the person. [1969 c.591 §66; 1997 c.631 §403; 2005 c.270 §9; 2015 c.387 §24]

**112.545 Rights of persons without notice dealing with slayer or abuser.** ORS 112.455 to 112.555 do not affect the rights of any person who for value and without notice purchases or agrees to purchase property that a slayer of a decedent or an abuser of a decedent would have acquired except for ORS 112.455 to 112.555, but all proceeds received by the slayer or abuser from the sale shall be held by the slayer or abuser in trust for the persons entitled to the property as provided in ORS 112.455 to 112.555. The slayer or abuser is liable for any portion of the proceeds of the sale that the slayer or abuser spends and for the difference, if any, between the amount received from the sale and the actual value of the property. [1969 c.591 §67; 2005 c.270 §10]

**112.555 Evidence of felonious and intentional killing; conviction as conclusive.** After any right to appeal has been exhausted, a final judgment of conviction of felonious and intentional killing is conclusive for purposes of ORS 112.455 to 112.555. In the absence of a conviction of felonious and intentional killing the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of ORS 112.455 to 112.555. [1969 c.591 §68; 1973 c.506 §18; 2015 c.387 §25]

#### UNIFORM SIMULTANEOUS DEATH ACT

**112.570 Definitions for ORS 112.570 to 112.590.** As used in ORS 112.570 to 112.590:

(1) "Co-owners with right of survivorship" means joint tenants, tenants by the entirety and any other co-owners of property or accounts that are held in a manner that entitles one or more of the owners to ownership

of the whole of the property or account upon the death of one or more of the other owners.

(2) “Governing instrument” means:

(a) A deed;

(b) A will;

(c) A transfer on death deed under ORS 93.948 to 93.979;

(d) A trust;

(e) An insurance or annuity policy account with a payable-on-death designation;

(f) A pension, profit-sharing, retirement or similar benefit plan;

(g) An instrument creating or exercising a power of appointment or a power of attorney; or

(h) Any other dispositive, appointive or nominative instrument of a type similar to those instruments specified in this subsection.

(3) “Payor” means a trustee, insurer, employer, governmental agency, political subdivision or any other person authorized or obligated by law or by a governing instrument to make payments. [1999 c.131 §1; 2011 c.212 §27]

Note: 112.570 to 112.590 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 112 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**112.572 Requirement of survival.** Except as provided in ORS 112.586, if the title to property, the devolution of property, the right to elect an interest in property or the right to exempt property depends upon whether a specified person survives the death of another person, the specified person shall be deemed to have died before the other person unless it is established by clear and convincing evidence that the specified person survived the other person by at least 120 hours. [1999 c.131 §2]

Note: See note under 112.570.

112.575 [Formerly 112.010; repealed by 1999 c.131 §11]

**112.578 Construction of survivorship provisions in governing instruments.** Except as provided in ORS 112.586, if a governing instrument contains a provision the operation of which is conditioned on whether a specified person survives the death of another person or survives another event, the specified person shall be deemed to have died before the other person or before the other event unless it is established by clear and convincing evidence that the specified person survived the other person or event by at least 120 hours. [1999 c.131 §3]

Note: See note under 112.570.

**112.580 Co-owners with right of survivorship; requirement of survival.** (1) Except as provided in ORS 112.586, if property is held by two co-owners with right of survivorship and both co-owners are deceased, one-half of the property passes as if one co-owner had survived the second co-owner by 120 hours or more, and one-half of the property passes as if the second co-owner had survived the first co-owner by 120 hours or more, unless it is established by clear and convincing evidence that one of two co-owners survived the other co-owner by at least 120 hours.

(2) Except as provided in ORS 112.586, if property is held by more than two co-owners and it is not established by clear and convincing evidence that at least one of the owners survived the others by at least 120 hours, the property passes in the proportion that one bears to the whole number of co-owners. [1999 c.131 §4]

Note: See note under 112.570.

**112.582 Evidence of death or status.** (1) For the purpose of establishing death under the survivorship

rules established under ORS 112.570 to 112.590, death occurs when an individual has sustained irreversible cessation of circulatory and respiratory functions, or when there has been an irreversible cessation of all functions of the entire brain, including the brain stem. A determination of death must be made in accordance with accepted medical standards.

(2)(a) For the purpose of establishing death under the survivorship rules established under ORS 112.570 to 112.590, a certified or authenticated copy of a death record purporting to be issued by an official or agency of the place where the death is alleged to have occurred is prima facie evidence of the identity of the decedent and of the fact, place, date and time of death.

(b) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead or alive is prima facie evidence of the status of the person and of the dates, circumstances and places disclosed by the record or report.

(3) In the absence of prima facie evidence of death under subsection (2) of this section, the facts surrounding a person's death may be established by clear and convincing evidence. Circumstantial evidence may be considered in determining whether a person has died and the circumstances of the death.

(4) An individual whose death is not otherwise established under this section but who is absent for a continuous period of five years is presumed to be dead if the person has made no contact with another person during the five-year period and the absence of the person cannot be satisfactorily explained after diligent search or inquiry. A person presumed dead under this subsection is presumed to have died at the end of the five-year period unless it is proved by a preponderance of the evidence that death occurred at a different time.

(5) In the absence of evidence contradicting a time of death specified in a document described in subsection (2) of this section, a document described in subsection (2) of this section that indicates a time of death 120 hours or more after the time of death of another person conclusively establishes that the person specified in the document survived the other person by at least 120 hours, without regard to the manner in which the time of death of the other person is determined. [1999 c.131 §5; 2013 c.366 §58]

Note: See note under 112.570.

112.585 [Formerly 112.020; repealed by 1999 c.131 §11]

**112.586 Exceptions.** (1) The survivorship rules established under ORS 112.570 to 112.590 do not apply in any situation in which application would result in escheat of an intestate estate to the state.

(2) The survivorship rules established under ORS 112.570 to 112.590 do not apply if a governing instrument contains language that specifically addresses the possibility of simultaneous deaths or deaths in a common disaster, and the language of the instrument is controlling under the circumstances of the deaths.

(3) The survivorship rules established under ORS 112.570 to 112.590 do not apply if a governing instrument expressly provides that a person is not required to survive the death of another person or to survive another event by any specified period.

(4) The survivorship rules established under ORS 112.570 to 112.590 do not apply if the governing instrument expressly requires the person to survive the death of another person or to survive another event for a specified period of time other than provided under the survivorship rules established under ORS 112.570 to 112.590. If the governing instrument so provides, survival of the death of the other person or survival of the other event by at least the specified amount of time must be established by clear and convincing evidence.

(5) The survivorship rules established under ORS 112.570 to 112.590 do not apply if application of those rules would cause a nonvested property interest or a power of appointment to be invalid under ORS 105.950 (1)(a), (2)(a) or (3)(a). In cases subject to this subsection, survival of the death of the other person or survival of the other event must still be established by clear and convincing evidence.

(6) The survivorship rules established under ORS 112.570 to 112.590 do not apply in cases in which there

are multiple governing instruments and application of the rules to the governing instruments would result in an unintended failure or duplication of a disposition. In cases subject to this subsection, survival of the death of the other person or survival of the other event must still be established by clear and convincing evidence. [1999 c.131 §6]

Note: See note under 112.570.

**112.588 Protection of payors and other third parties.** (1) Unless a payor or other third party has received written notice of a claim under subsection (2) of this section, the payor or other third party is not liable for making a payment to, transferring property to, or conferring any other benefit on a person who appears to be entitled to the payment, property or benefit under a good faith reading of a governing instrument but who is not entitled to the payment, property or benefit by reason of the survivorship rules established under ORS 112.570 to 112.590. A payor or other third party is liable for a payment, property or other benefit conveyed after the payor or other third party receives written notice of a claim under subsection (2) of this section.

(2) Written notice of a claim that a person is not entitled to payment, property or other benefit by reason of the survivorship rules established under ORS 112.570 to 112.590 must be:

(a) Mailed to the main office or home of a payor or other third party by registered or certified mail, return receipt requested; or

(b) Served upon the payor or other third party in the manner provided by ORCP 7 for service of summons in a civil action.

(3) Upon receipt of written notice of a claim under subsection (2) of this section, a payor or other third party may deposit any money or property that is subject to the claim with any court conducting probate proceedings for one of the decedents' estates. If probate proceedings have not been commenced, the money or property may be deposited with the court with probate jurisdiction in the county in which one of the decedents resided. The court shall hold the funds or property and shall determine the rights of all parties under the governing instrument. Deposits made with the court under this subsection discharge the payor or other third party from all claims for the value of amounts paid to or items of property deposited with the court. [1999 c.131 §7]

Note: See note under 112.570.

**112.590 Protection of bona fide purchasers; personal liability of recipient.** (1) Unless the person has notice of the claim at the time the purchase, payment or delivery is made, a person who purchases property for value, or who receives payment, property or other benefit in full or partial satisfaction of a legally enforceable obligation, is not liable to another person with a claim to the payment, property or benefit by reason of the operation of the survivorship rules established under ORS 112.570 to 112.590 and need not return the payment, property or other benefit.

(2) A person who receives payment, property, or other benefit to which the person is not entitled by reason of the survivorship rules established under ORS 112.570 to 112.590 must return the payment, property or other benefit if:

(a) The person was aware of a claim to the payment, property or other benefit under the survivorship rules established under ORS 112.570 to 112.590 at the time the purchase, payment or delivery was made; or

(b) The person received the payment, property or other benefit for no value.

(3) A person who receives any payment, property or other benefit to which the person is not entitled because any part of ORS 112.570 to 112.590 is preempted by federal law must return the payment, property or other benefit if the person received the payment, property or other benefit for no value.

(4) Any person who is required to return any payment, property or other benefit under this section and who does not return the payment, property or other benefit is personally liable to a person with a right to the property

under the survivorship rules established under ORS 112.570 to 112.590 or with a right to the property by reason of federal preemption of all or part of the survivorship rules. [1999 c.131 §8]

Note: See note under 112.570.

112.595 [Formerly 112.030; repealed by 1999 c.131 §11]

112.605 [1969 c.591 §72; repealed by 1999 c.131 §11]

112.615 [Formerly 112.040; repealed by 1999 c.131 §11]

112.625 [Formerly 112.060; repealed by 1999 c.131 §11]

112.635 [Formerly 112.070; repealed by 1999 c.131 §11]

112.645 [Formerly 112.080; repealed by 1999 c.131 §11]

112.650 [1975 c.480 §9 (enacted in lieu of 112.675); repealed by 2001 c.245 §19]

112.652 [1975 c.480 §2 (enacted in lieu of 112.675); 1981 c.55 §1; repealed by 2001 c.245 §19]

112.655 [1975 c.480 §3 (enacted in lieu of 112.675); 1981 c.55 §2; repealed by 2001 c.245 §19]

112.657 [1975 c.480 §4 (enacted in lieu of 112.675); 1981 c.55 §3; repealed by 2001 c.245 §19]

112.660 [1975 c.480 §5 (enacted in lieu of 112.675); 1981 c.55 §4; repealed by 2001 c.245 §19]

112.662 [1975 c.480 §6 (enacted in lieu of 112.675); repealed by 2001 c.245 §19]

112.665 [1975 c.480 §7 (enacted in lieu of 112.675); 1981 c.55 §5; repealed by 2001 c.245 §19]

112.667 [1975 c.480 §8 (enacted in lieu of 112.675); repealed by 2001 c.245 §19]

112.675 [1969 c.591 §77; repealed by 1975 c.480 §1 (112.650 to 112.667 enacted in lieu of 112.675)]

#### DOWER AND CURTESY ABOLISHED

**112.685 Dower and curtesy abolished.** Dower and curtesy, including inchoate dower and curtesy, are abolished. [1969 c.591 §78; 2015 c.387 §34]

112.695 [Formerly 113.090; repealed by 2015 c.387 §1]

#### UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT

**112.705 Short title.** ORS 112.705 to 112.775 may be cited as the Uniform Disposition of Community Property Rights at Death Act. [1973 c.205 §11]

**112.715 Application to certain property.** ORS 112.705 to 112.775 apply to the disposition at death of the following property acquired by a married person:

(1) All personal property, wherever situated:

(a) Which was acquired as or became, and remained, community property under the laws of another jurisdiction; or

(b) All or the proportionate part of that property acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, that community property; or

(c) Traceable to that community property.

(2) All or the proportionate part of any real property situated in this state which was acquired with the rents, issues or income of, the proceeds from, or in exchange for, property acquired as or which became, and remained, community property under the laws of another jurisdiction, or property traceable to that community property. [1973 c.205 §1]

**112.725 Rebuttable presumptions.** In determining whether ORS 112.705 to 112.775 apply to specific property the following rebuttable presumptions apply:

(1) Property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under

whose laws property could then be acquired as community property is presumed to have been acquired as or to have become, and remained, property to which ORS 112.705 to 112.775 apply; and

(2) Real property situated in this state and personal property wherever situated acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be property to which ORS 112.705 to 112.775 apply. [1973 c.205 §2]

**112.735 One-half of property not subject to testamentary disposition or right to elect against will.** Upon death of a married person, one-half of the property to which ORS 112.705 to 112.775 apply is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this state. With respect to property to which ORS 112.705 to 112.775 apply, the one-half of the property which is the property of the decedent is not subject to the surviving spouse's right to elect against the will. [1973 c.205 §3]

**112.745 Proceedings to perfect title.** If the title to any property to which ORS 112.705 to 112.775 apply was held by the decedent at the time of death, title of the surviving spouse may be perfected by an order of the probate court or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the court. Neither the personal representative nor the court in which the decedent's estate is being administered has a duty to discover or attempt to discover whether property held by the decedent is property to which ORS 112.705 to 112.775 apply, unless a written demand is made by the surviving spouse or the spouse's successor in interest. [1973 c.205 §4]

**112.755 Who may institute proceedings.** If the title to any property to which ORS 112.705 to 112.775 apply is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover or attempt to discover whether any property held by the surviving spouse is property to which ORS 112.705 to 112.775 apply, unless a written demand is made by an heir, devisee, or creditor of the decedent. [1973 c.205 §5]

**112.765 Rights of purchaser.** (1) If a surviving spouse has apparent title to property to which ORS 112.705 to 112.775 apply, a purchaser for value or a lender taking a security interest in the property takes interest in the property free of any rights of the personal representative or an heir or devisee of the decedent.

(2) If a personal representative or an heir or devisee of the decedent has apparent title to property to which ORS 112.705 to 112.775 apply, a purchaser for value or a lender taking a security interest in the property takes interest in the property free of any rights of the surviving spouse.

(3) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.

(4) The proceeds of a sale or creation of a security interest shall be treated in the same manner as the property transferred to the purchaser for value or a lender. [1973 c.205 §6]

**112.775 Application and construction.** (1) ORS 112.705 to 112.775 do not affect rights of creditors with respect to property to which ORS 112.705 to 112.775 apply.

(2) ORS 112.705 to 112.775 do not prevent married persons from severing or altering their interests in property to which ORS 112.705 to 112.775 apply.

(3) ORS 112.705 to 112.775 do not authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

(4) ORS 112.705 to 112.775 shall be so applied and construed as to effectuate their general purpose to make uniform the law with respect to the subject of ORS 112.705 to 112.775 among those states which enact it. [1973 c.205 §§7,8,9,10]

## DISPOSITION OF WILLS

**112.800 Definition for ORS 112.800 to 112.830.** As used in ORS 112.800 to 112.830, unless the context requires otherwise, “person” means a natural person, a partnership, a corporation, a bank, a trust company and any other organization or legal entity. [1989 c.770 §1]

Note: 112.800 to 112.830 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 112 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**112.805 Exclusive manner of disposing of wills; destroyed will not revoked.** (1) Any person having custody of a will has a duty to maintain custody of the will and may not destroy or discard the will, disclose its contents to any person or deliver the will to any person except as authorized by the testator or as permitted by ORS 112.800 to 112.830.

(2) Nothing in ORS 112.800 to 112.830 bars a testator from destroying, revoking, delivering to any person or otherwise dealing with the will of the testator.

(3) A will destroyed in accordance with ORS 112.800 to 112.830 shall not be revoked by virtue of such destruction and its contents may be proved by secondary evidence. [1989 c.770 §§2,7,10]

Note: See note under 112.800.

**112.810 Duties of custodian of will.** (1) Any person having custody of a will:

(a) Shall deliver the will to the testator upon demand from the testator, unless the person having custody of the will is an attorney and is entitled to retain the will pursuant to ORS 87.430;

(b) May at any time deliver the will to the testator;

(c) Upon demand from the conservator, shall deliver the will to a conservator for the testator;

(d) Upon demand from the attorney-in-fact, shall deliver the will to an attorney-in-fact acting under a durable power of attorney signed by the testator expressly authorizing the attorney-in-fact to demand custody of the will;

(e) May deliver the will to any attorney licensed to practice law in Oregon willing to accept delivery of the will if the person does not know or cannot ascertain, upon diligent inquiry, the address of the testator; or

(f) Shall deliver the will to a court having jurisdiction of the estate of the testator or to a personal representative named in the will within 30 days after the date of receiving information that the testator is dead.

(2) With respect to a will held in a safe deposit box, compliance with ORS 708A.655 or 723.844 by the financial institution, trust company, savings association or credit union within which the box is located shall be deemed to be compliance with the requirements of this section. [1989 c.770 §3; 1999 c.506 §3; 2009 c.541 §2]

Note: See note under 112.800.

**112.815 Conditions for disposal of will.** An attorney who has custody of a will may dispose of the will in accordance with ORS 112.820 if:

(1) The attorney is licensed to practice law in the State of Oregon;

(2) At least 40 years has elapsed since execution of the will;

(3) The attorney does not know and after diligent inquiry cannot ascertain the address of the testator; and

(4) The will is not subject to a contract to make a will or devise or not to revoke a will or devise. [1989 c.770 §4]

Note: See note under 112.800.

**112.820 Procedure for destruction of will; filing of affidavit; fee.** (1) An attorney authorized to destroy a will under ORS 112.815 may proceed as follows:



(a) The attorney shall first publish a notice in a newspaper of general circulation in the county of the last-known address of the testator, if any, otherwise in the county of the principal place of business of the attorney. The notice shall state the name of the testator, the date of the will and the intent of the attorney to destroy the will if the testator does not contact the attorney within 90 days after the date of the notice.

(b) If the testator fails to contact the attorney within 90 days after the date of the notice, the attorney may destroy the will.

(c) Within 30 days after destruction of the will, the attorney shall file with the probate court in the county where the notice was published an affidavit stating the name of the testator, the name and relationship of each person named in the will whom the testator identified as related to the testator by blood, adoption or marriage, the date of the will, proof of the publication and the date of destruction.

(d) The clerk of the probate court shall charge and collect the fee established under ORS 21.145 for filing of the affidavit.

(2) If a will has not been admitted to probate within 40 years following the death of the testator, an attorney having custody of the will may destroy the will without notice to any person or court. [1989 c.770 §§5,6; 2003 c.737 §§56,57; 2005 c.702 §§65,66,67; 2011 c.595 §29]

Note: See note under 112.800.

**112.825 Liability for destruction of will.** A person who violates any provision of ORS 112.800 to 112.830 shall be liable to any person injured by such violation for any damages sustained thereby. An attorney who destroys a will in accordance with ORS 112.800 to 112.830 shall not be liable to the testator or any other person for such destruction or disposal. [1989 c.770 §8]

Note: See note under 112.800.

**112.830 Court may order delivery of will.** If it appears to a court having jurisdiction of the estate of a decedent that a person has custody of a will made by the decedent, the court may issue an order requiring that person to deliver the will to the court. [1989 c.770 §9]

Note: See note under 112.800.

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Chapter 113 — Initiation of Estate Proceedings  
2016 EDITION  
INITIATION OF ESTATE PROCEEDINGS  
PROBATE LAW

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**113.005 Special administrators.** (1) If, prior to appointment and qualification of a personal representative, property of a decedent is in danger of loss, injury or deterioration, or disposition of the remains of a decedent is required, the court may appoint a special administrator to take charge of the property or the remains. The petition for appointment shall state the reasons for special administration and specify the property, so far as known, requiring administration, and the danger to which it is subject.

(2) The special administrator shall qualify by filing a bond in the amount set by the court, conditioned upon the special administrator faithfully performing the duties of the trust.

(3) The special administrator may:

(a) Incur expenses for the funeral of the decedent in a manner suitable to the condition in life of the decedent;

(b) Incur expenses for the protection of the property of the estate; and

(c) Sell perishable property of the estate, whether or not listed in the petition, if necessary to prevent loss to the estate.

(4) The special administrator shall not approve or reject claims of creditors or pay claims or expenses of administration or take possession of assets of the estate other than those in danger of loss, injury or deterioration pending the appointment of a personal representative.

(5) Upon the appointment and qualification of a personal representative the powers of the special administrator shall cease. Within 30 days after the issuance of letters testamentary to a personal representative, the special administrator shall make and file an account and deliver to the personal representative the assets of the estate in the possession of the special administrator. If the personal representative objects to the account of

the special administrator, the court shall hear the objections, and, whether or not objections are made, shall examine the account.

(6) To the extent approved by the court, the compensation of the special administrator and expenses properly incurred by the special administrator, including a reasonable fee of the attorney of the special administrator, shall be paid as expenses of administration. [1969 c.591 §80; 1999 c.592 §1; 2016 Oregon Laws Ch 42 §20]

113.010 [Repealed by 1969 c.591 §305]

**113.015 Venue.** (1) The venue for a proceeding seeking the appointment of a personal representative and for a proceeding to probate a will is:

(a) In the county where the decedent had a domicile or where the decedent had a place of abode at the time of death;

(b) In any county where property of the decedent was located at the time of death or is located at the time the proceeding is commenced; or

(c) In the county in which the decedent died.

(2) Filing a proceeding in a county other than specified in subsection (1) of this section does not constitute a jurisdictional defect. [1969 c.591 §81]

113.020 [Repealed by 1969 c.591 §305]

**113.025 Proceedings commenced in more than one county.** (1) If proceedings seeking the appointment of a personal representative of the same estate or proceedings to probate a will of the same decedent are commenced in more than one county, they shall be stayed except in the county where first commenced until final determination there of venue. A proceeding is considered commenced by the filing of a petition. In determining venue, if the court finds that transfer to another county where a proceeding has been commenced is for the best interest of the estate, it may in its discretion order such transfer.

(2) If the proper venue is determined to be in another county, the clerk of the court shall transmit to the clerk of the court for the other county a transcript of the proceeding with all the original papers filed therein, and the court for the other county thereupon has exclusive jurisdiction of the proceeding to the same extent and with like effect as though the proceeding were in the court on original jurisdiction. [1969 c.591 §82]

**113.027 Limitation on admission of will to probate.** A will may not be admitted to probate or an estate reopened to admit a will to probate more than one year after the estate of the decedent has been administered in Oregon and closed. [1973 c.506 §21]

113.030 [Amended by 1963 c.308 §1; repealed by 1969 c.591 §305]

**113.035 Petition for appointment of personal representative and probate of will.** Any interested person or executor named in the will may petition for the appointment of a personal representative and for the probate of a will. The petition shall include the following information, so far as known:

(1) The name, age, domicile, post-office address, date and place of death, and Social Security account number or taxpayer identification number of the decedent.

(2) Whether the decedent died testate or intestate.

(3) The facts relied upon to establish venue.

(4) The name and post-office address of the person nominated as personal representative and the facts that show the person is qualified to act.

(5) The names, relationship to the decedent and post-office addresses of persons who are or would be the heirs of the decedent upon the death of the decedent intestate, and the ages of any who are minors.

(6) A statement that reasonable efforts have been made to identify and locate all heirs of the decedent. If

the petitioner knows of any actual or possible omissions from the list of heirs, the petition must include a statement indicating that there are omissions from the information relating to heirs.

(7) If the decedent died testate, the names and post-office addresses of the devisees, and the ages of any who are minors. If the will devises property to a person who did not survive the decedent or who is otherwise not entitled to receive the devise, the petition must include a statement explaining why the devise failed. If the petitioner knows of any actual or possible omissions from the list of devisees, the petition must include a statement indicating that there are omissions from the information relating to devisees.

(8) The name and post-office address of any person asserting an interest in the estate, or on whose behalf an interest has been asserted, based on a contention that:

- (a) The will alleged in the petition to be the will of the decedent is ineffective in whole or part;
- (b) There exists a will that has not been alleged in the petition to be the will of the decedent; or
- (c) The decedent agreed, promised or represented that the decedent would make or revoke a will or devise, or not revoke a will or devise, or die intestate.

(9) The name and post-office address of any person asserting an interest in the estate, or on whose behalf an interest has been asserted, based on a contention that a parent of the decedent willfully deserted the decedent or neglected without just and sufficient cause to provide proper care and maintenance for the decedent, as provided by ORS 112.047.

(10) Whether the original of the last will of the decedent is in the possession of the court or accompanies the petition. If the original will is not in the possession of the court or accompanying the petition and an authenticated copy of the will probated in another jurisdiction does not accompany the petition, the petition shall also state the contents of the will and indicate that it is lost, destroyed or otherwise unavailable and that it was not revoked.

(11) A statement of the extent and nature of assets of the estate, to enable the court to set the amount of bond of the personal representative. [1969 c.591 §83; 1973 c.506 §19; 1991 c.704 §1; 2003 c.395 §10; 2005 c.741 §4]

113.040 [Amended by 1963 c.308 §2; repealed by 1969 c.591 §305]

**113.045 Information of escheat to Department of State Lands.** (1) Upon appointment, a personal representative shall deliver or mail to an estate administrator of the Department of State Lands appointed under ORS 113.235 a copy of the petition filed under ORS 113.035, and a copy of any last will of the decedent, if the personal representative has not identified and found all heirs and devisees of the decedent. The personal representative shall file proof of the delivery or mailing with the court.

(2) If at any time after the appointment of a personal representative it appears that any heir or devisee of the decedent cannot be identified and found, the personal representative shall promptly deliver or mail to an estate administrator of the Department of State Lands appointed under ORS 113.235 a notice indicating that an heir or devisee cannot be identified and found. The personal representative shall file proof of the delivery or mailing with the court.

(3) This section does not affect the requirements of ORS 113.085 (2). [1969 c.591 §84; 2003 c.395 §11; 2007 c.284 §9]

113.050 [Amended by 1963 c.272 §1; repealed by 1969 c.591 §305]

**113.055 Testimony of attesting witnesses to will.** (1) Upon an ex parte hearing of a petition for the probate of a will, an affidavit of an attesting witness may be used instead of the personal presence of the witness in court. The witness may give evidence of the execution of the will by attaching the affidavit to the will or to a photographic or other facsimile copy of the will, and may identify the signature of the testator and witnesses to the will by use of the will or the copy. The affidavit shall be received in evidence by the court and have the same

weight as to matters contained in the affidavit as if the testimony were given by the witness in open court. The affidavit of the attesting witness may be made at the time of execution of the will or at any time thereafter.

(2) However, upon motion of any person interested in the estate filed within 30 days after the order admitting the will to probate is made, the court may require that the witness making the affidavit be brought before the court. If the witness is outside the reach of a subpoena, the court may order that the deposition of the witness be taken.

(3) If the evidence of none of the attesting witnesses is available, the court may allow proof of the will by testimony or other evidence that the signature of the testator or at least one of the witnesses is genuine.

(4) In the event of contest of the will or of probate thereof in solemn form, proof of any facts shall be made in the same manner as in an action tried without a jury. [1969 c.591 §85; 1979 c.284 §105]

113.060 [Amended by 1963 c.271 §1; repealed by 1969 c.591 §305]

**113.065 Establishing foreign wills.** (1) The written will of a testator who died domiciled outside this state, which upon probate may operate upon property in this state, may be admitted to probate upon petition therefor, by filing a certified copy of the will and a certified copy of the order admitting the will to probate or evidencing its establishment in the jurisdiction where the testator died domiciled.

(2) A will offered for probate under this section may be contested for a cause which would be grounds for rejection of a will of a testator who died domiciled in this state. [1969 c.591 §86]

113.070 [Repealed by 1969 c.591 §305]

**113.075 Contest of will.** (1) Any interested person may contest the probate of the will or the validity of the will or assert an interest in the estate for the reason that:

- (a) The will alleged in the petition to be the will of the decedent is ineffective in whole or part;
- (b) There exists a will that has not been alleged in the petition to be the will of the decedent; or
- (c) The decedent agreed, promised or represented that the decedent would make or revoke a will or devise, or not revoke a will or devise, or die intestate.

(2) An action described in subsection (1) of this section shall be commenced by the filing of a petition in the probate proceedings, except that an action described in subsection (1)(c) of this section may be commenced by the filing of a separate action in any court of competent jurisdiction.

(3) An action described in subsection (1) of this section shall be commenced before the later of:

- (a) Four months after the date of delivery or mailing of the information described in ORS 113.145 if that information was required to be delivered or mailed to the person on whose behalf the petition is filed; or
- (b) Four months after the first publication of notice to interested persons if the person on whose behalf the petition is filed was not required to be named in the petition as an interested person.

(4) A cause of action described in subsection (1)(c) of this section shall not be presented as a claim under ORS chapter 115. [1969 c.591 §87; 1973 c.506 §23; 1991 c.704 §2]

113.080 [Repealed by 1969 c.591 §305]

**113.085 Preference in appointing personal representative.** (1) Except as provided in subsection (2) of this section, upon the filing of the petition, if there is no will or there is a will and it has been proved, the court shall appoint a qualified person it finds suitable as personal representative, giving preference in the following order:

- (a) The executor named in the will.
- (b) The surviving spouse of the decedent or the nominee of the surviving spouse of the decedent.
- (c) The nearest of kin of the decedent or the nominee of the nearest of kin of the decedent.

(d) The Director of Human Services or the Director of the Oregon Health Authority, or an attorney approved under ORS 113.086, if the decedent received public assistance as defined in ORS 411.010, received medical assistance as defined in ORS 414.025 or received care at an institution described in ORS 179.321 (1) and it appears that the assistance or the cost of care may be recovered from the estate of the decedent.

(e) The Department of Veterans' Affairs, if the decedent was a protected person under ORS 406.050 (10), and the department has joined in the petition for such appointment.

(f) Any other person.

(2) Except as provided in subsection (3) of this section, the court shall appoint the Department of State Lands as personal representative if it appears that the decedent died wholly intestate and without known heirs. The Attorney General shall represent the Department of State Lands in the administration of the estate. Any funds received by the Department of State Lands in the capacity of personal representative may be deposited in accounts, separate and distinct from the General Fund, established with the State Treasurer. Interest earned by such account shall be credited to that account.

(3) The court may appoint a person other than the Department of State Lands to administer the estate of a decedent who died wholly intestate and without known heirs if the person filing a petition under ORS 113.035 attaches written authorization from an estate administrator of the Department of State Lands appointed under ORS 113.235 approving the filing of the petition by the person. Except as provided by rule adopted by the Director of the Department of State Lands, an estate administrator may consent to the appointment of another person to act as personal representative only if it appears after investigation that the estate is insolvent. [1969 c.591 §88; 1971 c.421 §1; 1971 c.675 §1; 1973 c.370 §1; 1987 c.158 §17a; 1987 c.425 §1; 1989 c.966 §2; 1995 c.106 §2; 2001 c.102 §3; 2001 c.900 §15; 2003 c.395 §12; 2005 c.381 §20; 2005 c.625 §56; 2009 c.595 §76; 2009 c.602 §2; 2009 c.828 §7; 2011 c.720 §57; 2013 c.36 §33; 2013 c.688 §14; 2015 c.381 §5]

**113.086 Approval of attorneys who are eligible to be personal representative for decedent who received Medicaid or other public assistance.** The Director of Human Services, or the director's designated representative, or the Director of the Oregon Health Authority, or the director's designated representative, may approve in writing attorneys who are eligible to be appointed as personal representatives under ORS 113.085 if the decedent received public assistance as defined in ORS 411.010, received medical assistance as defined in ORS 414.025 or received care at an institution as defined in ORS 179.010, and it appears that the assistance or the cost of care may be recovered from the estate of the decedent. An attorney approved under this section does not represent the Director of Human Services or the Director of the Oregon Health Authority when appointed as a personal representative. [2009 c.262 §2; 2009 c.828 §6; 2013 c.688 §15]

**113.087 Effect of accepting appointment as personal representative; notices to be sent to representative.** (1) By accepting appointment, a personal representative, whether a resident or nonresident of this state, submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person.

(2) Notice of any proceeding shall be delivered to the personal representative or mailed to the personal representative by ordinary first class mail at the address as listed in the petition for appointment or as thereafter reported to the court. If the personal representative has an address different from that listed in the petition or reported to the court, the person giving the notice shall also mail the notice to that address if it is known to the person. [1973 c.506 §22]

113.090 [Amended by 1969 c.591 §79; renumbered 112.695]

**113.092 Convicted felon as nominated personal representative.** (1) A person nominated as personal representative who has been convicted of a felony shall inform the court of the conviction. The conviction shall not disqualify the nominee from acting as personal representative unless the court finds that the facts underlying the conviction are substantially similar to facts which would constitute grounds for removal of a personal

representative under ORS 113.195 (2), and the court has reasonable grounds to believe that such person will be unfaithful to or neglectful of the trust.

(2) A nominee who fails to inform the court of a felony conviction may be disqualified from acting as personal representative. A personal representative who so fails to inform the court may be removed. [1975 c.781 §8]

**113.095 Persons not qualified to act as personal representatives.** A person is not qualified to act as personal representative if the person is:

(1) An incompetent.

(2) A minor.

(3) A person suspended for misconduct or disbarred from the practice of law, during the period of suspension or disbarment.

(4) A person who has resigned from the Oregon State Bar when charges of professional misconduct are under investigation or when disciplinary proceedings are pending against the person, until the person is reinstated.

(5) A licensed funeral service practitioner unless the decedent was:

(a) A relative of the licensed funeral service practitioner; or

(b) A licensed funeral service practitioner who was a partner, employee or employer in the practice of the licensed funeral service practitioner who is petitioning for appointment as personal representative. [1969 c.591 §89; 1973 c.308 §1; 1973 c.506 §24; 1975 c.781 §6; 1993 c.287 §1; 2001 c.779 §11; 2003 c.14 §43]

**113.105 Necessity and amount of bond; exceptions; bond notwithstanding will.** (1) Unless a testator provides in a will that no bond shall be required of the executor of the estate, or unless the personal representative is the sole heir or devisee or is the Department of State Lands, the Department of Veterans' Affairs, the Director of Human Services, the Director of the Oregon Health Authority or an attorney approved under ORS 113.086, the personal representative may not act nor shall letters be issued to the personal representative until the personal representative files with the clerk of the court a bond. The bond shall be executed by a surety company authorized to transact surety business in this state, or by one or more sufficient personal sureties approved by the court. A personal surety must be a resident of this state. The court may, in its discretion, require a bond notwithstanding any provision in a will that no bond is required. The bond shall be for the security and benefit of all interested persons and shall be conditioned upon the personal representative faithfully performing the duties of the trust.

(2) The amount of the bond set by the court shall be adequate to protect interested persons, but in no event shall it be less than \$1,000. In setting the amount of the bond the court shall consider:

(a) The nature, liquidity and apparent value of the assets of the estate.

(b) The anticipated income during administration.

(c) The probable indebtedness and taxes.

(3) Nothing in this section affects the provisions of ORS 709.240, relating to a trust company acting as personal representative.

(4) Notwithstanding any other provisions of this section, a court may, in its discretion, waive the requirement of a bond if all devisees and heirs known to the court agree in writing that the requirement be waived and the signed agreement is filed with the court at the time of filing of the petition for the appointment of a personal representative. [1969 c.591 §90; 1971 c.421 §2; 1973 c.369 §1; 1973 c.797 §425; 1989 c.682 §1; 2001 c.900 §16; 2003 c.395 §13; 2005 c.625 §72; 2009 c.595 §77; 2009 c.828 §8]

113.110 [Repealed by 1969 c.591 §305]

**113.115 Increasing, reducing or requiring new bond.** The court may increase or reduce the amount of the bond of a personal representative, or require a new bond, if it appears to the court that the bond was inadequate or excessive or a new bond is necessary. The surety on the bond may be discharged from liability by an order made pursuant to ORS 33.510 and 33.520. [1969 c.591 §91]

113.120 [Repealed by 1969 c.591 §305]

**113.125 Letters testamentary or of administration.** (1) Letters testamentary or letters of administration shall be issued to the personal representative appointed by the court upon the filing with the clerk of the court the bond, if any, required by the court.

(2) Letters testamentary may be in the following form:

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LETTERS TESTAMENTARY

No. \_\_\_\_\_

THIS CERTIFIES that the will of \_\_\_\_\_, deceased, has been proved and \_\_\_\_\_ has (have) been appointed and is (are) at the date hereof the duly appointed, qualified and acting

\_\_\_\_\_  
(Executor(s) or Administrator(s) with the Will Annexed) of the will and estate of the decedent.

IN WITNESS WHEREOF, I, as Clerk of the Circuit Court of the State of Oregon for the County of \_\_\_\_\_, in which proceedings for administration upon the estate are pending, do hereby subscribe my name and affix the seal of the court this \_\_\_ day of \_\_\_\_\_, 2\_\_.

\_\_\_\_\_  
Clerk of the Court

By \_\_\_\_\_ Deputy

(Seal)

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(3) Letters of administration may be in the following form:

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LETTERS OF ADMINISTRATION

No. \_\_\_\_\_

THIS CERTIFIES that \_\_\_\_\_ has (have) been appointed and is (are) at the date hereof the duly appointed, qualified and acting administrator(s) of the estate of \_\_\_\_\_, deceased, and that no will of the decedent has been proved in this court.

IN WITNESS WHEREOF, I, as Clerk of the Circuit Court of the State of Oregon for the County of \_\_\_\_\_, in which proceedings for administration upon the estate are pending, do hereby subscribe my name and affix the seal of the court this \_\_\_ day of \_\_\_\_\_, 2\_\_.

\_\_\_\_\_  
Clerk of the Court

By \_\_\_\_\_ Deputy

(Seal)

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\_\_\_\_\_ [1969 c.591 §92]

113.130 [Repealed by 1969 c.591 §305]

**113.135 Designation of attorney to be filed.** If the personal representative has employed an attorney to represent the personal representative in the administration of the estate, the personal representative shall file in



the estate proceeding the name and post-office address of the attorney unless that information appears in the petition or the order appointing the personal representative. [1969 c.591 §93]

113.140 [Repealed by 1969 c.591 §305]

**113.145 Information to devisees, heirs, interested persons, Department of Human Services and Oregon Health Authority.** (1) Upon appointment a personal representative shall deliver or mail to the devisees, heirs and the persons described in ORS 113.035 (8) and (9) who were required to be named in the petition for appointment of a personal representative, at the addresses therein shown, information that shall include:

- (a) The title of the court in which the estate proceeding is pending and the clerk's file number;
- (b) The name of the decedent and the place and date of the death of the decedent;
- (c) Whether or not a will of the decedent has been admitted to probate;
- (d) The name and address of the personal representative and the attorney of the personal representative;
- (e) The date of the appointment of the personal representative;

(f) A statement advising the devisee, heir or other interested person that the rights of the devisee, heir or other interested person may be affected by the proceeding and that additional information may be obtained from the records of the court, the personal representative or the attorney for the personal representative;

(g) If information under this section is required to be delivered or mailed to a person described in ORS 113.035 (8), a statement that the rights of the person in the estate may be barred unless the person proceeds as provided in ORS 113.075 within four months of the delivery or mailing of the information; and

(h) If information under this section is required to be delivered or mailed to a person described in ORS 113.035 (9), a statement that the rights of the person in the estate may be barred unless the person proceeds as provided in ORS 112.049 within four months of the delivery or mailing of the information.

(2) If the personal representative is a devisee, heir or other interested person named in the petition the personal representative is not required to deliver or mail the information under this section to the personal representative.

(3) The failure of the personal representative to give information under this section is a breach of duty to the persons concerned, but does not affect the validity of appointment, duties or powers or the exercise of duties or powers.

(4) Within 30 days after the date of appointment a personal representative shall cause to be filed in the estate proceeding proof of the delivery or mailing required by this section or a waiver of notice as provided under ORS 111.225. The proof shall include a copy of the information delivered or mailed and the names of the persons to whom it was delivered or mailed.

(5) If before the filing of the final account the personal representative has actual knowledge that the petition did not include the name and address of any person described in ORS 113.035 (4), (5), (7), (8) or (9), the personal representative shall:

- (a) Make reasonable efforts under the circumstances to ascertain each of those names and addresses;
- (b) Promptly deliver or mail information as described in subsection (1) of this section to each of those persons located after the filing of the petition and before the filing of the final account; and

(c) File in the estate proceeding, on or before filing the final account under ORS 116.083, proof of compliance with this subsection or a waiver of notice as provided under ORS 111.225.

(6) Within 30 days after the appointment of a personal representative, the personal representative must mail or deliver the information specified in subsection (1) of this section and a copy of the death record of the decedent to the Department of Human Services and the Oregon Health Authority or as otherwise provided by

rule adopted by the authority. [1969 c.591 §94; 1973 c.506 §25; 1991 c.704 §3; 2001 c.620 §1; 2003 c.14 §44; 2003 c.395 §26; 2005 c.741 §5; 2007 c.284 §10; 2009 c.595 §78; 2011 c.720 §58; 2013 c.366 §59]

113.150 [Repealed by 1969 c.591 §305]

**113.155 Publication of notice to interested persons.** (1) Upon appointment a personal representative shall cause a notice to interested persons to be published once in each of three consecutive weeks in:

(a) A newspaper published in the county in which the estate proceeding is pending; or

(b) If no newspaper is published in the county in which the estate proceeding is pending, a newspaper designated by the court.

(2) The notice shall include:

(a) The title of the court in which the estate proceeding is pending;

(b) The name of the decedent;

(c) The name of the personal representative and the address at which claims are to be presented;

(d) A statement requiring all persons having claims against the estate to present them, within four months after the date of the first publication of the notice to the personal representative at the address designated in the notice for the presentation of claims or they may be barred;

(e) The date of the first publication of the notice; and

(f) A statement advising all persons whose rights may be affected by the proceeding that additional information may be obtained from the records of the court, the personal representative or the attorney for the personal representative.

(3) The failure of the personal representative to cause a notice to be published under this section is a breach of duty to the persons concerned, but does not affect the validity of appointment, duties or powers or the exercise of duties or powers.

(4) A personal representative shall file in the estate proceeding proof of the publication of notice required by this section. The proof shall include a copy of the published notice. [1969 c.591 §95; 1973 c.506 §26; 2007 c.284 §11]

113.160 [Repealed by 1969 c.591 §305]

**113.165 Filing inventory and evaluation.** Within 60 days after the date of appointment, unless a longer time is granted by the court, a personal representative shall file in the estate proceeding an inventory of all the property of the estate that has come into the possession or knowledge of the personal representative. The inventory shall show the estimates by the personal representative of the respective true cash values as of the date of the death of the decedent of the properties described in the inventory. [1969 c.591 §96; 1987 c.586 §27; 1991 c.191 §2]

**113.175 Property discovered after inventory filed.** Whenever any property of the estate not included in the inventory comes into the possession or knowledge of the personal representative, the personal representative shall either file in the estate proceeding a supplemental inventory within 30 days after the date of receiving possession or knowledge, or include the property in the next accounting. [1969 c.591 §97]

**113.185 Appraisal; employment and appointment of appraisers.** (1) The personal representative may employ a qualified and disinterested appraiser to assist the personal representative in the appraisal of any property of the estate the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of property.

(2) The court in its discretion may direct that all or any part of the property of the estate be appraised by one or more appraisers appointed by the court.

(3) Property for which appraisal is required shall be appraised at its true cash value as of the date of

the death of the decedent. Each appraisal shall be in writing and shall be signed by the appraiser making it.

(4) Each appraiser is entitled to be paid a reasonable fee from the estate for services and to be reimbursed from the estate for necessary expenses. [1969 c.591 §98]

**113.195 Removal of personal representative.** (1) When a personal representative ceases to be qualified as provided in ORS 113.095, or becomes incapable of discharging duties, the court shall remove the personal representative.

(2) When a personal representative has been unfaithful to or neglectful of the trust, the court may remove the personal representative.

(3) When a personal representative has failed to comply with ORS 113.092, the court may remove the personal representative.

(4) When grounds for removal of a personal representative appear to exist, the court, on its own motion or on the petition of any interested person, shall order the personal representative to appear and show cause why the personal representative should not be removed. A copy of the order to show cause and of the petition, if any, shall be served upon the personal representative and upon the surety of the personal representative as provided in ORS 111.215. [1969 c.591 §99; 1975 c.781 §9]

**113.205 Powers of surviving personal representative.** (1) Every power exercisable by copersonal representatives may be exercised by the survivors or survivor of them when the appointment of one is terminated, unless the will provides otherwise.

(2) Where one of two or more persons named as coexecutors is not appointed, those appointed may exercise all the powers incident to the office, unless the will provides otherwise. [1969 c.591 §100]

113.210 [Repealed by 1969 c.591 §305]

**113.215 Appointment of successor personal representative.** (1) When a personal representative dies, is removed by the court, or resigns and the resignation is accepted by the court, the court may appoint, and, if the personal representative was the sole or the last surviving personal representative and administration is not completed, the court shall appoint another personal representative in place of the personal representative.

(2) If, after a will has been proven and letters testamentary or of administration with the will annexed have been issued, the will is set aside, declared void or inoperative, the letters testamentary or of administration with the will annexed shall be revoked and letters of administration issued.

(3) If, after administration has been granted, a will of the decedent is found and proven, the letters of administration shall be revoked and letters testamentary or of administration with the will annexed shall be issued.

(4) When a successor personal representative is appointed, the successor has all the rights and powers of the predecessor or of the executor named in the will, except that the successor shall not exercise powers given in the will which by its terms are personal to the personal representative named therein. [1969 c.591 §101]

113.220 [Repealed by 1969 c.591 §305]

**113.225 Notice to interested persons by successor personal representative.** (1) If the personal representative dies, is removed by the court or resigns after the notice to interested persons required by ORS 113.155 has been published but before the expiration of four months from the date of first publication, the successor personal representative shall cause notice to interested persons to be published as if the successor were the original personal representative. The republished notice shall state that the original personal representative died, was removed by the court or resigned, the date of death, removal or resignation and the date of appointment of the new personal representative. It also shall state that all persons having claims against the estate shall present them, within four months after the date of the first publication of the republished notice, to the new personal representative, at the address designated in the republished notice for the presentation of

claims, or they may be barred.

(2) No notice by the successor personal representative shall be required under subsection (1) of this section if the original personal representative dies, is removed by the court, or resigns after the expiration of four months from the date of the first publication of the notice to interested persons. [1969 c.591 §102; 1977 c.187 §1]

113.230 [Repealed by 1969 c.591 §305]

**113.235 Appointment of estate administrators by Director of Department of State Lands.** The Director of the Department of State Lands shall appoint one or more estate administrators to act for the Department of State Lands in administration of any estate in which the Department of State Lands is appointed personal representative. An estate administrator appointed under this section is an employee of the Department of State Lands. [2003 c.395 §7]

**113.238 Requirements and prohibitions related to certain decedents who die intestate and without heirs.** (1) A person who has knowledge that a decedent died wholly intestate, that the decedent owned property subject to probate in Oregon and that the decedent died without a known heir shall give notice of the death within 48 hours after acquiring that knowledge to an estate administrator of the Department of State Lands appointed under ORS 113.235.

(2) Except as provided by ORS 708A.430 and 723.466, a person may not dispose of or diminish any assets of the estate of a decedent who has died wholly intestate, who owned property subject to probate in Oregon and who died without a known heir unless the person has prior written approval of an estate administrator of the Department of State Lands appointed under ORS 113.235. The prohibition of this subsection:

- (a) Applies to a guardian or conservator for the decedent; and
- (b) Does not apply to a personal representative appointed under ORS 113.085 (3) or to an affiant authorized under ORS 114.520 to file an affidavit under ORS 114.515.

(3) For purposes of this section, a known heir is an heir who has been identified and found. [2003 c.395 §8; 2009 c.541 §3]

113.240 [Repealed by 1969 c.591 §305]

**113.242 Authority of estate administrator.** (1) An estate administrator of the Department of State Lands appointed under ORS 113.235 may take custody of the property of a decedent who died owning property subject to probate in Oregon upon the estate administrator receiving notice that:

- (a) The decedent died wholly intestate and without a known heir as described in ORS 113.238 (3); or
  - (b) The decedent left a valid will, but no devisee has been identified and found.
- (2) For any estate described in subsection (1) of this section, an estate administrator of the Department of State Lands appointed under ORS 113.235 may:
- (a) Incur expenses for the funeral of the decedent in a manner suitable to the condition in life of the decedent;
  - (b) Incur expenses for the protection of the property of the estate;
  - (c) Incur expenses searching for a will or for heirs or devisees of the decedent;
  - (d) Have access to the property and records of the decedent other than records that are made confidential or privileged by statute;
  - (e) With proof of the death of the decedent, have access to all financial records of accounts or safe deposit boxes of the decedent at banks or other financial institutions; and
  - (f) Sell perishable property of the estate.

(3) The reasonable funeral and administrative expenses of the Department of State Lands incurred under this section, including a reasonable attorney fee, shall be paid from the assets of the estate with the same priority as funeral and administration expenses under ORS 115.125. [2003 c.395 §9; 2016 Oregon Laws Ch 42 §21]

- 113.250 [Repealed by 1969 c.591 §305]
- 113.260 [Repealed by 1969 c.591 §305]
- 113.270 [Repealed by 1969 c.591 §305]
- 113.280 [Repealed by 1969 c.591 §305]
- 113.290 [Amended by 1953 c.601 §1; repealed by 1969 c.591 §305]
- 113.410 [Repealed by 1969 c.591 §305]
- 113.420 [Repealed by 1969 c.591 §305]
- 113.430 [Repealed by 1969 c.591 §305]
- 113.440 [Repealed by 1969 c.591 §305]
- 113.450 [Repealed by 1969 c.591 §305]
- 113.510 [Repealed by 1969 c.591 §305]
- 113.520 [Repealed by 1969 c.591 §305]
- 113.530 [Repealed by 1969 c.591 §305]
- 113.540 [Repealed by 1969 c.591 §305]
- 113.610 [Repealed by 1969 c.591 §305]
- 113.620 [Repealed by 1969 c.591 §305]
- 113.630 [Repealed by 1969 c.591 §305]
- 113.640 [Repealed by 1969 c.591 §305]
- 113.650 [Repealed by 1969 c.591 §305]
- 113.660 [Repealed by 1969 c.591 §305]
- 113.670 [Repealed by 1969 c.591 §305]
- 113.680 [Repealed by 1969 c.591 §305]
- 113.690 [Repealed by 1969 c.591 §305]

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Chapter 114 — Administration of Estates Generally  
2016 EDITION  
ADMINISTRATION OF ESTATES GENERALLY  
PROBATE LAW

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#### SUPPORT OF SPOUSE AND CHILDREN

**114.005 Occupancy of family abode by spouse and children.** The spouse and dependent children of a

decedent, or any of them, may continue to occupy the principal place of abode of the decedent until one year after the death of the decedent or, if the estate therein is an estate of leasehold or an estate for the lifetime of another, until one year after the death of the decedent or the earlier termination of the estate. During that occupancy:

(1) The occupants shall not commit or permit waste to the abode, or cause or permit mechanic's or materialman's or other liens to attach thereto.

(2) The occupants shall keep the abode insured, to the extent of the fair market value of the improvements, against fire and other hazards within the extended coverage provided by fire insurance policies. In the event of loss or damage from those hazards, to the extent of the proceeds of the insurance, they shall restore the abode to its former condition.

(3) The occupants shall pay taxes and improvement liens on the abode as payment thereof becomes due.

(4) The abode is exempt from execution to the extent that it was exempt when the decedent was living. [1969 c.591 §103]

114.010 [Repealed by 1969 c.591 §305]

**114.015 Support of spouse and children.** The court by order shall make necessary and reasonable provision from the estate of a decedent for the support of the spouse and dependent children of the decedent, or any of them, upon:

(1) Petition therefor by or on behalf of the spouse or any dependent child;

(2) Service of the petition and notice of hearing thereon to the personal representative, unless the petitioner is the personal representative;

(3) Notice to persons whose distributive shares of the estate may be diminished by the granting of the petition, unless the court by order directs otherwise; and

(4) Hearing. [1969 c.591 §104]

114.020 [Amended by 1955 c.69 §1; repealed by 1969 c.591 §305]

**114.025 Petition for support and answer.** (1) The petition for support under ORS 114.015 shall include a description of property, other than property of the estate, available for the support of the spouse and children, and an estimate of the expenses anticipated for their support. If the petitioner is the personal representative, the petition shall also include, so far as known, a statement of the nature and estimated value of the property of the estate and of the nature and estimated amount of claims, taxes and expenses of administration.

(2) If the personal representative is not the petitioner, the personal representative shall answer the petition for support. The answer shall include, so far as known, a statement of the nature and estimated value of the property of the estate and of the nature and estimated amount of claims, taxes and expenses of administration. [1969 c.591 §105]

114.030 [Repealed by 1969 c.591 §305]

**114.035 Temporary support.** Pending hearing upon the petition under ORS 114.015, temporary support may be allowed by order of the court in an amount and of a nature the court considers reasonably necessary for the welfare of the surviving spouse and dependent children of the decedent or any of them. [1969 c.591 §106]

114.040 [Repealed by 1969 c.591 §305]

**114.045 Modification or termination of support.** Provision for support under ORS 114.015 ordered by the court may be modified or terminated by the court by further order. [1969 c.591 §107]

114.050 [Repealed by 1969 c.591 §305]

**114.055 Nature of support.** (1) Provision for support under ORS 114.015 ordered by the court may consist of any one or more of the following:



(a) Transfer of title to personal property.

(b) Transfer of title to real property.

(c) Periodic payment of moneys during administration of the estate, but the payments may not continue for more than two years after the date of death of the decedent.

(2) The court, in determining provision for support, shall take into consideration the solvency of the estate, property available for support other than property of the estate, and property of the estate inherited by or devised to the spouse and children. [1969 c.591 §108]

114.060 [Repealed by 1969 c.591 §305]

**114.065 Limitations on support.** If it appears to the court that after provision for support under ORS 114.015 is made the estate will be insolvent, the provision for support ordered by the court shall not exceed one-half of the estimated value of the property of the estate, and any periodic payment of moneys so ordered shall not continue for more than one year after the date of death of the decedent. [1969 c.591 §109]

114.070 [1957 c.345 §1; repealed by 1969 c.591 §305]

**114.075 Priority of support; treated as administration expense.** Subject to the limitations imposed by ORS 114.065, provision for support under ORS 114.015 ordered by the court has priority over claims and expenses of administration. The provision is not charged against the distributive share of the person receiving support. The provision is treated as an expense of administration, but not as a deduction for estate tax purposes. [1969 c.591 §110; 2011 c.526 §18]

**114.085 Setting apart whole estate for support; termination of administration.** If it appears, after the expiration of four months after the date of the first publication of notice to interested persons, that reasonable provision for support of the spouse and dependent children of the decedent, or any of them, warrants that the whole of the estate, after payment of claims, taxes and expenses of administration, be set apart for such support, the court may so order. There shall be no further proceeding in the administration of the estate, and the estate shall summarily be closed. [1969 c.591 §111]

114.105 [1969 c.591 §112; 1997 c.99 §22; repealed by 2009 c.574 §25]

114.110 [Repealed by 1969 c.591 §305]

114.115 [1969 c.591 §113; repealed by 2009 c.574 §25]

114.120 [Repealed by 1969 c.591 §305]

114.125 [1969 c.591 §114; repealed by 2009 c.574 §25]

114.130 [Amended by 1955 c.266 §1; 1965 c.506 §1; repealed by 1969 c.591 §305]

114.135 [1969 c.591 §115; 2003 c.576 §374; repealed by 2009 c.574 §25]

114.140 [Repealed by 1969 c.591 §305]

114.145 [1969 c.591 §116; repealed by 2009 c.574 §25]

114.150 [Repealed by 1969 c.591 §305]

114.155 [1969 c.591 §117; 1973 c.823 §109; 1995 c.664 §85; repealed by 2009 c.574 §25]

114.165 [1969 c.591 §118; repealed by 2009 c.574 §25]

## TITLE AND POSSESSION OF PROPERTY

**114.205 No distinction between real and personal property.** ORS chapters 111, 112, 113, 114, 115, 116 and 117 apply without distinction between real and personal property. [1969 c.591 §119]

114.210 [Repealed by 1969 c.591 §305]

**114.215 Devolution of and title to property.** (1) Upon the death of a decedent, title to the property of the

decedent vests:

(a) In the absence of testamentary disposition, in the heirs of the decedent, subject to support of spouse and children, rights of creditors, administration and sale by the personal representative; or

(b) In the persons to whom it is devised by the will of the decedent, subject to support of spouse and children, rights of creditors, right of the surviving spouse to elect against the will, administration and sale by the personal representative.

(2) The power of a person to leave property by will, and the rights of creditors, devisees and heirs to the property of the person, are subject to the restrictions and limitations expressed or implicit in ORS chapters 111, 112, 113, 114, 115, 116 and 117 to facilitate the prompt settlement of estates.

(3) Any animal of a value of less than \$2,500 that belonged to the decedent and that was kept by the decedent as a pet need not be listed on the inventory of the estate. Any family member of the decedent, friend of the decedent or animal shelter may take custody of the animal immediately upon the death of the decedent. A family member, friend or animal shelter that takes custody of an animal under this subsection is entitled to payment from the estate for the cost of caring for the animal. A family member, friend or animal shelter that takes custody of an animal under this subsection shall deliver the animal to the personal representative for the decedent, or to any heir or devisee entitled to possession of the animal, upon request of the personal representative, heir or devisee. [1969 c.591 §120; 1999 c.675 §1]

114.220 [Repealed by 1969 c.591 §305]

**114.225 Possession and control of decedent's estate.** A personal representative has a right to and shall take possession and control of the estate of the decedent, but the personal representative is not required to take possession of or be accountable for property in the possession of an heir or devisee unless in the opinion of the personal representative possession by the personal representative is reasonably required for purposes of administration. [1969 c.591 §121]

114.230 [Repealed by 1969 c.591 §305]

114.240 [Repealed by 1969 c.591 §305]

114.250 [Repealed by 1969 c.591 §305]

## DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

**114.255 Commencement of duties and powers of personal representative; prior acts.** The duties and powers of a personal representative commence upon the issuance of the letters of the personal representative. The powers of a personal representative relate back in time to give the acts of the personal representative occurring prior to appointment the same effect as those occurring thereafter. A personal representative may ratify and accept acts on behalf of the estate done by others where those acts would have been proper for a personal representative. [1969 c.591 §122]

114.260 [Repealed by 1969 c.591 §305]

**114.265 General duties of personal representative.** A personal representative is a fiduciary who is under a general duty to and shall collect the income from property of the estate in the possession of the personal representative and preserve, settle and distribute the estate in accordance with the terms of the will and ORS chapters 111, 112, 113, 114, 115, 116 and 117 as expeditiously and with as little sacrifice of value as is reasonable under the circumstances. [1969 c.591 §123]

114.270 [Repealed by 1969 c.591 §305]

**114.275 Personal representative to proceed without court order; application for authority, approval or instructions.** A personal representative shall proceed with the administration, settlement and distribution of the estate without adjudication, order or direction of the court, except as otherwise provided in ORS chapters 111, 112, 113, 114, 115, 116 and 117. However, a personal representative or any interested person may apply to

the court for authority, approval or instructions on any matter concerning the administration, settlement or distribution of the estate, and the court, without hearing or upon such hearing as it may prescribe, shall instruct the personal representative or rule on the matter as may be appropriate. [1969 c.591 §124]

**114.285 Naming or appointment of personal representative does not discharge claim.** The naming or appointment of any person as personal representative does not discharge any claim which the decedent had against that person. The claim shall be included in the inventory. If the person agrees to act as personal representative, the person is liable for the claim as for so much money in the hands of the person at the time the claim becomes due and payable; otherwise the person is liable for the claim as any other debtor of the decedent. [1969 c.591 §125]

**114.295 Discharge or devise in will of claim of testator.** The discharge or devise in a will of a claim of the testator against a personal representative or against any other person is of no effect as against creditors of the decedent. The claim shall be included in the inventory and for purposes of administration shall be regarded and treated as a specific devise of the amount of the claim. [1969 c.591 §126]

**114.305 Transactions authorized for personal representative.** Subject to the provisions of ORS 97.130 (2) and (10) and except as restricted or otherwise provided by the will of the decedent, a document of anatomical gift under ORS 97.965 or by court order, a personal representative, acting reasonably for the benefit of interested persons, is authorized to:

(1) Direct and authorize disposition of the remains of the decedent pursuant to ORS 97.130 and incur expenses for the funeral in a manner suitable to the condition in life of the decedent. Only those funeral expenses necessary for a plain and decent funeral may be paid from the estate if the assets are insufficient to pay the claims of the Department of Human Services and the Oregon Health Authority for the net amount of public assistance, as defined in ORS 411.010, or medical assistance, as defined in ORS 414.025, paid to or for the decedent and for care and maintenance of any decedent who was at a state institution to the extent provided in ORS 179.610 to 179.770.

(2) Retain assets owned by the decedent pending distribution or liquidation.

(3) Receive assets from fiduciaries or other sources.

(4) Complete, compromise or refuse performance of contracts of the decedent that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease real property, the personal representative, among other courses of action, may:

(a) Execute and deliver a deed upon satisfaction of any sum remaining unpaid or upon receipt of the note of the purchaser adequately secured; or

(b) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.

(5) Satisfy written pledges of the decedent for contributions, whether or not the pledges constituted binding obligations of the decedent or were properly presented as claims.

(6) Deposit funds not needed to meet currently payable debts and expenses, and not immediately distributable, in bank or savings and loan association accounts, or invest the funds in bank or savings and loan association certificates of deposit, or federally regulated money-market funds and short-term investment funds suitable for investment by trustees under ORS 130.750 to 130.775, or shortterm United States Government obligations.

(7) Abandon burdensome property when it is valueless, or is so encumbered or is in a condition that it is of no benefit to the estate.

(8) Vote stocks or other securities in person or by general or limited proxy.

- (9) Pay calls, assessments and other sums chargeable or accruing against or on account of securities.
- (10) Sell or exercise stock subscription or conversion rights.
- (11) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise.
- (12) Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held.
- (13) Insure the assets of the estate against damage and loss, and insure the personal representative against liability to third persons.
- (14) Advance or borrow money with or without security.
- (15) Compromise, extend, renew or otherwise modify an obligation owing to the estate. A personal representative who holds a mortgage, pledge, lien or other security interest may accept a conveyance or transfer of the encumbered asset in lieu of foreclosure in full or partial satisfaction of the indebtedness.
- (16) Accept other real property in part payment of the purchase price of real property sold by the personal representative.
- (17) Pay taxes, assessments and expenses incident to the administration of the estate.
- (18) Employ qualified persons, including attorneys, accountants and investment advisers, to advise and assist the personal representative and to perform acts of administration, whether or not discretionary, on behalf of the personal representative.
- (19) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of duties as personal representative.
- (20) Prosecute claims of the decedent including those for personal injury or wrongful death.
- (21) Continue any business or venture in which the decedent was engaged at the time of death to preserve the value of the business or venture.
- (22) Incorporate or otherwise change the business form of any business or venture in which the decedent was engaged at the time of death.
- (23) Discontinue and wind up any business or venture in which the decedent was engaged at the time of death.
- (24) Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.
- (25) Satisfy and settle claims and distribute the estate as provided in ORS chapters 111, 112, 113, 114, 115, 116 and 117.
- (26) Perform all other acts required or permitted by law or by the will of the decedent. [1969 c.591 §127; 1969 c.597 §278; 1977 c.211 §1; 1981 c.278 §1; 1995 c.157 §16; 1997 c.472 §10; 2001 c.900 §17; 2005 c.348 §126; 2007 c.681 §25; 2011 c.164 §4; 2011 c.720 §59; 2013 c.688 §16; 2016 Oregon Laws Ch 42 §22]

114.310 [Repealed by 1969 c.591 §305]

**114.315 Right to perfect lien or security interest.** A personal representative has the same rights to perfect a lien or security interest as the decedent would have had if the decedent were living. [1969 c.591 §128]

114.320 [Repealed by 1969 c.591 §305]

**114.325 Power to sell, mortgage, lease and deal with property.** (1) A personal representative has power to sell, mortgage, lease or otherwise deal with property of the estate without notice, hearing or court order.

(2) Exercise of the power of sale by the personal representative is improper, except after notice, hearing and order of the court, if:

- (a) The sale is in contravention of the provisions of the will; or
- (b) The property is specifically devised and the will does not authorize its sale; or
- (c) A bond of the personal representative has been required and filed, the sale price of the property to be sold exceeds \$5,000 and the bond of the personal representative has not been increased by the amount of cash to be realized on the sale, unless the court has directed otherwise. [1969 c.591 §129]

114.330 [Repealed by 1969 c.591 §305]

**114.333 Transfer of title and interest to real property by foreign personal representative.** Upon performance of a recorded contract of sale of real property the foreign personal representative of a deceased vendor whose estate is being administered in a foreign jurisdiction may convey the title and interest of the vendor in the property to the vendee or the assignee of the vendee upon recording in the deed records of the county where the property is located a certified copy of letters testamentary or of administration. The certificate shall include a statement that the letters are in effect. [1973 c.506 §28]

**114.335 Court order for sale, mortgage or lease.** Upon proof satisfactory to the court by an interested person that a sale, mortgage or lease of property of the estate is required for paying support of spouse and children, elective share of surviving spouse, claims or expenses of administration, or for distribution, and that the personal representative has failed or declined to act, the court may order the personal representative to make the sale, mortgage or lease. [1969 c.591 §130]

114.340 [Repealed by 1969 c.591 §305]

**114.345 Title conveyed free of claims of creditors.** Property sold, mortgaged or leased by a personal representative is subject to liens and encumbrances against the decedent or the estate of the decedent, but is not subject to rights of creditors of the decedent or liens or encumbrances against the heirs or devisees of the decedent. The filing and allowance of a claim in an estate proceeding does not make the claimant a secured creditor. [1969 c.591 §131]

114.350 [Repealed by 1963 c.287 §1]

**114.355 Sale or encumbrance to personal representative voidable; exceptions.** (1) Any sale or encumbrance to the personal representative, the spouse, agent or attorney of the personal representative, or any corporation or trust in which the personal representative has more than a one-third beneficial interest, is voidable unless:

- (a) The transaction was consented to by all interested persons affected thereby; or
- (b) The will expressly authorizes the transaction by the personal representative; or
- (c) The transaction was made in compliance with another statute or with a contract or other instrument executed by the decedent.

(2) The title of a purchaser for value without notice of the circumstances of the transaction with the personal representative is not affected unless the purchaser should have known of the defect in the title of the seller. [1969 c.591 §132]

114.360 [Repealed by 1963 c.287 §1]

**114.365 Validation of certain sales.** The following are the subject of validating Acts:

(1) Certain sales of decedent's real property made prior to 1903 where confirmation of sale was premature, validated by page 133, section 2, General Laws of Oregon 1903.

(2) Certain sales of decedent's property made prior to 1907 under power in will, validated by chapter 175, General Laws of Oregon 1907.

(3) Certain sales of decedent's real property made prior to 1917 where publication of the notice of sale was improper, validated by section 2, chapter 114, General Laws of Oregon 1917.

(4) Certain sales by executors or administrators made prior to 1943, validated by chapter 26, Oregon Laws 1943. [Formerly 116.835]

114.370 [Repealed by 1963 c.287 §1]

**114.375 Nonliability of transfer agents.** A transfer agent or a corporation transferring its own securities incurs no liability to any person by making a transfer of securities of an estate as requested or directed by a personal representative. [1969 c.591 §134]

**114.385 Persons dealing with personal representative; protection.** A person dealing with or assisting a personal representative without actual knowledge that the personal representative is improperly exercising the power of the personal representative is protected as if the personal representative properly exercised the power. The person is not bound to inquire whether the personal representative is properly exercising the power of the personal representative, and is not bound to inquire concerning the provisions of any will or any order of court that may affect the propriety of the acts of the personal representative. No provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection expressed in this section extends to a person dealing with or assisting a personal representative appointed under ORS 113.085 without actual knowledge that the personal representative was not qualified as provided in ORS 113.095 or that the appointment of the personal representative involved procedural irregularity. [1969 c.591 §135]

**114.395 Improper exercise of power; breach of fiduciary duty.** If the exercise of power by a personal representative in the administration of an estate is improper, the personal representative is liable for breach of fiduciary duty to interested persons for resulting damage or loss to the same extent as a trustee of an express trust. Exercise of power in violation of a court order is a breach of duty. Exercise of power contrary to the provisions of the will may be a breach of duty. [1969 c.591 §136]

**114.405 Personal liability of personal representative.** (1) The personal liability of a personal representative to third parties, as distinguished from fiduciary accountability to the estate, arising from the administration of the estate is that of an agent for a disclosed principal.

(2) A personal representative is not personally liable on contracts properly entered into in the fiduciary capacity in the course of administration of the estate unless the personal representative expressly agrees to be personally liable.

(3) A personal representative is not personally liable for obligations arising from possession or control of property of the estate or for torts committed in the course of administration of the estate unless the personal representative is personally at fault.

(4) Claims based upon contracts, obligations and torts of the types described in subsections (2) and (3) of this section may be allowed against the estate whether or not the personal representative is personally liable therefor. [1969 c.591 §137]

114.410 [Repealed by 1969 c.591 §305]

**114.415 Copersonal representatives; when joint action required.** (1) When two or more persons are appointed copersonal representatives, the concurrence of all is required for all acts connected with the administration and distribution of the estate, except:

(a) Any copersonal representative may receive and receipt for property due the estate.

(b) When the concurrence of all cannot readily be obtained in the time reasonably available for emergency action.

(c) Where any others have delegated their power to act.

(d) Where the will provides otherwise.

(e) Where the court otherwise directs.

(2) Persons dealing with a copersonal representative who are actually unaware that another has been appointed to serve with the person are as fully protected as if the person with whom they dealt had been the sole personal representative. [1969 c.591 §138]

114.420 [Repealed by 1969 c.591 §305]

**114.425 Discovery of property, writings and information.** (1) The court may order any person to appear and give testimony by deposition if it appears probable that the person:

(a) Has concealed, secreted or disposed of any property of the estate of a decedent;

(b) Has been entrusted with property of the estate of a decedent and fails to account therefor to the personal representative;

(c) Has concealed, secreted or disposed of any writing, instrument or document pertaining to the estate;

(d) Has knowledge or information that is necessary to the administration of the estate; or

(e) As an officer or agent of a corporation, has refused to allow examination of the books and records of the corporation that the decedent had the right to examine.

(2) If a person cited as provided in subsection (1) of this section fails to appear or to answer questions asked as authorized by the order of the court, the person is in contempt and may be punished as for other contempts. [1969 c.591 §139; 1979 c.284 §106]

114.430 [Repealed by 1969 c.591 §305]

**114.435 Power to avoid transfers.** The property liable for the payment of expenses of administration, funeral expenses, claims and taxes shall include property transferred by the decedent with intent to defraud the creditors of the decedent or transferred by any means which is in law void or voidable as against the creditors of the decedent. The right to recover that property so far as necessary for the payment of those expenses, claims and taxes is in the personal representative, who shall take necessary steps to recover it. That property constitutes general assets for the payment of creditors. [1969 c.591 §140]

114.440 [Repealed by 1969 c.591 §305]

## SMALL ESTATES

**114.505 Definitions for ORS 114.505 to 114.560.** As used in ORS 114.505 to 114.560:

(1) “Affiant” means the person or persons signing an affidavit filed under ORS 114.515.

(2) “Claiming successors” means:

(a) If the decedent died intestate, the heir or heirs of the decedent, or if there is no heir, an estate administrator of the Department of State Lands appointed under ORS 113.235;

(b) If the decedent died testate, the devisee or devisees of the decedent; and

(c) Any creditor of the estate entitled to payment or reimbursement from the estate under ORS 114.545 (1)(d) who has not been paid or reimbursed the full amount owed such creditor within 60 days after the date of the decedent’s death.

(3) “Estate” means decedent’s property subject to administration in Oregon. [1973 c.710 §2; 1977 c.239 §1; 1979 c.340 §1; 1979 c.467 §3; 1989 c.228 §1; 2003 c.395 §14; 2005 c.22 §92; 2015 c.146 §2]

**114.515 Value of estate; where affidavit filed; fee; amended affidavit; supplemental affidavit.** (1) If the estate of a decedent meets the requirements of subsection (2) of this section, any of the following persons may file an affidavit with the clerk of the probate court in any county where there is venue for a proceeding seeking the appointment of a personal representative for the estate:

(a) One or more of the claiming successors of the decedent.

(b) If the decedent died testate, any person named as personal representative in the decedent's will.

(c) The Director of Human Services, the Director of the Oregon Health Authority or an attorney approved under ORS 114.517, if the decedent received public assistance as defined in ORS 411.010, received medical assistance as defined in ORS 414.025 or received care at an institution as defined in ORS 179.010, and it appears that the assistance or the cost of care may be recovered from the estate of the decedent.

(2) An affidavit under this section may be filed only if:

(a) The fair market value of the estate is \$275,000 or less;

(b) Not more than \$75,000 of the fair market value of the estate is attributable to personal property; and

(c) Not more than \$200,000 of the fair market value of the estate is attributable to real property.

(3) An affidavit under this section may not be filed until 30 days after the death of the decedent.

(4) An affidavit filed under the provisions of this section must contain the information required in ORS 114.525 and shall be made a part of the probate records. If the affiant is an attorney approved by the Director of Human Services or the Director of the Oregon Health Authority, a copy of the document approving the attorney must be attached to the affidavit.

(5) In determining fair market value under this section, the fair market value of the entire interest in the property included in the estate shall be used without reduction for liens or other debts.

(6) The clerk of the probate court shall charge and collect the fee established under ORS 21.145 for the filing of any affidavit under this section.

(7) Any error or omission in an affidavit filed under this section may be corrected by filing an amended affidavit within four months after the filing of the affidavit.

(8) One or more supplemental affidavits may be filed at any time after the filing of an affidavit under this section for the purpose of including property not described in the original affidavit. Copies of all previously filed affidavits must be attached to the supplemental affidavit and all information required in ORS 114.525 must be reflected in the supplemental affidavit. A supplemental affidavit may not be filed if by reason of the additional property described in the supplemental affidavit any limitation imposed by subsection (2) of this section is exceeded. [1973 c.710 §§3, 8; 1977 c.239 §2; 1979 c.467 §1; 1981 s.s. c.3 §36; 1985 c.368 §1; 1985 c.496 §6; 1987 c.586 §28; 1989 c.228 §2; 1989 c.856 §1; 1995 c.682 §1; 1997 c.447 §1; 1997 c.801 §32; 2003 c.737 §§59,60; 2005 c.122 §§1,2; 2005 c.273 §§1,2; 2005 c.702 §§69,70,71; 2009 c.262 §7; 2009 c.413 §1; 2009 c.828 §10; 2011 c.595 §22; 2013 c.688 §17]

**114.517 Approval of attorneys filing affidavits for recipients of Medicaid or other public assistance.**

The Director of Human Services, or the director's designated representative, or the Director of the Oregon Health Authority, or the director's designated representative, may approve in writing attorneys who are eligible to file an affidavit under ORS 114.515 if the decedent received public assistance as defined in ORS 411.010, received medical assistance as defined in ORS 414.025 or received care at an institution as defined in ORS 179.010, and it appears that the assistance or the cost of care may be recovered from the estate of the decedent. An attorney approved under this section does not represent the Director of Human Services or the Director of the Oregon Health Authority when the attorney files an affidavit under ORS 114.515. [2009 c.262 §6; 2009 c.828 §9; 2013 c.688 §18]

**114.520 Authorization from Department of State Lands required for filing of affidavit by creditor if decedent dies intestate and without heirs; rules.**

(1) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming successor may not file an affidavit under ORS 114.515 unless the creditor has received written authorization from an estate administrator of the Department of State Lands appointed under ORS 113.235. Except as provided by rule adopted by the Director of the Department of State Lands, an estate administrator shall consent to the filing of an affidavit under ORS 114.515 by a creditor only if it appears after



investigation that the estate is insolvent.

(2) A creditor of an estate who is subject to subsection (1) of this section may give written notice to an estate administrator of the Department of State Lands informing the estate administrator that the creditor intends to file an affidavit under ORS 114.515. Upon receiving the notice permitted by this subsection, the estate administrator shall investigate the assets and liabilities of the estate. Within 30 days after receiving the notice required by this subsection, the estate administrator shall either:

(a) Give written authorization to the creditor for the filing of an affidavit by the creditor under ORS 114.515; or

(b) Inform the creditor that the Department of State Lands will file an affidavit as claiming successor under ORS 114.515.

(3) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming successor and who files an affidavit under ORS 114.515 must notate at the top of the affidavit that the affidavit is being filed by a creditor of the estate. If the affidavit contains the notation required by this subsection, the clerk of the probate court may not accept the affidavit for filing unless there is attached to the affidavit written authorization for the filing of the affidavit by the creditor from an estate administrator of the Department of State Lands. The written authorization may be a copy of a memorandum of an interagency agreement between the Department of State Lands and another state agency. [1997 c.88 §2; 2003 c.395 §15]

**114.525 Content of affidavit; rules.** An affidavit filed under ORS 114.515 shall:

(1) State the name, age, domicile, post-office address and Social Security number of the decedent;

(2) State the date and place of the decedent's death. A certified copy of the death record shall be attached to the affidavit;

(3) Describe and state the fair market value of all property in the estate, including a legal description of any real property;

(4) State that no application or petition for the appointment of a personal representative has been granted in Oregon;

(5) State whether the decedent died testate or intestate, and if the decedent died testate, the will shall be attached to the affidavit;

(6) List the heirs of the decedent and the last address of each heir as known to the affiant, and state that a copy of the affidavit showing the date of filing and a copy of the will, if the decedent died testate, will be delivered to each heir or mailed to the heir at the last-known address;

(7) If the decedent died testate, list the devisees of the decedent and the last address of each devisee as known to the affiant and state that a copy of the will and a copy of the affidavit showing the date of filing will be delivered to each devisee or mailed to the devisee at the last-known address;

(8) State the interest in the property described in the affidavit to which each heir or devisee is entitled and the interest, if any, that will escheat;

(9) State that reasonable efforts have been made to ascertain creditors of the estate. List the expenses of and claims against the estate remaining unpaid or on account of which the affiant or any other person is entitled to reimbursement from the estate, including the known or estimated amounts thereof and the names and addresses of the creditors as known to the affiant, and state that a copy of the affidavit showing the date of filing will be delivered to each creditor who has not been paid in full or mailed to the creditor at the last-known address;

(10) Separately list the name and address of each person known to the affiant to assert a claim against the estate that the affiant disputes and the known or estimated amount thereof and state that a copy of the affidavit showing the date of filing will be delivered to each such person or mailed to the person at the last-known

address;

(11) State that a copy of the affidavit showing the date of filing will be mailed or delivered to the Department of Human Services or to the Oregon Health Authority, as prescribed by rule by the authority;

(12) State that claims against the estate not listed in the affidavit or in amounts larger than those listed in the affidavit may be barred unless:

(a) A claim is presented to the affiant within four months of the filing of the affidavit at the address stated in the affidavit for presentment of claims; or

(b) A personal representative of the estate is appointed within the time allowed under ORS 114.555; and

(13) If the affidavit lists one or more claims that the affiant disputes, state that any such claim may be barred unless:

(a) A petition for summary determination is filed within four months of the filing of the affidavit; or

(b) A personal representative of the estate is appointed within the time allowed under ORS 114.555. [1973 c.710 §6; 1977 c.239 §3; 1979 c.340 §2; 1989 c.228 §3; 1991 c.191 §3; 1995 c.453 §1; 2001 c.104 §35; 2001 c.620 §2; 2001 c.900 §18a; 2003 c.196 §1; 2003 c.395 §16; 2005 c.22 §93; 2009 c.595 §79; 2013 c.14 §2; 2013 c.366 §60]

**114.535 Transfer of decedent's property to affiant; proceedings to compel transfer.** (1) Not sooner than 10 days after the filing of an affidavit under ORS 114.515, the affiant may deliver a certified copy of the affidavit to any person who was indebted to the decedent or who has possession of personal property belonging to the estate. Except as provided in this section, upon receipt of the copy, the person shall pay, transfer, deliver, provide access to and allow possession of the personal property to the affiant.

(2) Subject to ORS 114.537, if a copy of an affidavit is delivered under subsection (1) of this section to a person that controls access to personal property belonging to the estate of the decedent, including personal property held in a safe deposit box for which the decedent was the sole lessee or the last surviving lessee, the person shall:

(a) Provide the affiant with access to the decedent's personal property; and

(b) Allow the affiant to take possession of the personal property.

(3) Subject to ORS 114.537, if a copy of an affidavit is delivered under subsection (1) of this section to a person who has received property of the decedent under ORS 446.616, 708A.430, 723.466 or 803.094, or a similar statute providing for the transfer of property of an estate that is not being probated, the person shall pay, transfer, deliver, provide access to or allow possession of the property to the affiant if the person would be required to pay, transfer, deliver, provide access to or allow possession of the property to a personal representative of the estate.

(4) Any person that pays, transfers, delivers, provides access to or allows possession of property of a decedent in the manner provided by this section is discharged and released from any liability or responsibility for the property in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the decedent.

(5) A transfer agent of any corporate security registered in the name of the decedent shall change the registered ownership on the books of the corporation to the person entitled thereto on presentation of a certified copy of the affidavit filed under ORS 114.515.

(6) If a person to whom an affidavit is delivered refuses to pay, deliver, transfer, provide access to or allow possession of any personal property as required by this section, the property may be recovered or payment, delivery, transfer of or access to the property may be compelled upon proof of the transferee's entitlement in a proceeding brought for the purpose by or on behalf of the transferee.

(7) If the affidavit was signed by the Director of Human Services, the Director of the Oregon Health Authority or an attorney approved under ORS 114.517, the Director of Human Services, the Director of the Oregon Health Authority or the attorney may certify a copy of the affidavit for the purposes described in this section. [1973 c.710 §4; 1979 c.340 §3; 1989 c.228 §4; 1991 c.67 §23; 1997 c.631 §404; 2003 c.196 §2; 2003 c.655 §60; 2009 c.541 §4; 2009 c.595 §80; 2009 c.828 §11; 2011 c.422 §3]

**114.537 Safe deposit boxes.** (1) If a claiming successor or other person who is eligible to file an affidavit under ORS 114.515 is aware that the decedent was the sole lessee or the last surviving lessee of a safe deposit box at the time of the decedent's death, the claiming successor or other person may not file an affidavit under ORS 114.515 until the person requests an inventory of the box under ORS 708A.655, if the lessor of the box is an Oregon operating institution as defined in ORS 706.008, or under ORS 723.844, if the lessor of the box is a credit union as defined in ORS 723.008. Upon receiving the request, the lessor of the box shall cause an inventory of the contents of the box to be made. The lessor shall retain the original inventory in the box and shall provide a copy of the inventory to the person requesting the inventory. The person requesting the inventory shall take the contents of the box into consideration in determining whether the estate of the decedent is within the limits prescribed by ORS 114.515 (2). If an affidavit under ORS 114.515 is filed by the person, the value of the contents of the box shall be stated in the affidavit.

(2) If a person who has filed an affidavit under ORS 114.515 becomes aware after the filing of the affidavit that the decedent was the sole lessee or the last surviving lessee of a safe deposit box at the time of the decedent's death, the person shall promptly request an inventory of the box under ORS 708A.655, if the lessor of the box is an Oregon operating institution as defined in ORS 706.008, or under ORS 723.844, if the lessor of the box is a credit union as defined in ORS 723.008. Upon receiving the request, the lessor of the box shall cause an inventory of the contents of the box to be made. The lessor shall retain the original inventory in the box and shall provide a copy of the inventory to the person requesting the inventory. If the estate of the decedent remains within the limits prescribed by ORS 114.515 (2) after consideration of the value of the contents of the box, the person shall file an amended affidavit under ORS 114.515. Upon providing the lessor of the box with a certified copy of the amended affidavit, the lessor shall allow the person to take possession of the contents of the box. If the estate of the decedent exceeds the limits prescribed by ORS 114.515 (2) after consideration of the value of the contents of the box, the person may not file an amended affidavit under ORS 114.515 and shall file notice with the court that the estate of the decedent is not subject to ORS 114.505 to 114.560 and shall serve a copy of the notice on the lessor of the box. The lessor of the box shall thereafter deliver the contents of the box to the personal representative for the decedent, or to such other person as may be provided for under the terms of the lease of the box. [2011 c.422 §2]

**114.540 Procedure for claims; disallowance; summary determination.** (1) A claim against an estate with respect to which an affidavit is filed under ORS 114.515 may be presented to the affiant within four months after the affidavit was filed. If an amended affidavit is filed under ORS 114.515 (7), claims against the estate must be filed within four months after the filing of the amended affidavit. If a supplemental affidavit is filed under ORS 114.515 (8), claims against the estate must be filed within four months after the filing of the supplemental affidavit. Each claim presented to the affiant must include the information required by ORS 115.025.

(2) A claim presented to the affiant shall be considered allowed as presented unless within 60 days after the date of presentment of the claim the affiant mails or delivers a notice of disallowance of the claim in whole or in part to the claimant and any attorney for the claimant. A notice of disallowance of a claim shall inform the claimant that the claim has been disallowed in whole or in part and, to the extent disallowed, will be barred unless:

- (a) The claimant proceeds as provided in subsection (3) of this section; or
- (b) A personal representative is appointed within the time allowed under ORS 114.555.

(3) A creditor of the estate whose claim has been presented within the time permitted by subsection (1) of this section and disallowed by the affiant may within 30 days after the date of mailing or delivery of the notice of disallowance file with the probate court a petition for summary determination of the claim by the court. A creditor of the decedent whose claim is listed in the affidavit as disputed may within four months after the filing of the affidavit file with the probate court a petition for summary determination of the creditor's claim by the court. The court shall hear the matter without a jury, after notice to the creditor and affiant, and any interested person may be heard in the proceeding. The claim may be proved as provided in ORS 115.195 (2). Upon the hearing the court shall determine the claim in a summary manner and shall make an order allowing or disallowing the claim in whole or in part. If the court allows the claim in whole or in part, the order shall direct the affiant, to the extent of property of the estate allocable to the payment of the claim pursuant to ORS 115.125, or any claiming successor to whom payment, delivery or transfer has been made under ORS 114.505 to 114.560 as a person entitled thereto as disclosed in the affidavit, to the extent of the value of the property received, to pay to the creditor the amount so allowed. No appeal may be taken from the order of the court made upon the summary determination. [1989 c.228 §7; 2003 c.523 §3; 2005 c.122 §4]

**114.545 Duties of person filing affidavit; accounts in financial institutions; payment of claims; conveyance of real property; liability of person to whom property transferred or payment made.** (1) The affiant:

- (a) Shall take control of the property of the estate coming into the possession of the affiant.
- (b) Within 30 days after filing the affidavit shall mail, deliver or cause to be recorded each instrument which the affidavit states will be mailed, delivered or recorded.
- (c) May open one or more deposit accounts in a financial institution as defined in ORS 706.008 with funds of the decedent, upon which the affiant may withdraw funds by means of checks, drafts or negotiable orders of withdrawal or otherwise for the payment of claims and expenses described in paragraph (d) of this subsection.
- (d) From and to the extent of the property of the estate, shall pay or reimburse any person who has paid:
  - (A) Expenses described in ORS 115.125 (1)(b) and (c) and listed in the affidavit;
  - (B) Claims listed in the affidavit as undisputed;
  - (C) Allowed claims presented to the affiant within the time permitted by ORS 114.540; and
  - (D) Claims which the probate court directs the affiant to pay.
- (e) Shall pay claims and expenses under paragraph (d) of this subsection in the order of priority prescribed by ORS 115.125.
- (f) May transfer or sell any vehicle that is part of the estate before the completion of the period established under ORS 114.555 if the affiant complies with the requirements established by the Department of Transportation for such purposes under ORS 803.094.
- (g) May convey any real or personal property that is part of the estate before the completion of the period established under ORS 114.555, provided that each heir or devisee succeeding to the interest conveyed joins in the conveyance and that any proceeds of sale, net of the reasonable expenses of sale and any debt secured as of the date of the decedent's death by a duly perfected lien on the property, shall become a part of the estate subject to ORS 114.505 to 114.560. If the property is a manufactured structure as defined in ORS 446.561, the affiant must assign interest in the structure as provided in ORS 446.616. Any conveyance to a purchaser in good faith and for a valuable consideration made by the affiant and the heir or devisee succeeding to the interest conveyed, or made by the heir or devisee succeeding to the interest conveyed after completion of the period established under ORS 114.555, conveys the interest stated in the conveyance free of any interest of the claiming successors, and the purchaser has no duty with respect to application of the consideration paid for the conveyance.

(2) Notwithstanding any other provision of this section, when an heir or devisee entitled to succeed to a conveyance fails or refuses to join in the conveyance as required by subsection (1)(g) of this section, an affiant approved under ORS 114.517 may convey any real or personal property that is part of the estate at any time to a third party for a valuable consideration.

(3) Property conveyed by an affiant under this section is subject to liens and encumbrances against the decedent or the estate of the decedent but is not subject to rights of creditors of the decedent or liens or encumbrances against the heirs or devisees of the decedent. The filing and allowance of a claim in a proceeding under ORS 114.505 to 114.560 does not make the claimant a secured creditor.

(4) Any claiming successor to whom payment, delivery or transfer is made under ORS 114.505 to 114.560 as a person entitled thereto as disclosed in the affidavit is personally answerable and accountable:

(a) To the extent of the value of the property received, to creditors of the estate to the extent such creditors are entitled to payment under subsection (1) of this section; and

(b) To any personal representative of the estate of the decedent thereafter appointed.

(5) After the expiration of the period established in subsection (1)(b) of this section, the affiant shall cause to be recorded in the deed records of any county in which real property belonging to the decedent is situated an affiant or claiming successor's deed conveying the property to persons entitled to the property, executed in the manner required by ORS chapter 93.

(6) For a manufactured structure as defined in ORS 446.561 belonging to a decedent and assessed as personal property, the affiant shall file with the Department of Consumer and Business Services the necessary information for recording the successor's interest in the manufactured structure on an ownership document.

(7) A financial institution as defined in ORS 706.008 that opens one or more deposit accounts for an affiant pursuant to subsection (1)(c) of this section is not liable to any other person for opening the account or accounts or for permitting the affiant to withdraw funds from the account or accounts by means of checks, drafts, negotiable orders of withdrawal or otherwise. The financial institution is not required to ensure that the funds of the decedent that are paid out by the affiant are properly applied. [1973 c.710 §7; 1979 c.340 §4; 1985 c.300 §5; 1989 c.148 §6; 1989 c.228 §5; 1991 c.191 §4; 2003 c.655 §61; 2015 c.146 §1]

**114.550 Summary review of administration of estate; hearing.** The affiant or any claiming successor of the estate who has not been paid the full amount owed such claiming successor may, within two years after the filing of an affidavit under ORS 114.515, file with the probate court a petition for summary review of administration of the estate. A creditor may not file a petition under this section if the creditor received a copy of an affidavit filed under ORS 114.515 delivered or mailed to such creditor within 30 days after the date the affidavit was filed, the creditor was shown as a disputed creditor in the affidavit, and the creditor has not filed a petition for summary determination under ORS 114.540. The court shall hear the matter without a jury, after notice to the claiming successor and the affiant, and any interested person may be heard in the proceeding. Upon the hearing the court shall review administration of the estate in a summary manner and may order the affiant to sell property of the estate and pay creditors, to pay creditors of the estate from property of the estate or of the affiant, or to distribute property of the estate to the claiming successors, or may order any person who has received property of the estate to pay amounts owed to claiming successors of the estate in whole or in part. [1989 c.228 §8; 2003 c.196 §3]

**114.552 Filing fees.** (1) A person filing a petition for summary determination under ORS 114.540 or a petition for summary review of administration of estate under ORS 114.550, or any other appearance in a proceeding under ORS 114.505 to 114.560, must pay the filing fee established under ORS 21.135.

(2) If at any time after the filing of an affidavit under ORS 114.515 a petition for appointment of a personal representative is filed for the same estate, the person filing the petition must pay the fees established under ORS 21.170. [2011 c.595 §25]

**114.555 Effect of failure to appoint personal representative.** If a personal representative is not appointed within four months after the filing of the affidavit authorized by ORS 114.515, the interest of the decedent in all of the property described in the affidavit is transferred to the person or persons shown by the affidavit to be entitled thereto, and any other claims against the property are barred, except:

(1) As provided in ORS 114.540, 114.545 and 114.550; and

(2) For the purposes of a surviving spouse's claim for an elective share in the manner provided by ORS 114.600 to 114.725. [1973 c.710 §5; 1977 c.239 §4; 1989 c.228 §10; 2009 c.574 §21]

**114.560 Exclusive remedy.** The exclusive remedy of a person injured by the failure of the affiant or any claiming successor to comply with the requirements of ORS 114.505 to 114.560 shall be a summary determination under ORS 114.540, a summary review of administration under ORS 114.550, or appointment of a personal representative for the estate within the time allowed by ORS 114.555. [1989 c.228 §9]

#### ELECTIVE SHARE FOR DECEDENTS WHO DIE ON OR AFTER JANUARY 1, 2011

(Generally)

**114.600 Elective share generally.** (1) If a decedent is domiciled in this state on the decedent's date of death, and the decedent is survived by a spouse, the surviving spouse of the decedent may elect to receive the elective share provided by ORS 114.600 to 114.725. An election under ORS 114.600 to 114.725 must be made before the death of the surviving spouse by the filing of a motion or petition in the manner described in ORS 114.610. If a motion or petition is filed within the time specified in ORS 114.610, and the surviving spouse dies before payment of the elective share, the personal representative for the estate of the surviving spouse may take all steps necessary to secure payment of the elective share under ORS 114.600 to 114.725.

(2) Any amounts received under ORS 114.015 are in addition to the elective share provided for in ORS 114.600 to 114.725.

(3) If a decedent dies while domiciled outside this state, any right of a surviving spouse of the decedent to take an elective share in property in this state is governed by the law of the decedent's domicile at death. [2009 c.574 §2]

**114.605 Amount of elective share.** (1) Except as otherwise provided in ORS 114.600 to 114.725, the amount of the elective share is a dollar amount determined by multiplying the augmented estate by the percentage provided in this section. All properties included in the augmented estate shall be determined as provided in ORS 114.600 to 114.725. A court of this state has authority to order distribution under ORS 114.600 to 114.725 of all properties included in the augmented estate under ORS 114.600 to 114.725.

(2) The elective share of a surviving spouse is determined by the length of time the spouse and decedent were married to each other, in accordance with the following schedule:

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If the decedent and the spouse were married to each other:	The elective-share percentage is:
Less than 2 years	5% of the augmented estate
2 years but less than 3 years	7% of the

	augmented estate
3 years but less than 4 years	9% of the augmented estate
4 years but less than 5 years	11% of the augmented estate
5 years but less than 6 years	13% of the augmented estate
6 years but less than 7 years	15% of the augmented estate
7 years but less than 8 years	17% of the augmented estate
8 years but less than 9 years	19% of the augmented estate
9 years but less than 10 years	21% of the augmented estate
10 years but less than 11 years	23% of the augmented estate
11 years but less than 12 years	25% of the augmented estate
12 years but less than 13 years	27% of the augmented estate
13 years but less than 14 years	29% of the augmented estate
14 years but less than 15 years	31% of the augmented estate
15 years or more	

33% of the  
augmented estate

[2009 c.574

§3]

**114.610 Manner of making election.** (1) A surviving spouse may claim the elective share only by:

(a) Filing a petition for the appointment of a personal representative for the estate of the deceased spouse, and a motion for the exercise of the election as described in paragraph (b) of this subsection, within nine months after the spouse dies.

(b) Filing a motion for the exercise of the election in a probate proceeding commenced for the estate of the deceased spouse under ORS 113.035. The motion must be filed not later than nine months after the death of the decedent. A copy of the motion must be served on the personal representative, on all persons who would be entitled to receive information under ORS 113.145 and on all distributees and recipients of portions of the augmented estate known to the surviving spouse who can be located with reasonable efforts. A surviving spouse may withdraw a motion for an election filed under this subsection at any time before the court enters an order granting the motion.

(c) Filing a petition for the exercise of the election under ORS 114.720 (1) within nine months after the death of the decedent.

(2) If a court determines that the elective share is payable, the court shall determine the amount of the elective share and shall order its payment pursuant to the priorities established under ORS 114.700. If it appears that property has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the property or who has possession thereof, whether as trustee or otherwise. [2009 c.574 §4]

**114.615 Payment of elective share.** In determining whether any payment is required to a surviving spouse in satisfaction of the elective share provided for in ORS 114.605, the court shall consider the values of the decedent's probate estate, the decedent's nonprobate estate, the surviving spouse's estate, the decedent's probate transfers to the surviving spouse and the decedent's nonprobate transfers to the surviving spouse. If the court determines that the aggregate value of the surviving spouse's estate, the decedent's probate transfers to the surviving spouse and the decedent's nonprobate transfers to the surviving spouse do not satisfy the amount of the elective share, any additional amount required to satisfy the elective share shall be paid out of the decedent's probate estate and the decedent's nonprobate estate in the manner provided by ORS 114.700. [2009 c.574 §5]

**114.620 Waiver of right to elect and other rights.** (1) The right of election under ORS 114.600 to 114.725 may be waived, wholly or partially, before or after marriage by a written contract, agreement or waiver signed by the surviving spouse.

(2) Unless specifically provided otherwise, a written agreement that waives all rights in the property or estate of a present or prospective spouse, using the phrase "all rights" or other equivalent language, or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to an elective share under ORS 114.600 to 114.725 by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to each spouse from the other by intestate succession or by virtue of any will executed before the written agreement or property settlement. [2009 c.574 §6]

Note: Section 24, chapter 574, Oregon Laws 2009, provides:

Sec. 24. A written contract, agreement or waiver entered into before the effective date of this 2009 Act [January 1, 2011], whether prenuptial or post-nuptial, that waives in whole or in part the elective share of a surviving spouse is effective as a waiver under section 6 of this 2009 Act [114.620] unless a court determines



that the contract, agreement or waiver is not enforceable under the standards of section 6 of this 2009 Act. Section 6 (2) of this 2009 Act applies to contracts, agreements or waivers entered into before, on or after the effective date of this 2009 Act. [2009 c.574 §24]

**114.625 Who may exercise right of election.** The elective share may be personally claimed by a surviving spouse, or may be claimed on the surviving spouse's behalf by a conservator, guardian or agent under the authority of a power of attorney. [2009 c.574 §7]

(Augmented Estate)

**114.630 Augmented estate.** (1) Except as otherwise provided in ORS 114.600 to 114.725, the augmented estate consists of all of the following property, whether real or personal, movable or immovable, or tangible or intangible, wherever situated:

- (a) The decedent's probate estate as described in ORS 114.650.
- (b) The decedent's nonprobate estate as described in ORS 114.660 and 114.665.
- (c) The surviving spouse's estate, as described in ORS 114.675.

(2) The value attributable to any property included in the augmented estate under ORS 114.600 to 114.725 must be reduced by the amount of all enforceable claims against the property and all encumbrances on the property. Any exemption or deduction that is allowed for the purpose of determining estate or inheritance taxes on the augmented estate and that is attributable to the marriage of the decedent and the surviving spouse inures to the benefit of the surviving spouse as provided in ORS 116.343 (2).

(3) The value attributable to any property included in the augmented estate includes the present value of any present or future interest and the present value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal Social Security Act.

(4) The value attributable to property included in the augmented estate is equal to the value that would be used for purposes of federal estate and gift tax laws if the property had passed without consideration to an unrelated person on the date that the value of the property is determined for the purposes of ORS 114.600 to 114.725.

(5) In no event may the value of property be included in the augmented estate more than once. [2009 c.574 §8; 2011 c.305 §4]

**114.635 Exclusions from augmented estate.** The augmented estate does not include:

- (1) Any value attributable to future enhanced earning capacity of either spouse;
- (2) Any property that is irrevocably transferred before the death of the decedent spouse;
- (3) Any property that is transferred on or after the date of the death of the decedent spouse with the written joinder or written consent of the surviving spouse;
- (4) Any property that is community property under ORS 112.705 to 112.775 or under the laws of the jurisdiction where the property is located; or

(5) Any property that is held by either spouse solely in a fiduciary capacity. [2009 c.574 §9; 2011 c.305 §1]

(Decedent's Probate Estate)

**114.650 Decedent's probate estate.** For purposes of ORS 114.600 to 114.725, a decedent's probate estate is the value of all estate property that is subject to probate and that is available for distribution after payment of claims and expenses of administration. A decedent's probate estate includes all property that could be administered under a small estate affidavit pursuant to ORS 114.505 to 114.560. A decedent's probate estate does not include any property that constitutes a probate transfer to the decedent's surviving spouse under ORS

114.685. [2009 c.574 §10]

(Decedent's Nonprobate Estate)

**114.660 Decedent's nonprobate estate.** For purposes of ORS 114.600 to 114.725, a decedent's nonprobate estate consists of the property described in ORS 114.665 that is not included in the decedent's probate estate and that does not constitute a transfer to the decedent's surviving spouse. The value of the decedent's nonprobate estate is reduced by all debts and liabilities of the decedent that are not paid in probate, and by all costs of administering the decedent's nonprobate estate that are incurred for the purpose of settling claims against the nonprobate estate and distributing the nonprobate estate property to the persons entitled to that property. [2009 c.574 §11; 2011 c.305 §2]

**114.665 Decedent's nonprobate estate; property owned immediately before death.** (1) A decedent's nonprobate estate includes the decedent's fractional interest in property held by the decedent in any form of survivorship tenancy immediately before the death of the decedent. The amount included in the decedent's nonprobate estate under the provisions of this subsection is the value of the decedent's fractional interest, to the extent the fractional interest passes by right of survivorship at the decedent's death to a surviving tenant other than the decedent's surviving spouse.

(2) A decedent's nonprobate estate includes the decedent's ownership interest in property or accounts held immediately before death under a payable on death designation or deed, under a transfer on death registration or in co-ownership registration with a right of survivorship. The amount included in the decedent's nonprobate estate under the provisions of this subsection is the value of the decedent's ownership interest, to the extent the decedent's ownership interest passed at the decedent's death to any person other than the decedent's estate or surviving spouse or for the benefit of any person other than the decedent's estate or surviving spouse.

(3) A decedent's nonprobate estate includes any property owned by the decedent immediately before death for which the decedent had the power to designate a beneficiary, but only to the extent that the decedent could have designated the decedent, or the spouse of the decedent, as the beneficiary.

(4) A decedent's nonprobate estate includes any property that immediately before death the decedent could have acquired by the exercise of a revocation, without regard to whether the revocation was required to be made by the decedent alone or in conjunction with other persons.

(5) A decedent's nonprobate estate does not include the present value of any life insurance policy payable on the death of the decedent. [2009 c.574 §12; 2011 c.305 §3]

(Surviving Spouse's Estate)

**114.675 Surviving spouse's estate.** (1) For purposes of ORS 114.600 to 114.725, a surviving spouse's estate is:

(a) The decedent's probate transfers to the spouse, as described in ORS 114.685.

(b) The decedent's nonprobate transfers to the spouse, as described in ORS 114.690.

(c) All other property of the spouse, as determined on the date of the decedent's death.

(d) Any property that would have been included under paragraph (a), (b) or (c) of this subsection except for the exercise of a disclaimer by the spouse after the death of the decedent.

(2)(a) For the purpose of establishing the value of the surviving spouse's estate under this section, the estate includes 100 percent of the corpus of any trust or portion of a trust from which all income must be distributed to or for the benefit of the surviving spouse during the life of the surviving spouse, and for which the surviving spouse has a general power of appointment that the surviving spouse, acting alone, may exercise, during the surviving spouse's lifetime or at death of the surviving spouse, to or for the benefit of the surviving spouse or the surviving spouse's estate.

(b) For the purpose of establishing the value of the surviving spouse's estate under this section, the estate

includes 100 percent of the corpus of a trust or portion of a trust created by the decedent spouse, if all income from the trust or portion of a trust must be distributed to or for the benefit of the surviving spouse during the life of the surviving spouse and the trust principal may be accessed only by the trustee or the spouse and only for the purpose of providing for the health, education, support or maintenance of the spouse.

(c) For the purpose of establishing the value of the surviving spouse's estate under this section, the estate includes 50 percent of the corpus of a trust or portion of a trust created by the decedent spouse if all income from the trust or portion of a trust must be distributed to or for the benefit of the surviving spouse during the life of the surviving spouse and neither the trustee nor the spouse has the power to distribute trust principal to or for the benefit of the surviving spouse or any other person during the spouse's lifetime.

(d) For the purposes of this section, all amounts distributed to a surviving spouse from a unitrust that meets the requirements of ORS 129.225 (4) shall be considered income.

(e) The value of the surviving spouse's beneficial interest in a trust other than a trust described in paragraphs (a) to (d) of this subsection shall be determined under the provisions of ORS 114.630 (3) and (4). [2009 c.574 §13; 2011 c.305 §5]

(Decedent's Probate Transfers to Spouse)

**114.685 Decedent's probate transfers to surviving spouse.** The decedent's probate transfers to the decedent's surviving spouse include all estate property that is subject to probate, that passes to the surviving spouse by testate or intestate succession, and that is available for distribution to the surviving spouse after payment of claims and expenses of administration. [2009 c.574 §14]

(Decedent's Nonprobate Transfers to Spouse)

**114.690 Decedent's nonprobate transfers to surviving spouse.** (1) Except as provided in subsection (2) of this section, the decedent's nonprobate transfers to the decedent's surviving spouse include all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death, including:

(a) The decedent's fractional interest in property held in any form of survivorship tenancy, as described in ORS 114.665 (1), to the extent that the decedent's fractional interest passed to the surviving spouse as surviving tenant;

(b) The decedent's ownership interest in property or accounts held in co-ownership registration with the right of survivorship, to the extent that the decedent's ownership interest passed to the surviving spouse as surviving co-owner;

(c) Insurance proceeds payable to the surviving spouse by reason of the death of the decedent; and

(d) All other property that would have been included in the decedent's nonprobate estate under ORS 114.660 and 114.665 had it passed to or for the benefit of a person other than the decedent's spouse.

(2) The decedent's nonprobate transfers to the decedent's surviving spouse do not include any property passing to the surviving spouse under the federal Social Security Act. [2009 c.574 §15]

(Payment of Elective Share)

**114.700 Priority of sources from which elective share payable.** (1) The surviving spouse's estate, as described in ORS 114.675, shall be applied first to satisfy the dollar amount of the elective share and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others.

(2) If after application of the surviving spouse's estate under subsection (1) of this section the elective share amount is not fully satisfied, the following amounts shall be applied to the extent necessary to satisfy the balance of the elective share amount:

(a) Amounts included in the decedent's probate estate.

(b) Amounts included in the decedent's nonprobate estate under ORS 114.600 to 114.725.

(3) Unless otherwise provided by a will, trust or other instrument executed by the decedent spouse:

(a) Amounts applied against the unsatisfied balance of an elective share amount under subsection (2) of this section shall be collected from both the probate and nonprobate estates of the decedent in a manner that ensures that the probate and nonprobate estates bear proportionate liability for the amounts necessary to pay the elective share amount.

(b) Amounts applied against the unsatisfied balance of an elective share amount under subsection (2) of this section out of the probate estate of the decedent must be apportioned among all recipients of the decedent's probate estate in a manner that ensures that each recipient bears liability for a portion of the payment that is proportionate to the recipient's interest in the decedent's probate estate.

(c) Amounts applied against the unsatisfied balance of an elective share amount under subsection (2) of this section out of the nonprobate estate of the decedent must be apportioned among all recipients of the decedent's nonprobate estate in a manner that ensures that each recipient bears liability for a portion of the payment that is proportionate to the recipient's interest in the decedent's nonprobate estate.

(4) All apportionments under this section between the probate and nonprobate estates of the decedent and among the recipients of those estates shall be based on the assets of each estate that are subject to distribution by the court under the provisions of ORS 114.600 to 114.725.

(5) In any proceeding described in ORS 114.610, the court may allocate the cost of storing and maintaining property included in the augmented estate pending distribution of the property. [2009 c.574 §16; 2011 c.305 §6]

**114.705 Liability of recipients of decedent's nonprobate estate.** (1) The following recipients of the decedent's nonprobate estate are the only persons who may be required to make a proportional contribution toward the satisfaction of the surviving spouse's elective share under the provisions of ORS 114.600 to 114.725:

(a) An original recipient of all or part of the decedent's nonprobate estate.

(b) A person who has received all or part of the decedent's nonprobate estate for less than fair consideration from an original recipient of the property, to the extent the person has the property or proceeds of the property.

(2) A recipient of all or part of the decedent's nonprobate estate who is required to make a proportional contribution toward the satisfaction of the surviving spouse's elective share may elect to make the contribution by returning property determined to be adequate to satisfy the recipient's obligation or by paying money equal to the value of that property. [2009 c.574 §17]

**114.710 Protective order.** (1) If a surviving spouse has filed a motion or petition described in ORS 114.610, the surviving spouse or any person who has received any part of the decedent's probate or nonprobate estate may request, at any time after the filing, that the court issue a protective order. The protective order shall prohibit or impose conditions on the transfer of property included in the augmented estate. The protective order may be served on any person holding property included in the augmented estate.

(2) Upon the filing of a motion or petition under ORS 114.610, any person who has received any part of the decedent's probate or nonprobate estate and who is required to make a contribution toward the satisfaction of the elective share may file a motion or petition with the court requesting a determination of the amount of the person's proportionate contribution toward the satisfaction of the elective share. Upon that determination being made, the person may deposit with the court the amount so determined in the form of money or a bond or other security. The deposit discharges the person from all claims relating to the satisfaction of the elective share. In lieu of deposit with the court under this subsection the court may require that the money or security be deposited

with a person designated by the court.

(3) If a surviving spouse has filed a motion or petition described in ORS 114.610, and a notice of pendency of action under ORS 93.740 is recorded, a temporary restraining order is issued under ORCP 79, or provisional process is issued under ORCP 83, an owner of the property that is subject to the notice, order or process may seek relief from the notice, order or process by providing a bond or other security to the court in such amount as the court may determine adequate to satisfy the person's proportionate contribution toward the satisfaction of the elective share. [2009 c.574 §18]

(Procedure)

**114.720 Proceedings to claim elective share.** (1) A surviving spouse may claim the elective share by filing a petition for the exercise of the election in a circuit court within the time allowed by ORS 114.610 (1)(c). Venue for the proceeding is as provided in ORS 113.015. A copy of the petition must be served on all persons who would be entitled to receive information under ORS 113.145 and on all distributees and recipients of portions of the augmented estate known to the surviving spouse who can be located with reasonable efforts. The fee for filing a petition under this subsection shall be the amount prescribed in ORS 21.170, based on the value of the nonprobate estate. The Oregon Rules of Civil Procedure apply to proceedings under this section. Any party to a proceeding under this section may request that the pleadings and records in the proceeding be sealed.

(2) A surviving spouse may withdraw a petition filed under this section at any time before entry of a judgment on the petition.

(3) If a probate proceeding is commenced for the estate of the deceased spouse under ORS 113.035 either before or after a petition is filed under this section, the court shall consolidate the proceedings under this section with the probate proceedings. [2009 c.574 §19; 2011 c.595 §125]

**114.725 Effect of separation.** If the decedent and the surviving spouse were living apart at the time of the decedent's death, whether or not there was a judgment of legal separation, the court may deny any right to an elective share or may reduce the elective share to such amount as the court determines reasonable and proper. In deciding if all or part of the elective share should be denied, the court shall consider whether the marriage was a first or subsequent marriage for either or both of the spouses, the contribution of the surviving spouse to the property of the decedent in the form of services or transfers of property, the length and cause of the separation and any other relevant circumstances. [2009 c.574 §20]

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Chapter 115 — Claims; Actions and Suits

2016 EDITION

CLAIMS; ACTIONS AND SUITS

PROBATE LAW

CLAIMS AGAINST ESTATES

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#### CLAIMS AGAINST ESTATES

**115.001 Effect of direction to pay debts, charges, taxes or expenses.** A mere testamentary direction to pay debts, charges, taxes or expenses of administration shall not be considered a direction for exoneration from encumbrances. [1973 c.506 §35]

**115.003 Personal representative to make diligent search for claimants; notice to claimants; contents; proof of compliance.** (1) During the three months following appointment, unless a longer time is allowed by the court, the personal representative shall make reasonably diligent efforts to investigate the financial records and affairs of the decedent and shall take such further actions as may be reasonably necessary to ascertain the identity and address of each person who has or asserts a claim against the estate. The personal representative shall request and the court shall allow a longer time for ascertaining claims if the personal representative cannot

complete reasonably diligent efforts to identify persons with claims during the time required by this section or by a previous order of the court.

(2) Not later than 30 days after expiration of the period, including any extensions, described in subsection (1) of this section, the personal representative shall cause to be delivered or mailed to each person known by the personal representative during such period to have or assert a claim against the estate a notice containing the information required in subsection (3) of this section, except that it shall not be necessary to give notice on account of a claim that has already been presented, accepted or paid in full or on account of a claim that is merely conjectural. The personal representative may also cause such a notice to be delivered or mailed to any person discovered by the personal representative after expiration of the period described in subsection (1) of this section to have or assert a claim against the estate.

(3) The notice shall include:

(a) The title of the court in which the estate proceeding is pending;

(b) The name of the decedent;

(c) The name of the personal representative and the address at which claims are to be presented;

(d) A statement that claims against the estate not presented to the personal representative within 30 days of the date of the notice may be barred; and

(e) The date of the notice, which shall be the date on which it is delivered or mailed.

(4) Not later than 60 days after expiration of the period, including any extensions, described in subsection (1) of this section, the personal representative shall cause to be filed in the estate proceeding proof of compliance with subsections (1) and (2) of this section. The proof shall include a copy of the form of any notice delivered or mailed, the date on which each notice was delivered or mailed and the name and address of the person to whom each notice was delivered or mailed.

(5) The failure of the personal representative to make reasonably diligent efforts to ascertain claims as required by subsection (1) of this section or to cause a notice to be delivered or mailed as required by subsection (2) of this section is a breach of duty to the persons concerned, but does not affect the validity of appointment, duties or powers or the exercise of duties or powers. [1989 c.229 §2; 2007 c.284 §12]

**115.004 Recovery for failure to make search or give notice; indemnification; time for commencing action.** If, as a result of breach of a duty imposed by ORS 115.003, a claim or any part of a claim is not paid from the estate during administration, the amount of the claim may be recovered as follows:

(1) The claimant shall have a cause of action against the personal representative and the surety for the personal representative for the amount the claimant would have been paid from the estate had all claims not barred from payment been presented within the time required by ORS 115.005 (2) and allowed by the personal representative, provided that any payment on account of a judgment entered under subsection (2) of this section shall also satisfy a judgment entered under this subsection in the amount of the payment.

(2) The claimant shall have a cause of action against each interested person who received a distribution or other payment from the estate for the amount by which the payment received would have been reduced by payment of the claim from the estate had all claims not barred from payment been presented within the time required by ORS 115.005 (2) and allowed by the personal representative, provided that any payment on account of a judgment entered under subsection (1) of this section shall also satisfy a pro rata portion of each judgment entered under this subsection.

(3) Each interested person who received a distribution or other payment from the estate shall indemnify the personal representative and the surety for the personal representative against liability on the claim in the amount by which the payment received would have been reduced by payment of the claim from the estate had all claims not barred from payment been presented within the time required by ORS 115.005 (2) and allowed by the

personal representative.

(4) Each interested person who received a distribution or other payment from the estate shall indemnify the personal representative and the surety for the personal representative against the reasonable costs, including attorney fees, of defense of the action in the same proportion and to the same extent as such distributee would be required to indemnify against the claim under subsection (3) of this section:

(a) If the personal representative prevails against the claimant, in such proportion of the full amount of such costs; or

(b) If the claimant prevails against the personal representative, in such proportion of the amount of any such costs which could have been reasonably incurred by the estate upon disallowance of the claim had it been presented within the time required by ORS 115.005 (2).

(5) Except as provided in subsection (6) of this section, an action under this section against a personal representative, the surety for a personal representative or an interested person shall be commenced within two years after the death of the decedent or within the statute of limitations applicable to the claim, whichever is earlier.

(6) An action for indemnity under subsection (3) or (4) of this section shall be commenced within the time required by subsection (5) of this section, unless:

(a) Notice of the action giving rise to the claim for indemnity is given to each party from whom indemnity is sought personally or by mail to the party's last-known address within 180 days after the complaint in the action is served on the party seeking indemnity; and

(b) The action is commenced within one year after a judgment in the action giving rise to the claim for indemnity becomes final and not subject to further appeal. [1989 c.229 §3]

**115.005 Presentation of claims; time limitations.** (1) Claims against the estate of a decedent, other than claims of the personal representative as a creditor of the decedent, shall be presented to the personal representative.

(2) Except as provided in subsection (3) of this section, a claim is barred from payment from the estate if not presented within the statute of limitations applicable to the claim and before the later of:

(a) Four months after the date of first publication of notice to interested persons; or

(b) If the claim was one with respect to which the personal representative was required to deliver or mail a notice under ORS 115.003 (2), 30 days after a notice meeting the requirements of ORS 115.003 (3) is delivered or mailed to the last-known address of the person asserting the claim.

(3) A claim against the estate presented after claims are barred under subsection (2) of this section shall be paid from the estate if the claim:

(a) Is presented before the expiration of the statute of limitations applicable to the claim and before the personal representative files the final account;

(b) Is presented by a person who did not receive a notice under ORS 115.003 mailed or delivered more than 30 days prior to the date on which the claim is presented and who is not an assignee of a person who received such notice; and

(c) Would be allowable but for the time at which the claim is presented.

(4) A claim against an estate may be paid under subsection (3) of this section only after payment of all expenses having priority over claims under ORS 115.125 and payment of all previously presented claims.

(5) This section does not affect or prevent:

(a) Any proceeding to enforce a mortgage, pledge or other lien upon property of the estate, or to quiet title or reform any instrument with respect to title to property; or



(b) To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which the decedent or personal representative is protected by liability insurance at the time the proceeding is commenced. [1969 c.591 §141; 1973 c.506 §29; 1989 c.229 §4; 1993 c.214 §1; 2001 c.620 §3; 2003 c.523 §1]

**115.008 Application of time limitations to public bodies.** Notwithstanding ORS 12.250, and except as otherwise specifically provided in this chapter, all statutes of limitation and other time limitations imposed under this chapter apply to actions brought in the name of the state, or brought in the name of any county or public corporation, and to actions brought for the benefit of the state or for the benefit of any county or public corporation. [1999 c.675 §3; 2001 c.620 §4]

115.010 [Repealed by 1969 c.591 §305]

115.015 [1969 c.591 §141a; 1973 c.506 §30; repealed by 1989 c.229 §15]

115.020 [Repealed by 1969 c.591 §305]

115.025 Form of claims. Each claim presented shall:

(1) Be in writing.

(2) Describe the nature and the amount thereof, if ascertainable.

(3) State the names and addresses of the claimant and, if any, the attorney of the claimant. [1969 c.591 §142; 1973 c.506 §31]

**115.035 Waiver of defect or insufficiency.** A defect of form of a claim timely presented may be waived by the personal representative or by the court. [1969 c.591 §143; 1973 c.506 §32]

**115.045 Written evidence of claim.** When it appears that there is written evidence of a claim that has been presented to the personal representative, the claimant, upon demand by the personal representative, shall produce the evidence or account for its nonproduction. [1969 c.591 §144]

**115.055 Claims on debts due.** If a claim on a debt due is presented and allowed, allowance shall be in the amount of the debt remaining unpaid on the date of allowance. [1969 c.591 §145]

**115.065 Claims on secured debts due.** (1) A claim on a debt due for which the creditor holds security may be presented as a claim on an unsecured debt due, or the creditor may elect to rely entirely on the security without presentation of the claim.

(2) If the claim is presented, it shall describe the security. If the security is an encumbrance that is recorded, it is sufficient to describe the encumbrance by reference to the book, page, date and place of recording.

(3) If the claim is presented and allowed, allowance shall be in the amount of the debt remaining unpaid on the date of allowance.

(4) If the creditor surrenders the security, payment shall be on the basis of the amount allowed.

(5) If the creditor does not surrender the security, payment shall be on the basis of:

(a) If the creditor exhausts the security before receiving payment, unless precluded by other law, the amount allowed, less the amount realized on exhausting the security; or

(b) If the creditor does not exhaust the security before receiving payment or does not have the right to exhaust the security, the amount allowed, less the value of the security determined by agreement or as the court may order.

(6) The personal representative may convey the secured property to the creditor in consideration of the satisfaction or partial satisfaction of the claim. [1969 c.591 §146; 1989 c.229 §5]

**115.070 Claims on debts reduced to judgments.** If a judgment was entered on a claim prior to the death of the decedent, the claim shall be presented in the same manner as if no judgment had been entered, and a copy

of the judgment shall be attached to the claim. Such a claim may be disallowed only if the judgment was void or voidable, or if the judgment could have been set aside on the date of the decedent's death, or if the claim is not presented within the time required by ORS 115.005. If the judgment was a lien against the property of the estate on the date of the decedent's death it shall be treated as a claim on a debt due for which the creditor holds security. In all other respects a claim which has been reduced to judgment shall have the same priority under ORS 115.125 as it would have had were it not reduced to judgment. [1989 c.229 §11]

**115.075 Claims on debts not due.** A claim on a debt not due, whether or not the creditor holds security therefor, may be presented as a claim on a debt due. If the claim is allowed, allowance shall be in an amount equal to the value of the debt on the date of allowance. The creditor, after allowance of the claim, may withdraw the claim without prejudice to other remedies. Payment on the basis of the amount allowed discharges the debt and the security, if any, held by the creditor therefor. [1969 c.591 §147]

**115.085 Claims on contingent and unliquidated debts.** (1) A claim on a contingent or unliquidated debt shall be presented as any other claim.

(2) If the debt becomes absolute or liquidated before distribution of the estate, the claim shall be paid in the same manner as a claim on an absolute or liquidated debt.

(3) If the debt does not become absolute or liquidated before distribution of the estate, the court shall provide for payment of the claim by any of the following methods:

(a) The creditor and personal representative may determine, by agreement, arbitration or compromise, the value of the debt, and upon approval thereof by the court, the claim may be allowed and paid in the same manner as a claim on an absolute or liquidated debt.

(b) The court may order the personal representative to make distribution of the estate, but to retain sufficient funds to pay the claim if and when the debt becomes absolute or liquidated. The estate may not be kept open for this purpose more than two years after distribution of the remainder of the estate. If the debt does not become absolute or liquidated within that time, the funds retained, after payment therefrom of any expenses accruing during that time, shall be distributed to the distributees.

(c) The court may order the personal representative to make distribution of the estate as though the claim did not exist.

(d) If after distribution under paragraph (b) or (c) of this subsection the debt becomes absolute or liquidated, the distributees are liable to the creditor to the extent of the estate received by them. Payment of the debt may be arranged by creating a trust, giving a mortgage, securing a bond from a distributee or by such other method as the court may order. [1969 c.591 §148]

**115.095 Compromise of claims.** The personal representative may compromise a claim against the estate of a decedent. [1969 c.591 §149]

**115.105 Claims of personal representative.** A claim of a personal representative shall be filed with the clerk of the court within the time required by law for presentment of claims. Upon application by the personal representative or by any interested person the claim may be considered by the court on the hearing of the final account of the personal representative or prior to the hearing of the final account upon notice to interested persons. [1969 c.591 §150; 1973 c.506 §33]

115.110 [Repealed by 1969 c.591 §305]

**115.115 Payment of claims.** After the day on which all known claims are barred under ORS 115.005 (2), the personal representative, after making provision for support of spouse and children ordered by the court, for expenses of administration and for claims already presented which have not been allowed or allowance of which has been appealed, shall proceed to pay the claims allowed against the estate in the order of priority prescribed by ORS 115.125. After payment of those claims, claims presented and allowed under ORS 115.005 (3) shall be

paid in the order in which they are received and to the extent of the remaining assets of the estate. [1969 c.591 §151; 1989 c.229 §6]

115.120 [Repealed by 1969 c.591 §305]

**115.125 Order of payment of expenses and claims.** (1) If the applicable assets of the estate are insufficient to pay all expenses and claims in full, the personal representative shall make payment in the following order:

- (a) Support of spouse and children, subject to the limitations imposed by ORS 114.065.
- (b) Expenses of administration.
- (c) Expenses of a plain and decent funeral.
- (d) Debts and taxes with preference under federal law.
- (e) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent.
- (f) Taxes with preference under the laws of this state that are due and payable while possession of the estate of the decedent is retained by the personal representative.
- (g) Debts owed employees of the decedent for labor performed within 90 days immediately preceding the date of death of the decedent.
- (h) Child support arrearages.
- (i) The claim of the Department of Veterans' Affairs under ORS 406.100, including a claim the waiver of which was retracted by the Director of Veterans' Affairs under ORS 406.110.
- (j) The claim of the Department of Human Services or the Oregon Health Authority for the amount of the state's monthly contribution to the federal government to defray the costs of outpatient prescription drug coverage provided to a person who is eligible for Medicare Part D prescription drug coverage and who receives benefits under the state medical assistance program or Title XIX of the Social Security Act.
- (k) The claim of the Department of Human Services or the Oregon Health Authority for the net amount of assistance paid to or for the decedent, in the following order:
  - (A) Public assistance, as defined in ORS 411.010, and medical assistance, as defined in ORS 414.025, funded entirely by moneys from the General Fund; and
  - (B) Public assistance, as defined in ORS 411.010, and medical assistance, as defined in ORS 414.025, that may be recovered from an estate under ORS 416.350, funded by a combination of state and federal funds.
- (L) The claim of the Department of Human Services or the Oregon Health Authority for the care and maintenance of the decedent at a state institution, as provided in ORS 179.610 to 179.770.
- (m) The claim of the Department of Corrections for care and maintenance of any decedent who was at a state institution to the extent provided in ORS 179.610 to 179.770.
- (n) All other claims against the estate.

(2) If the applicable assets of the estate are insufficient to pay in full all expenses or claims of any one class specified in subsection (1) of this section, each expense or claim of that class shall be paid only in proportion to the amount thereof. [1969 c.591 §152; 1969 c.597 §279; 1973 c.402 §32; 1979 c.684 §17; 2001 c.316 §1; 2001 c.487 §13; 2001 c.900 §19a; 2005 c.754 §3; 2007 c.26 §1; 2009 c.595 §81; 2011 c.720 §60; 2013 c.190 §1; 2013 c.688 §19; 2016 Oregon Laws Ch 42 §23]

115.130 [Repealed by 1969 c.591 §305]

**115.135 Allowance and disallowance of claims.** (1) A claim presented to the personal representative shall be considered allowed as presented unless within 60 days after the date of presentment of the claim the

personal representative mails or delivers a notice of disallowance of the claim in whole or in part to the claimant and, if any, the attorney of the claimant. The personal representative shall file in the estate proceeding the claim as presented and a copy of the notice of disallowance.

(2) A notice of disallowance of a claim shall inform the claimant that the claim has been disallowed in whole or in part and, to the extent disallowed, will be barred unless the claimant proceeds as provided in ORS 115.145.

(3) The personal representative may rescind the previous allowance of an unpaid claim, if the claim was allowed because of error, misinformation or excusable neglect. Not less than 30 days before the date of the filing of the final account the personal representative shall give notice of rescission of previous allowance of a claim to the claimant and, if any, the attorney of the claimant in the same manner and containing the same information as a notice of disallowance. [1969 c.591 §153]

115.140 [Amended by 1955 c.292 §1; repealed by 1969 c.591 §305]

**115.145 Procedure by claimant on disallowance of claim.** (1) If the personal representative disallows a claim in whole or in part, the claimant, within 30 days after the date of mailing or delivery of the notice of disallowance, may either:

(a) File in the estate proceeding a request for summary determination of the claim by the probate court, with proof of service of a copy of the request upon the personal representative or the attorney of the personal representative; or

(b) Commence a separate action against the personal representative on the claim in any court of competent jurisdiction. The action shall proceed and be tried as any other action.

(2) If the claimant fails to either request a summary determination or commence a separate action as provided in subsection (1) of this section, the claim, to the extent disallowed by the personal representative, is barred.

(3) In a proceeding for summary determination of a claim or in a separate action on a claim the claim shall be allowed or judgment entered on the claim in the full amount of the liability, if any, of the decedent to the claimant. However, the claim shall be paid only to the extent of the assets of the estate allocable to the payment of the claim pursuant to ORS 115.115 and 115.125. [1969 c.591 §154; 1989 c.229 §7]

115.150 [Repealed by 1969 c.591 §305]

**115.155 Separate action required by personal representative.** If the claimant files a request for summary determination of the claim as provided in ORS 115.145, the personal representative, within 30 days after the date of service of a copy of the request upon the personal representative or the attorney of the personal representative, may notify the claimant in writing that if the claimant desires to prove the claim the claimant must commence a separate action against the personal representative on the claim within 60 days after the date of receipt of such notice. If the claimant fails to commence a separate action within 60 days after the date of receipt of the notice, the claim, to the extent disallowed by the personal representative, is barred. [1969 c.591 §155]

115.160 [Repealed by 1969 c.591 §305]

**115.165 Summary determination procedure.** In a proceeding for summary determination by the probate court of a claim disallowed in whole or in part by the personal representative:

(1) The personal representative shall move or plead to the claim as though the claim were a complaint filed in an action.

(2) The court shall hear the matter without a jury, after notice to the claimant and personal representative. Upon the hearing the court shall determine the claim in a summary manner and shall make an order allowing or disallowing the claim in whole or in part.

(3) No appeal may be taken from the order of the court made upon the summary determination. [1969 c.591 §156]

115.170 [Repealed by 1969 c.591 §305]

**115.175 Interested persons heard in summary determination or separate action.** Any interested person may be heard in a proceeding for summary determination by the probate court of a claim, and may intervene in a separate action against the personal representative on the claim. [1969 c.591 §157]

115.180 [Repealed by 1969 c.591 §305]

**115.185 Creditor may obtain order for payment.** A creditor whose claim has been allowed or established by summary determination or separate action, and who has not received payment within six months after the date of the first publication of notice to interested persons, may apply to the court for an order directing the personal representative to pay the claim to the extent that funds of the estate are available for that payment. [1969 c.591 §158]

115.190 [Repealed by 1969 c.591 §305]

**115.195 Proof for court allowance of disallowed claim; claims for recovery of public assistance or medical assistance.** (1) A claim that has been disallowed by the personal representative may not be allowed by any court except upon some competent, satisfactory evidence other than the testimony of the claimant.

(2) Notwithstanding subsection (1) of this section, claims for recovery of public assistance as defined by ORS 411.010 or medical assistance as defined in ORS 414.025 may be allowed based on evidence in the form of documents from the Department of Human Services or the Oregon Health Authority that contain information relating to that public assistance or medical assistance, such as the date that services were provided to the decedent, the classification of those services, the name of the provider or the provider's identification number, and the amount of the public assistance or medical assistance payment made for the services. The documents may be prints obtained from microfilm or microfiche, or printouts from computer records or other electronic storage medium. Notwithstanding ORS 40.460 and 40.510, a document described in this subsection is prima facie evidence of the information contained in the document and is not excluded from introduction as hearsay, and extrinsic evidence of authenticity of the document as a condition precedent to admissibility is not required, if the document bears a seal that on its face is the seal of the Director of Human Services or the designee of the director, or the Director of the Oregon Health Authority or the designee of the director, and:

(a) For a print obtained from microfilm or microfiche, also bears a statement indicating that the print is a true copy of the microfilm or microfiche record, signed by a person who purports to be an officer or employee of the department or the authority; or

(b) For a printout from computer records or other electronic storage medium, also bears a statement indicating that the printout accurately reflects the data retrieved, signed by a person who purports to be an officer or employee of the department or the authority. [1969 c.591 §159; 2003 c.523 §2; 2011 c.720 §61; 2013 c.688 §20]

115.200 [Repealed by 1969 c.591 §305]

**115.205 Waiver of statute of limitations.** A claim barred by the statute of limitations may not be allowed by the personal representative or by any court except upon the written direction or consent of those interested persons who would be adversely affected by allowance of the claim. [1969 c.591 §160]

115.210 [Repealed by 1969 c.591 §305]

**115.215 Extension of statute of limitations.** If a claim is not barred by the statute of limitations on the date of death of the decedent, the claim is not barred by the statute of limitations thereafter until at least one year after the date of death. [1969 c.591 §161]

115.220 [1963 c.447 §1; 1965 c.514 §1; repealed by 1969 c.591 §305]

## DISCHARGE OF ENCUMBRANCES

**115.255 Discharge of encumbrances.** (1) As used in this section:

(a) “Voluntary encumbrance” means any mortgage, trust deed, security agreement, pledge or public improvement assessment lien, or any lien arising from labor or services performed or materials supplied or furnished, or any combination thereof, upon or in respect of property.

(b) “Involuntary encumbrance” means any encumbrance upon property other than a voluntary encumbrance.

(2) If property upon which an encumbrance exists on the date of the death of the testator is specifically devised, the devisee takes it subject to the encumbrance, and the personal representative is not required to make any payment on account of the obligation secured by the encumbrance, whether or not the testator was personally liable on the obligation secured by the encumbrance, except as provided otherwise in the will or in subsection (3) or (4) of this section.

(3) Unless the will provides otherwise, the devisee of specifically devised property may require that an encumbrance thereon be fully or partially discharged out of other assets of the estate not specifically devised, if:

(a) The encumbrance is an involuntary encumbrance; or

(b) The encumbrance is a voluntary encumbrance and:

(A) The will specifically directs full or partial discharge of the encumbrance out of other assets; or

(B) The personal representative receives rents or profits, or both, from the property and the devisee requests that the personal representative apply all or part of the rents or profits, or both, in full or partial discharge of the obligation secured by the encumbrance, in which event the personal representative shall apply the rents or profits, or both, upon principal or interest, or both, owing upon the obligation, as requested; or

(C) Any devisee requests, in a writing signed by the devisee and delivered to the personal representative, that the obligation secured by the encumbrance be fully or partially discharged out of property, or the proceeds of the sale thereof, which otherwise would pass to the devisee.

(4) If a claim based upon an obligation secured by a voluntary encumbrance upon specifically devised property is presented and paid, or if specifically devised real property subject to a voluntary encumbrance is redeemed, and the devisee is not entitled to exoneration pursuant to subsection (3) of this section, the personal representative has a lien upon the property in the amount paid, and the lien shall be administered upon as an asset of the estate.

(5) If property is specifically devised by a will executed before the effective date of this section, and if an encumbrance upon that property exists on the date of the death of the testator, the rights of the devisee of that property in respect of exoneration thereof out of other assets of the estate shall be determined in accordance with the law in effect on the date the will was executed. [1969 c.591 §162]

**115.265 Power to redeem estate property.** Unless otherwise provided by the will, the personal representative may redeem property of the estate sold on foreclosure of mortgage or upon execution if it appears that the redemption would be for the benefit of the estate and would not be prejudicial to creditors. [1969 c.591 §163]

**115.275 Encumbered assets; powers of personal representative.** When any assets of the estate are encumbered by an involuntary or voluntary encumbrance, the personal representative may discharge the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of the lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate. Discharge of an encumbrance shall not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration under ORS 115.255 (3). [1969 c.591 §164]

## ACTIONS AND SUITS

**115.305 Survival of causes of action.** All causes of action or suit, by one person against another, survive to the personal representative of the former and against the personal representative of the latter. [Formerly 121.020]

115.310 [Repealed by 1969 c.591 §305]

**115.315 Continuation of action without claim presentation.** An action against a decedent commenced before and pending on the date of death of the decedent may be continued as provided in ORCP 34 B(2) without presentation of a claim against the estate of the decedent. [1969 c.591 §166; 1979 c.284 §107]

115.320 [Repealed by 1969 c.591 §305]

**115.325 Action not to be commenced until claim presented and disallowed.** Except as provided in ORS 115.004, 115.005 (5) and 115.065, no action against a personal representative on account of a claim shall be commenced until the claim of the plaintiff has been presented to and disallowed by the personal representative. [Formerly 121.090; 1989 c.229 §8; 1993 c.214 §2]

115.330 [Repealed by 1969 c.591 §305]

## APPLICATION TO NONTESTAMENTARY TRUSTS

**115.335 Chapter does not apply to certain trusts.** The provisions of this chapter do not apply to claims against trusts that are subject to the provisions of ORS 130.350 to 130.450. [2001 c.593 §17; 2005 c.348 §120a]

115.340 [Repealed by 1969 c.591 §305]

115.350 [Repealed by 1969 c.591 §305]

115.410 [Repealed by 1969 c.591 §305]

115.420 [Repealed by 1969 c.591 §305]

115.430 [Repealed by 1969 c.591 §305]

115.440 [Repealed by 1969 c.591 §305]

115.450 [Repealed by 1969 c.591 §305]

115.460 [Repealed by 1969 c.591 §305]

115.470 [Repealed by 1969 c.591 §305]

115.480 [Repealed by 1969 c.591 §305]

115.490 [Repealed by 1969 c.591 §305]

115.500 [Repealed by 1969 c.591 §305]

115.510 [Repealed by 1969 c.591 §305]

115.520 [Repealed by 1969 c.591 §305]

115.990 [Repealed by 1969 c.591 §305]

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Chapter 116 — Accounting, Distribution and Closing

2016 EDITION

ACCOUNTING, DISTRIBUTION AND CLOSING

PROBATE LAW

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116.003 [1969 c.591 §168; 1973 c.506 §36; repealed by 1975 c.717 §14 (116.007 enacted in lieu of 116.003)]

116.005 [Repealed by 1969 c.591 §305]

#### ALLOCATION OF INCOME

**116.007 Allocation of income.** (1) Unless the will otherwise provides and subject to subsection (2) of this section, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives and court costs, shall be charged against the principal of the estate.

(2) Unless the will otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under ORS chapter 129 and this section and distributed as follows:

(a) To specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator and of taxes imposed on income, excluding taxes on capital gains, that accrue during the period of administration.

(b) To all other legatees and devisees, except legatees of pecuniary bequests that are not in trust and that do not qualify for the marital deduction provided for in section 2056 of the Internal Revenue Code (26 U.S.C. 2056), the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, and taxes imposed on income, excluding taxes on capital gains, that accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at times of distribution on the basis of inventory value.

(3) Income received by a trustee under subsection (2) of this section shall be treated as income of the trust. [1975 c.717 §15 (enacted in lieu of 116.003); 2003 c.279 §33; 2005 c.22 §94; 2007 c.71 §29]

116.010 [Repealed by 1969 c.591 §305]

#### PARTIAL DISTRIBUTION

**116.013 Petition and order for partial distribution.** Upon petition by the personal representative or other interested person, and after such notice and hearing as the court may prescribe, the court may order the personal representative to distribute, prior to final settlement and distribution, property of the estate to the person or persons who would be entitled to the property under the will or under intestate succession on final distribution, if the court finds that:

(1) After the distribution sufficient assets will remain to pay support of spouse and children, expenses of administration, unpaid claims and all known unpaid creditors of the decedent or of the estate; and

(2) The distribution may be made without loss to creditors or injury to the estate or to any interested person. [1969 c.591 §169; 1987 c.646 §1]

116.015 [Repealed by 1969 c.591 §305]

116.020 [Amended by 1957 c.352 §1; repealed by 1969 c.591 §305]

**116.023 Bond or other security.** The court may require a bond or other security of any distributee for the protection of creditors and other interested persons who might suffer loss or injury because of the distribution of property under ORS 116.013. [1969 c.591 §170]

116.025 [Repealed by 1969 c.591 §305]

**116.033 Discharge of personal representative.** The distribution of property in accordance with the order

of the court under ORS 116.013 is a full discharge of the personal representative in respect to all property embraced in the order, except as otherwise provided in ORS chapters 111, 112, 113, 114, 115, 116 and 117. [1969 c.591 §171]

**116.043 Petition and order for refund by distributee.** If, after the distribution of property under ORS 116.013, it appears that all or any part of the property distributed is required for the payment of claims and expenses of administration, including determined and undetermined state and federal tax liability, the personal representative shall petition the court to order the return of the property. Notice of the hearing on the petition shall be given as provided in ORS 111.215. Upon the hearing the court may order the distributee to return the property distributed or any part thereof, or to pay its value as of the time of distribution, and may specify the time within which the return or payment must be made. If the property is not returned or the payment is not made within the time ordered, the person failing to return the property or pay the value may be adjudged in contempt of court and judgment may be entered against the person and the sureties of the person, if any. [1969 c.591 §172]

#### ACCOUNTING AND DISTRIBUTION

**116.063 Liability of personal representative.** A personal representative may be liable for and is chargeable in the accounts of the personal representative with:

- (1) All of the estate of the decedent that comes into the possession of the personal representative at any time, including the income therefrom.
- (2) All property not a part of the estate if:
  - (a) The personal representative has commingled the property with the assets of the estate; or
  - (b) The property was received under a duty imposed on the personal representative by law in the capacity of personal representative.
- (3) Any loss to the estate arising from:
  - (a) Neglect or unreasonable delay in collecting the assets of the estate.
  - (b) Neglect in paying over money or delivering property of the estate.
  - (c) Failure to pay taxes as required by law or to close the estate within a reasonable time.
  - (d) Embezzlement or commingling of the assets of the estate with other property.
  - (e) Unauthorized self-dealing.
  - (f) Wrongful acts or omissions of copersonal representatives that the personal representative could have prevented by the exercise of ordinary care.
  - (g) Any other negligent or willful act or nonfeasance in the administration of the estate by which loss to the estate arises. [1969 c.591 §173]

**116.073 Nonliability of personal representative.** A personal representative is not liable for or chargeable in the accounts of the personal representative with:

- (1) Debts due the decedent or other assets of the estate that remain uncollected without the fault of the personal representative.
- (2) Loss by the decrease in value or destruction of property of the estate if the loss is caused without the fault of the personal representative. [1969 c.591 §174]

**116.083 Accounting by personal representative; rules.** (1) A personal representative shall make and file in the estate proceeding an account of the personal representative's administration:

- (a) Unless the court orders otherwise, annually within 60 days after the anniversary date of the personal representative's appointment.

(b) Within 30 days after the date of the personal representative's removal or resignation or the revocation of the personal representative's letters.

(c) When the estate is ready for final settlement and distribution.

(d) At such other times as the court may order.

(2) Each account must include the following information:

(a) The period of time covered by the account.

(b) The total value of the property with which the personal representative is chargeable according to the inventory, or, if there was a prior account, the amount of the balance of the prior account.

(c) All money and property received during the period covered by the account.

(d) All disbursements made during the period covered by the account. Vouchers for disbursements must accompany the account, unless otherwise provided by order or rule of the court, or unless the personal representative is a trust company that has complied with ORS 709.030, but that personal representative shall:

(A) Maintain the vouchers for a period of not less than one year following the date on which the order approving the final account is entered;

(B) Permit interested persons to inspect the vouchers and receive copies thereof at their own expense at the place of business of the personal representative during the personal representative's normal business hours at any time prior to the end of the one-year period following the date on which the order approving the final account is entered; and

(C) Include in each annual account and in the final account a statement that the vouchers are not filed with the account but are maintained by the personal representative and may be inspected and copied as provided in subparagraph (B) of this paragraph.

(e) The money and property of the estate on hand.

(f) Such other information as the personal representative considers necessary to show the condition of the affairs of the estate or as the court may require.

(g) A declaration under penalty of perjury in the form required by ORCP 1 E, or an unsworn declaration under ORS 194.800 to 194.835, if the declarant is physically outside the boundaries of the United States.

(3) When the estate is ready for final settlement and distribution, the account must also include:

(a) A statement that all Oregon income taxes, inheritance or estate taxes and personal property taxes, if any, have been paid, or if not so paid, that payment of those taxes has been secured by bond, deposit or otherwise, and that all required tax returns have been filed.

(b) A petition for a judgment authorizing the personal representative to distribute the estate to the persons and in the portions specified therein.

(4) If the distributees consent thereto in writing and all creditors of the estate have been paid in full other than creditors owed administrative expenses that require court approval, the personal representative, in lieu of the final account otherwise required by this section, may file a statement that includes the following:

(a) The period of time covered by the statement.

(b) A statement that all creditors have been paid in full other than creditors owed administrative expenses that require court approval.

(c) The statement and petition referred to in subsection (3) of this section.

(d) A declaration under penalty of perjury in the form required by ORCP 1 E, or an unsworn declaration under ORS 194.800 to 194.835, if the declarant is physically outside the boundaries of the United States.

(5) Notice of time for filing objections to the statement described in subsection (4) of this section is not

required.

(6) The Chief Justice of the Supreme Court may by rule specify the form and contents of accounts that must be filed by a personal representative. [1969 c.591 §175; 1973 c.506 §37; 1985 c.304 §1; 1995 c.453 §2; 1997 c.631 §405; 1999 c.592 §2; 2003 c.576 §375; 2005 c.22 §95; 2005 c.123 §1; 2007 c.284 §2; 2011 c.526 §19; 2013 c.218 §14]

**116.093 Notice for filing objections to final account and petition for distribution; rules.** (1) Upon filing the final account and petition for a judgment of distribution, the personal representative shall fix a time for filing objections thereto in a notice thereof. Not less than 20 days before the time fixed in the notice, the personal representative shall cause a copy of the notice to be mailed to:

- (a) Each heir at the last-known address of the heir, if the decedent died intestate.
- (b) Each devisee at the last-known address of the devisee, if the decedent died testate.
- (c) Each creditor who has not received payment in full and whose claim has not otherwise been barred.
- (d) Any other person known to the personal representative to have or to claim an interest in the estate being distributed.

(2) The notice need not be mailed to the personal representative.

(3) Proof of the mailing to those persons entitled to notice shall be filed in the estate proceeding at or before approval of the final account.

(4) If the Department of Human Services has presented a claim under ORS chapter 411 or ORS 416.310 to 416.340, 416.350 or 417.010 to 417.080, or the Oregon Health Authority has presented a claim under ORS chapter 414 or ORS 416.310 to 416.340, 416.350 or 416.510 to 416.990, or the Department of Corrections has presented a claim under ORS 179.620 (3), and the claim has not been settled or paid in full, the personal representative shall mail to the appropriate agency a copy of the final account at the same time, and shall make proof of the mailing in the same manner, as the notice provided for in this section.

(5) The Oregon Health Authority may adopt rules designating the Department of Human Services as the appropriate department to receive the final account for claims presented by the authority under subsection (4) of this section. [1969 c.591 §176; 1969 c.597 §280; 1989 c.348 §14; 2001 c.487 §14; 2001 c.900 §20a; 2003 c.576 §376; 2005 c.381 §21; 2007 c.284 §13; 2009 c.595 §82; 2011 c.720 §62]

**116.103 Objections to final account and petition.** Any person entitled to notice under ORS 116.093 may, within the time fixed for the filing, file in the estate proceeding objections to the final account and petition for distribution, specifying the particulars of the objections. Upon the filing of objections the court shall fix the time for hearing thereon. [1969 c.591 §177]

116.105 [Repealed by 1969 c.591 §305]

116.110 [Repealed by 1969 c.591 §305]

**116.113 Judgment of final distribution.** (1) If no objections to the final account and petition for distribution are filed, or if objections are filed, upon the hearing, the court shall enter a general judgment of final distribution. In the judgment the court shall designate the persons in whom title to the estate available for distribution is vested and the portion of the estate or property to which each is entitled under the will, by agreement approved by the court or pursuant to intestate succession. The judgment shall also contain any findings of the court in respect to:

- (a) Advancements.
- (b) Election against will by the surviving spouse.
- (c) Renunciation.
- (d) Lapse.

- (e) Adjudicated controversies.
- (f) Partial distribution, which shall be confirmed or modified.
- (g) Retainer.
- (h) Claims for which a special fund is set aside, and the amount set aside.
- (i) Contingent claims that have been allowed and are still unpaid.
- (j) Approval of the final account in whole or in part.

(2) The personal representative is not entitled to approval of the final account until Oregon income and personal property taxes, if any, have been paid and appropriate receipts and clearances therefor have been filed, or until payment of those taxes has been secured by bond, deposit or otherwise, provided, however, that no such receipts or clearances shall be required with regard to damages accepted upon settlement of a claim or recovered on a judgment in an action for wrongful death as provided in ORS 30.010 to 30.100.

(3) If, by agreement approved by the court, property is distributed to persons in whom title is vested by the judgment of final distribution otherwise than as provided by the will or pursuant to intestate succession, the judgment operates as a transfer of the property between those persons.

(4) The judgment of final distribution is a conclusive determination of the persons who are the successors in interest to the estate and of the extent and character of their interest therein, subject only to the right of appeal and the power of the court to vacate the judgment. [1969 c.591 §178; 1987 c.646 §2; 1989 c.921 §1; 1995 c.453 §3; 1999 c.59 §26; 2003 c.576 §377; 2005 c.568 §34]

116.115 [1961 c.674 §4; 1969 c.175 §11; renumbered 97.295]

116.120 [Repealed by 1969 c.591 §305]

**116.123 Effect of approval of final account.** To the extent that the final account is approved, the personal representative and the surety of the personal representative, subject to the right of appeal, to the power of the court to vacate its final orders and to the provisions of ORS 116.213, are relieved from liability for the administration of the trust. The court may disapprove the account in whole or in part, surcharge the personal representative for any loss caused by any breach of duty and deny in whole or in part the right of the personal representative to receive compensation. [1969 c.591 §179]

116.125 [Repealed by 1969 c.591 §305]

116.130 [Repealed by 1969 c.591 §305]

**116.133 Distribution; order in which assets appropriated; abatement.** (1) If the will expresses an order of abatement, or the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (2) of this section, the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(2) Except as provided in ORS 112.405 as to the shares of pretermitted children, and in ORS 114.600 to 114.725 relating to the elective share of the surviving spouse, shares of distributees abate without any preference or priority as between real and personal property in the following order:

- (a) Property not disposed of by the will.
- (b) Residuary devises.
- (c) General devises.
- (d) Specific devises.

(3) A general devise charged on any specific property or fund is considered, for purposes of abatement, property specifically devised to the extent of the value of the thing on which it is charged. Upon the failure or insufficiency of the thing on which it is charged, it is considered a general devise to the extent of the failure or

insufficiency.

(4) Abatement within each classification is in proportion to the amounts of property each of the distributees would have received had full distribution of the property been made in accordance with the terms of the will.

(5) Persons to whom the will gives tangible personal property not used in trade, agriculture or other business are not required to contribute from that property unless the particular devise forms a substantial amount of the total estate and the court specifically orders contribution because of the devise.

(6) When the subject matter of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets. [1969 c.591 §180; 2009 c.574 §22]

116.135 [Repealed by 1969 c.591 §305]

116.140 [Repealed by 1969 c.591 §305]

**116.143 Interest on pecuniary devises.** (1) As used in this section, “discount rate” means the auction average rate on 91-day United States Treasury bills, as established by the most recent auction of these Treasury bills and as reported by the United States Department of the Treasury, Bureau of the Public Debt. The discount rate shall be determined, with reference to the most recent auction date, before May 15 and before November 15 of each year.

(2) General pecuniary devises not entitled to a share of income under ORS 116.007 (2) bear interest payable from the residuary estate at the discount rate for a period beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is evidenced in the will or unless otherwise ordered by the court. [1969 c.591 §181; 2005 c.125 §1]

116.145 [Repealed by 1969 c.591 §305]

116.150 [Repealed by 1969 c.591 §305]

**116.153 Right of offset and retainer.** The amount of the indebtedness of a distributee to the estate if due, or its present worth if not due, shall be offset against the interest of the distributee in the estate; but the distributee has the benefit of any defense that would be available to the distributee in a direct proceeding for recovery of the debt. The right of offset and retainer is prior and superior to the rights of judgment creditors, heirs or assignees of the distributee. [1969 c.591 §182]

116.155 [Repealed by 1969 c.591 §305]

116.160 [Repealed by 1969 c.591 §305]

**116.163 Distribution to foreign personal representative.** When administration of an estate in this state has been completed and the estate is in a condition to be distributed, the court, upon application by the personal representative, may authorize the delivery to the personal representative of an estate of a decedent pending in a foreign jurisdiction of such property as the court finds appropriate for the payment of debts, taxes or other charges or for distribution to the distributees of the estate in the foreign jurisdiction. [1969 c.591 §183]

116.165 [Repealed by 1969 c.591 §305]

116.170 [Repealed by 1969 c.591 §305]

**116.173 Compensation of personal representative.** (1) Upon application to the court a personal representative is entitled to receive compensation for services as provided in this section. If there is more than one personal representative acting concurrently, the compensation shall not be increased, but may be divided among them as they agree or as the court may order. The compensation is a commission upon the whole estate, as follows:

(a) Upon the property subject to the jurisdiction of the court, including income and realized gains:

- (A) Seven percent of any sum not exceeding \$1,000.
- (B) Four percent of all above \$1,000 and not exceeding \$10,000.
- (C) Three percent of all above \$10,000 and not exceeding \$50,000.
- (D) Two percent of all above \$50,000.

(b) One percent of the property, exclusive of life insurance proceeds, not subject to the jurisdiction of the court but reportable for Oregon inheritance or estate tax or federal estate tax purposes.

(2) In all cases, further compensation as is just and reasonable may be allowed by the court for any extraordinary and unusual services not ordinarily required of a personal representative in the performance of duties as a personal representative.

(3) When a decedent by will has made special provision for the compensation of a personal representative, the personal representative is not entitled to any other compensation for services unless prior to appointment the personal representative signs and files with the clerk of the court a written renunciation of the compensation provided by the will. [Formerly 117.680; 2005 c.126 §1; 2011 c.526 §20]

116.175 [Repealed by 1969 c.591 §305]

116.180 [Repealed by 1969 c.591 §305]

**116.183 Expenses of personal representative; determination of attorney fees.** (1) A personal representative shall be allowed in the settlement of the final account all necessary expenses incurred in the care, management and settlement of the estate, including reasonable fees of appraisers, attorneys and other qualified persons employed by the personal representative. A partial award of such expenses, including fees, may be allowed prior to settlement of the final account upon petition, showing that the final account reasonably cannot be filed at that time, and upon notice as directed by the court. An award of reasonable attorney fees under this section shall be made after consideration of the customary fees in the community for similar services, the time spent by counsel, counsel's experience in such matters, the skill displayed by counsel, the excellence of the result obtained, any agreement as to fees which may exist between the personal representative and the counsel of the personal representative, the amount of responsibility assumed by counsel considering the total value of the estate, and such other factors as may be relevant. No single factor shall be controlling.

(2) A personal representative who defends or prosecutes any proceeding in good faith and with just cause, whether successful or not, is entitled to receive from the estate necessary expenses and disbursements, including reasonable attorney fees, in the proceeding. [1969 c.591 §185; 1977 c.733 §1; 1987 c.518 §1]

116.185 [Repealed by 1961 c.417 §2]

116.186 [1961 c.417 §1; repealed by 1969 c.591 §305]

116.190 [Repealed by 1969 c.591 §305]

**116.193 Order of escheat.** If it appears to the court, at any time after the expiration of four months after the date of the first publication of notice to interested persons, that there is no known person to take by descent the net intestate estate, the court shall order that the estate escheat to the State of Oregon and that the whole of the estate, after payment of claims, taxes and expenses of administration, be distributed to the Department of State Lands. There shall be no further proceeding in the administration of the estate, and the estate shall summarily be closed. [1969 c.591 §186]

116.195 [Repealed by 1969 c.591 §305]

**116.203 Disposition of unclaimed assets.** If a report filed in the estate proceeding by the personal representative not less than 30 days after the date of entry of the judgment of distribution shows that payment or delivery of property in the possession of the personal representative or under the control of the personal representative cannot be made to a distributee entitled thereto, either because the distributee refuses to accept

the property or because the distributee cannot be found, the court may direct the personal representative to pay or deliver the property to the Department of State Lands, to be placed in the escheat funds of the state. The personal representative shall take the receipt of the Department of State Lands stating from whom the property was received, a description of the property and the name of the person entitled to the property. The person entitled thereto may apply for and recover the property in the manner provided for recovery of escheat funds. [1969 c.591 §187; 2003 c.576 §378]

**116.213 Discharge of personal representative.** Upon the filing of receipts or other evidence satisfactory to the court that distribution has been made as ordered in the general judgment, the court shall enter a supplemental judgment of discharge. Except as provided in ORS 115.004, the discharge so entered operates as a release of the personal representative from further duties and as a bar to any action against the personal representative and the surety of the personal representative. The court may, in its discretion and upon such terms as may be just, within one year after entry of the supplemental judgment of discharge, permit an action to be brought against the personal representative and the surety of the personal representative if the supplemental judgment of discharge was taken through fraud or misrepresentation of the personal representative or the surety of the personal representative or through the mistake, inadvertence, surprise or excusable neglect of the claimant. [1969 c.591 §188; 1989 c.229 §9; 2003 c.576 §379]

**116.223 Recording of personal representative's deed in other counties.** The personal representative shall cause to be recorded in the deed records of any county in which real property belonging to the estate is situated, a personal representative's deed executed in the manner required by ORS chapter 93. The execution of the personal representative's deed shall not place the personal representative in the chain of title to the property so conveyed unless the personal representative is also an heir, devisee or claiming successor to the property conveyed. [1969 c.591 §189; 1991 c.191 §1]

**116.233 Reopening estate of decedent.** Upon the petition of any interested person, the court, with such notice as it may prescribe, may order the estate of a decedent reopened if other property is discovered, if any necessary act remains unperformed or for any other proper cause appearing to the court. The court may reappoint the former personal representative, or appoint another personal representative, to administer any additional property or to perform such other acts as are considered necessary. The provisions of law as to original administration apply, in so far as applicable, to accomplish the purpose for which the estate is reopened, but a claim that already is adjudicated or barred may not be asserted in the reopened administration. [1969 c.591 §190]

**116.243 Reports by court clerks, county clerks or court administrators to Department of State Lands.** A court clerk of any county in which the county court has judicial functions, the clerk of any county court that has jurisdiction over probate matters under ORS 111.075 or a court administrator, upon request, shall furnish to an estate administrator of the Department of State Lands appointed under ORS 113.235 the titles of estates of decedents that have remained open for more than three years and in which no heirs, or only persons whose right to inherit the proceeds thereof is being contested, have appeared to claim the estate. [1969 c.591 §191; 1991 c.230 §24; 1991 c.790 §9a; 2003 c.395 §17]

**116.253 Recovery of escheated property.** (1) Within 10 years after the death of a decedent whose estate escheated in whole or in part to the state, or within eight years after the entry of a judgment or order escheating property of an estate to the state, a claim may be made for the property escheated, or the proceeds thereof, by or on behalf of a person not having actual knowledge of the escheat or by or on behalf of a person who at the time of the escheat was unable to prove entitlement to the escheated property.

(2) The claim shall be made by a petition filed with the Director of the Department of State Lands. The claim is considered a contested case as provided in ORS 183.310 and there is the right of judicial review as provided in ORS 183.480. The petition must include a declaration under penalty of perjury in the form required by ORCP 1 E, or an unsworn declaration under ORS 194.800 to 194.835, if the declarant is physically outside



the boundaries of the United States, and shall state:

- (a) The age and place of residence of the claimant by whom or on whose behalf the petition is filed;
  - (b) That the claimant lawfully is entitled to the property or proceeds, briefly describing the property or proceeds;
  - (c) That at the time the property escheated to the state the claimant had no knowledge or notice thereof or was unable to prove entitlement to the escheated property and has subsequently acquired new evidence of that entitlement;
  - (d) That the claimant claims the property or proceeds as an heir or devisee or as the personal representative of the estate of an heir or devisee, setting forth the relationship, if any, of the claimant to the decedent who at the time of death was the owner;
  - (e) That 10 years have not elapsed since the death of the decedent, or that eight years have not elapsed since the entry of the judgment or order escheating the property to the state; and
  - (f) If the petition is not filed by the claimant, the status of the petitioner.
- (3) If it is determined that the claimant is entitled to the property or the proceeds thereof, the Director of the Department of State Lands shall deliver the property to the petitioner, subject to and charged with any tax on the property and the costs and expenses of the state in connection therewith.
- (4) If the person whose property escheated or reverted to the state was at any time a patient of a state institution in Oregon for persons with mental illness or of the Eastern Oregon Training Center, the reasonable unpaid cost of the care and maintenance of the person while a ward of the institution, regardless of when the cost was incurred, may be deducted from, or, if necessary, be offset in full against, the amount of the escheated property. The reasonable unpaid cost of care and maintenance shall be determined in accordance with ORS 179.701.
- (5) For the purposes of this section, the death of the decedent is presumed to have occurred on the date shown in the decedent's certified copy of the death record or in any other similar document issued by the jurisdiction in which the death occurred or issued by an agency of the federal government. [Formerly 120.130; 2003 c.395 §18; 2003 c.576 §380a; 2007 c.70 §23; 2007 c.284 §3; 2009 c.595 §83; 2013 c.36 §34; 2013 c.218 §15; 2013 c.366 §61]

**116.263 Payment of debt and delivery of property to foreign personal representative without local administration.** (1) Three months or more after the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession of personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may make payment of the indebtedness, in whole or in part, or deliver the personal property or the instrument evidencing the debt, obligation, stock or chose in action to the foreign personal representative of the nonresident decedent, upon an affidavit made by or on behalf of the foreign personal representative stating:

- (a) The date of the death of the nonresident decedent;
  - (b) That no local administration or application therefor is pending in this state; and
  - (c) That the foreign personal representative is entitled to payment or delivery.
- (2) Payment or delivery made in good faith on the basis of the affidavit is a discharge of the debtor or person having possession of the personal property.
- (3) Payment or delivery may not be made under this section if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the foreign personal representative. [1969 c.591 §193; 1987 c.646 §3]

## APPORTIONMENT OF ESTATE TAXES

### **116.303 Definitions for ORS 116.303 to 116.383.** As used in ORS 116.303 to 116.383:

(1) “Estate” means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state under ORS 118.005 to 118.540.

(2) “Person” means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency or local governmental agency.

(3) “Person interested in the estate” means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent’s estate. It includes a personal representative, guardian, conservator or trustee.

(4) “State” means any state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(5) “Tax” means the federal estate tax and the estate tax payable to this state under ORS 118.005 to 118.540, and interest and penalties imposed in addition to the tax. [1969 c.591 §194; 1977 c.666 §32; 2011 c.526 §21]

116.305 [Repealed by 1969 c.591 §305]

116.310 [Repealed by 1969 c.591 §305]

**116.313 Apportionment among interested persons; valuations; apportionment directed by will or trust.** Unless the will, or a revocable trust of which the decedent is settlor, otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose. In the event the decedent’s will or revocable trust directs a method of apportionment of tax different from the method described in ORS 116.303 to 116.383, the method described in the will or revocable trust shall control. A mere testamentary direction to pay debts, charges, taxes or expenses of administration shall not be considered a direction against apportionment of estate taxes. [1969 c.591 §195; 1973 c.506 §38; 2015 c.387 §32]

116.315 [Repealed by 1969 c.591 §305]

116.320 [Repealed by 1969 c.591 §305]

**116.323 Apportionment proceedings; equitable apportionment; penalties and interest; court determination.** (1) The court in which the administration of the estate is proceeding may on petition for the purpose determine the apportionment of the tax.

(2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in ORS 116.313 because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

(3) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the personal representative, the court may charge the personal representative with the amount of the assessed penalties and interest.

(4) In any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with ORS 116.303 to 116.383, the determination of the probate court in respect thereto is prima facie correct. [1969 c.591 §196]

116.325 [Repealed by 1969 c.591 §305]

116.330 [Repealed by 1969 c.591 §305]

**116.333 Withholding of tax; recovery from distributee; bond of distributee.** (1) The personal representative or other person who is in possession of the property of the decedent and who is required to pay

the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to the person, the amount of tax attributable to the interest of the person. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with ORS 116.303 to 116.383.

(2) If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative. [1969 c.591 §197]

116.335 [Repealed by 1969 c.591 §305]

116.340 [Repealed by 1969 c.591 §305]

**116.343 Allowances for exemptions, deductions and credits.** (1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purpose of the gift inures to the benefit of the person bearing that relationship or receiving the gift, except that when an interest is subject to a prior present interest that is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or estate taxes of a foreign country paid by the decedent or the estate of the decedent inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof in respect to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment thereof to the extent that, or in proportion as, the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in ORS 116.313, and to that extent no apportionment shall be made against the property. This subsection does not apply to any case in which the result will be to deprive the estate of a deduction otherwise allowable under section 2053 (d) of the Internal Revenue Code (26 U.S.C. 2053 (d)) relating to deduction for state estate taxes on transfers for public, charitable or religious uses. [1969 c.591 §198; 2005 c.22 §96; 2011 c.526 §22]

**116.353 Income interests; life or temporary interests; charging corpus.** No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder. [1969 c.591 §199]

**116.363 Proceedings for recovery of tax; liability of personal representative; apportionment of amount not recovered.** Neither the personal representative nor other person required to pay the tax is under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to that person until the expiration of three months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the suit or proceeding within a

reasonable time after the three-month period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment. [1969 c.591 §200]

**116.373 Foreign personal representatives and estates.** A personal representative acting in another state or a person required to pay the tax who is domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct. [1969 c.591 §201]

**116.383 Construction.** ORS 116.303 to 116.383 embody the Uniform Estate Tax Apportionment Act and shall be construed to effectuate its general purpose to make uniform the law of those states which enact it. [1969 c.591 §202]

116.405 [Repealed by 1969 c.591 §305]

116.410 [Repealed by 1969 c.591 §305]

116.415 [Repealed by 1969 c.591 §305]

116.420 [Amended by 1957 c.364 §1; repealed by 1969 c.591 §305]

116.425 [Repealed by 1969 c.591 §305]

116.430 [Repealed by 1969 c.591 §305]

116.435 [Repealed by 1969 c.591 §305]

116.440 [Repealed by 1969 c.591 §305]

116.445 [Repealed by 1969 c.591 §305]

116.450 [Repealed by 1969 c.591 §305]

116.455 [Repealed by 1969 c.591 §305]

116.460 [Repealed by 1969 c.591 §305]

116.465 [Repealed by 1969 c.591 §305]

116.505 [Repealed by 1969 c.591 §305]

116.510 [Amended by 1957 c.410 §1; repealed by 1969 c.591 §305]

116.515 [Repealed by 1969 c.591 §305]

116.520 [Repealed by 1969 c.591 §305]

116.525 [Amended by 1957 c.410 §2; repealed by 1969 c.591 §305]

116.530 [Amended by 1957 c.410 §3; repealed by 1969 c.591 §305]

116.535 [Repealed by 1969 c.591 §305]

116.540 [Amended by 1957 c.410 §4; repealed by 1969 c.591 §305]

116.545 [Amended by 1957 c.410 §5; repealed by 1969 c.591 §305]

116.550 [Amended by 1969 c.198 §57; repealed by 1969 c.591 §305]

116.555 [Repealed by 1969 c.591 §305]

116.560 [Repealed by 1969 c.591 §305]

116.565 [Repealed by 1969 c.591 §305]  
116.570 [Repealed by 1969 c.591 §305]  
116.575 [Repealed by 1969 c.591 §305]  
116.580 [Repealed by 1969 c.591 §305]  
116.585 [Repealed by 1969 c.591 §305]  
116.590 [Amended by 1955 c.444 §1; repealed by 1969 c.591 §305]  
116.595 [Amended by 1955 c.444 §2; repealed by 1969 c.591 §305]  
116.705 [Repealed by 1969 c.591 §305]  
116.710 [Repealed by 1969 c.591 §305]  
116.715 [Repealed by 1969 c.591 §305]  
116.720 [Amended by 1955 c.149 §1; repealed by 1969 c.591 §305]  
116.725 [Repealed by 1969 c.591 §305]  
116.730 [Repealed by 1969 c.591 §305]  
116.735 [Repealed by 1969 c.591 §305]  
116.740 [Repealed by 1969 c.591 §305]  
116.745 [Amended by 1963 c.417 §6; repealed by 1969 c.591 §305]  
116.750 [Repealed by 1969 c.591 §305]  
116.755 [Repealed by 1969 c.591 §305]  
116.760 [Repealed by 1969 c.591 §305]  
116.765 [Repealed by 1969 c.591 §305]  
116.770 [Repealed by 1969 c.591 §305]  
116.775 [Repealed by 1969 c.591 §305]  
116.780 [Repealed by 1969 c.591 §305]  
116.785 [Repealed by 1969 c.591 §305]  
116.790 [Repealed by 1969 c.591 §305]  
116.795 [Repealed by 1969 c.591 §305]  
116.800 [Repealed by 1969 c.591 §305]  
116.805 [Amended by 1965 c.504 §1; repealed by 1969 c.591 §305]  
116.810 [Repealed by 1965 c.399 §1 (116.811 enacted in lieu of 116.810)]  
116.811 [1965 c.399 §2 (enacted in lieu of 116.810); repealed by 1969 c.591 §305]  
116.815 [Repealed by 1969 c.591 §305]  
116.820 [Amended by 1953 c.350 §2; repealed by 1969 c.591 §305]  
116.825 [Amended by 1963 c.417 §11; repealed by 1969 c.591 §305]  
116.830 [Repealed by 1969 c.591 §305]  
116.835 [Subsection (1) enacted as 1903 p.133 §2; subsection (2) enacted as 1907 c.175; subsection (3) enacted as 1917 c.114 §2; subsection (4) enacted as 1943 c.26; 1969 c.591 §133; renumbered 114.365]  
116.840 [1963 c.417 §3; repealed by 1969 c.591 §305]  
116.850 [1963 c.417 §4; repealed by 1969 c.591 §305]

- 116.860 [1963 c.417 §5; repealed by 1969 c.591 §305]
- 116.870 [1963 c.417 §7; repealed by 1969 c.591 §305]
- 116.880 [1963 c.417 §8; repealed by 1969 c.591 §305]
- 116.890 [1963 c.417 §9; repealed by 1969 c.591 §305]
- 116.900 [1963 c.417 §10; repealed by 1969 c.591 §305]
- 116.990 [Repealed by 1969 c.591 §305]

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Chapter 117 — Estates of Absentees

2016 EDITION

ESTATES OF ABSENTEES

PROBATE LAW

- 117.005 Petition for administration of estate of absentee
- 117.015 Setting date of hearing on petition; notice of hearing
- 117.025 Appointment of person to represent absentee; directing search
- 117.035 Hearing on petition
- 117.045 Effect of finding of death
- 117.055 Procedure for administering estate
- 117.065 Revocation of letters; proceedings upon revocation
- 117.075 Rights of absentee
- 117.085 Substitution of parties
- 117.095 Costs, expenses and charges

**117.005 Petition for administration of estate of absentee.** Administration may be had upon the estate of an absentee. A petition for administration shall state, in addition to the information required by ORS 113.035:

- (1) Whether the absentee, when last heard from, was a resident or nonresident of this state.
- (2) The address of the absentee at the last-known domicile of the absentee.

(3)(a) That, to the best knowledge of the petitioner and after diligent search, the whereabouts of the absentee is and has been unknown for a period stated of not less than one year, and that the petitioner has reason to believe and believes the absentee is dead;

(b) That the death of the absentee at the time, location and in the circumstances stated in the petition is probable, and that the fact of death is in doubt solely by reason of the failure to find or identify the remains of the absentee; or

(c) That there is a presumption that the absentee is dead under the provisions of ORS 176.740. [1969 c.591 §203; 2003 c.560 §2]

117.010 [Repealed by 1969 c.591 §305]

**117.015 Setting date of hearing on petition; notice of hearing.** (1) Upon the filing of a petition under ORS 117.005, the clerk of the court shall set a date for hearing not less than 30 days after the date of filing the petition, unless the court sets an earlier date. A copy of the notice of the hearing shall be sent:

(a) To the absentee at the last-known address of the absentee by registered mail or by certified mail with return receipt.

(b) By ordinary mail to the devisees and heirs named in the petition.

(2) The court may order that additional notice of the hearing be given by publication or by other means. Proof of mailing or other notice shall be made by the petitioner and filed in the proceeding. [1969 c.591 §204; 1973 c.506 §39; 1991 c.249 §15; 2007 c.284 §14]

117.020 [Repealed by 1969 c.591 §305]

**117.025 Appointment of person to represent absentee; directing search.** The court may appoint some disinterested person as guardian ad litem to appear for the absentee at the hearing on the petition. The court may direct the petitioner or the guardian ad litem to make search for the absentee in any manner the court considers advisable, including any or all of the following methods:

(1) By inserting in one or more suitable publications a notice requesting information from any person having knowledge of the whereabouts of the absentee.

(2) By notifying officers of justice and public welfare agencies in appropriate locations of the disappearance of the absentee.

(3) By engaging the services of an investigation agency. [1969 c.591 §205]

117.030 [Amended by 1959 c.638 §11; repealed by 1969 c.591 §305]

**117.035 Hearing on petition.** Upon the hearing on the petition the court shall determine whether the absentee has died and if so, the date of death and whether the absentee died testate or intestate. Upon finding that the absentee has died, the court shall grant letters accordingly, or, in the absence of that finding, may deny the petition. An appeal may be taken from the order of the court. [1969 c.591 §206]

**117.045 Effect of finding of death.** The finding of the court that the absentee has died is conclusive as to the estate of the absentee only if:

(1) Notice of the hearing on the petition was given as required by ORS 117.015; and

(2) The court finds that diligent search for the absentee was made. [1969 c.591 §207]

**117.055 Procedure for administering estate.** Upon the entry of the order of the court finding that the absentee has died and granting letters, administration of the estate of the absentee, whether testate or intestate, shall proceed as provided for the estates of other decedents, except as otherwise provided in this chapter. [1969 c.591 §208]

**117.065 Revocation of letters; proceedings upon revocation.** Upon proof that the absentee is alive, letters theretofore granted shall be revoked. Acts of the personal representative before revocation of letters are as valid as though the letters had not been revoked, but after revocation the personal representative has no further power in the capacity of personal representative except as provided in this section. The personal representative shall pay claims allowed and proved. Within 30 days after letters are revoked under this section, the personal representative must file an account of administration for the period of time before revocation of letters and transfer any property in the possession of the personal representative to the person for whose estate the personal representative acted or to the authorized agent of that person. [1969 c.591 §209; 1999 c.592 §3]

**117.075 Rights of absentee.** (1) If property of the absentee has been sold by the personal representative, the absentee has no right, title or interest in or to the property sold, but only to the proceeds realized therefrom or so much thereof as may remain in the possession of the personal representative upon the closing of the estate.

(2) The absentee, for a period of five years after distribution of the estate, has a right to recover from the distributees any of the estate or proceeds of the estate of the absentee that remain in their possession, but there is no right of recovery from purchasers of property sold by the distributees. [1969 c.591 §210]

**117.085 Substitution of parties.** After revocation of letters the absentee may be substituted as plaintiff in actions brought by the personal representative. The absentee may be substituted as defendant, upon application by the absentee or application by the plaintiff, in actions brought against the personal representative. [1969 c.591 §211]

**117.095 Costs, expenses and charges.** The costs, expenses and charges attending the granting of letters and their revocation shall be paid out of the estate of the absentee. If the petition for administration is not granted, the petitioner shall pay the costs, expenses and charges. [1969 c.591 §212]

117.110 [Amended by 1953 c.441 §3; 1955 c.597 §1; 1959 c.652 §21; repealed by 1969 c.591 §305]

117.120 [Repealed by 1969 c.591 §305]

117.130 [Repealed by 1969 c.591 §305]

117.140 [Repealed by 1969 c.591 §305]

117.150 [Repealed by 1969 c.591 §305]

117.160 [Repealed by 1969 c.591 §305]

117.170 [Repealed by 1969 c.591 §305]

117.180 [Repealed by 1969 c.591 §305]

117.310 [Repealed by 1969 c.591 §305]

117.315 [1955 c.183 §2; 1957 c.662 §1; repealed by 1969 c.591 §305]

117.320 [Repealed by 1969 c.591 §305]

117.330 [Repealed by 1969 c.591 §305]

117.340 [Repealed by 1969 c.591 §305]

117.350 [Amended by 1957 c.363 §1; repealed by 1969 c.591 §305]

117.360 [Repealed by 1957 c.363 §2 (117.361 enacted in lieu of 117.360)]

117.361 [1957 c.363 §3 (enacted in lieu of 117.360); repealed by 1969 c.591 §305]

117.370 [Repealed by 1969 c.591 §305]

117.380 [Amended by 1959 c.638 §12; repealed by 1969 c.591 §305]

117.390 [Repealed by 1969 c.591 §305]

117.510 [Repealed by 1969 c.591 §305]

117.520 [Repealed by 1969 c.591 §305]

117.530 [Repealed by 1969 c.591 §305]

117.540 [Repealed by 1969 c.591 §305]

117.550 [Repealed by 1969 c.591 §305]

117.560 [Repealed by 1969 c.591 §305]

117.610 [Repealed by 1969 c.591 §305]

117.612 [1961 c.515 §1; 1965 c.514 §2; repealed by 1969 c.591 §305]

117.615 [1959 c.62 §1; repealed by 1969 c.591 §305]

117.620 [Repealed by 1969 c.591 §305]

117.630 [Repealed by 1969 c.591 §305]

117.640 [Repealed by 1969 c.591 §305]

117.650 [Repealed by 1969 c.591 §305]

117.660 [Repealed by 1969 c.591 §305]

117.670 [Repealed by 1969 c.591 §305]

117.680 [Amended by 1969 c.591 §184; renumbered 116.173]



117.690 [Repealed by 1969 c.591 §305]

117.710 [1965 c.345 §1; repealed by 1969 c.591 §305]

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Chapter 118 — Estate Tax

2016 EDITION

ESTATE TAX

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#### GENERAL PROVISIONS

**118.005 Definitions for ORS 118.005 to 118.540.** As used in ORS 118.005 to 118.540, unless the context requires otherwise:

(1) “Beneficiary” means the recipient of a beneficial interest in property or the income therefrom transferred in a manner taxable under ORS 118.005 to 118.540.

(2) “Department” means the Department of Revenue.

(3) “Director” means the Director of the Department of Revenue.

(4) “Executor” means the executor, administrator, personal representative, fiduciary, or custodian of property of the decedent, or, if there is no executor, administrator, fiduciary or custodian appointed, qualified and acting, then any person who is in the actual or constructive possession of any property includable in the estate of the decedent for estate tax purposes whether or not such estate is subject to administration.

(5) “Federal taxable estate” means the taxable estate as determined under subtitle B, chapter 11 of the Internal Revenue Code.

(6) “Gross estate” has the meaning given that term in section 2031 of the Internal Revenue Code.

(7) “Oregon taxable estate” means the federal taxable estate with the adjustments provided by ORS 118.010 (3).

(8) “Passes” includes any case where for the purposes of ORS 118.005 to 118.540 a taxable transfer takes place or is deemed to take place.

(9) “Personal representative” means personal representative as defined in ORS 111.005. [1959 c.418 §7; 1969 c.520 §23; 1971 c.567 §4; 1973 c.344 §1; 1975 c.762 §1; 1977 c.666 §1; 1997 c.99 §6; 2011 c.526 §1]

**118.007 Connection to federal law; meaning of terms.** Any term used in ORS 118.005 to 118.540 has the same meaning as when used in a comparable context in the laws of the federal Internal Revenue Code relating to federal estate taxes, unless a different meaning is clearly required or the term is specifically defined in ORS 118.005 to 118.540. Any reference in ORS 118.005 to 118.540 to the Internal Revenue Code means the federal Internal Revenue Code as amended and in effect on December 31, 2010, except where the Legislative Assembly has specifically provided otherwise. [2003 c.806 §2; 2011 c.526 §2]

118.009 [2003 c.806 §1a; repealed by 2011 c.526 §29]

**118.010 Imposition and amount of tax in general; Oregon taxable estate; out-of-state property; nonresident decedents; rules.** (1) As used in this section:

(a) “Nonresident decedent” means an individual who is domiciled outside of Oregon on the date the individual dies.

(b) “Resident decedent” means an individual who is domiciled in Oregon on the date the individual dies.

(2) A tax is imposed upon a transfer of the property of each:

(a) Resident decedent; and

(b) Nonresident decedent whose estate includes any interest in:

- (A) Real property located in Oregon; or
- (B) Tangible personal property located in Oregon.

(3) The Oregon taxable estate to be used for purposes of computing the tax imposed under this section shall be the federal taxable estate:

- (a) Increased by:

(A) The deduction for state estate, inheritance, legacy or succession taxes allowable under section 2058 of the Internal Revenue Code; and

(B) If the decedent is a surviving spouse owning the property at death, the value of the following property unless included in the federal taxable estate:

(i) Property for which a deduction for Oregon special marital property under ORS 118.016 was previously allowed; or

(ii) Property for which a separate Oregon election under section 2056 or 2056A of the Internal Revenue Code was previously allowed; and

- (b) Reduced by:

(A) The value on the date of the decedent’s death of all Oregon special marital property under ORS 118.013; and

(B) Any other applicable exclusions or deductions.

(4) The tax imposed under this section shall be calculated by applying the rates in the following table. If the Oregon taxable estate is at least the amount in column 1, but less than the amount in column 2, the tax is the amount in column 3, increased by the excess above the amount in column 1 multiplied by the percentage in column 4:

1	2	3	4
\$1,000,000	\$1,500,000	\$0	10.0%
1,500,000	2,500,000	50,000	10.25%
2,500,000	3,500,000	152,500	10.5%
3,500,000	4,500,000	257,500	11.0%
4,500,000	5,500,000	367,500	11.5%
5,500,000	6,500,000	482,500	12.0%
6,500,000	7,500,000	602,500	13.0%
7,500,000	8,500,000	732,500	14.0%
8,500,000	9,500,000	872,500	15.0%
9,500,000		1,022,500	16.0%

(5) In the case of a resident decedent owning, on the date of the decedent’s death, real property located outside Oregon or tangible personal property located outside Oregon, the tax imposed under this section shall be the amount determined under subsection (4) of this section multiplied by a ratio. The numerator of the ratio shall be the sum of the value of the decedent’s real property located in Oregon, tangible personal property located in Oregon and intangible personal property. The numerator may not include any intangible personal property subject to a tax imposed, as a result of the death of the decedent, by another state or country. The denominator of the ratio shall be the total value of the decedent’s gross estate.

(6) In the case of a nonresident decedent owning, on the date of the decedent's death, real property located in Oregon or tangible personal property located in Oregon, the tax imposed under this section shall be the amount determined under subsection (4) of this section multiplied by a ratio. The numerator of the ratio shall be the sum of the value of the decedent's real property located in Oregon and tangible personal property located in Oregon. The denominator shall be the total value of the decedent's gross estate.

(7) Payment, in whole or in part, of estate taxes from funds of an estate or trust on any benefit subject to tax under ORS 118.005 to 118.540 is not to be considered a further taxable benefit, when such payment is directed by the decedent's will or by a trust agreement.

(8)(a) If the federal taxable estate is determined by making an election under section 2031(c), 2032, 2032A, 2056 or 2056A of the Internal Revenue Code or another provision of the Internal Revenue Code, or if a federal estate tax return is not required under the Internal Revenue Code, an executor may make separate elections for state estate tax purposes under that same provision.

(b) An executor may make elections under ORS 118.013 and 118.140 and section 2056 of the Internal Revenue Code for state estate tax purposes.

(c) Elections described in this subsection are irrevocable. [Amended by 1955 c.727 §1; 1959 c.418 §1; 1965 c.470 §1; 1969 c.591 §213; 1975 c.685 §3; 1977 c.666 §2; 1997 c.99 §7; 2003 c.806 §6; 2011 c.526 §3]

**118.013 Taxable estate adjustment for Oregon special marital property; rules.** (1) As used in this section and ORS 118.016, "permissible distributee" has the meaning given that term in ORS 130.010.

(2) Oregon special marital property consists of any trust or other property interest, or a portion of a trust or property interest:

(a) In which principal or income may be accumulated or distributed to or for the benefit of only the surviving spouse of the decedent during the lifetime of the surviving spouse;

(b) In which a person may not transfer or exercise a power to appoint any part of the trust or other property interest to a person other than the surviving spouse during the lifetime of the surviving spouse; and

(c) For which the executor of the estate of the decedent has made the election described in ORS 118.016 (1).

(3) If a trust or other property interest would qualify as Oregon special marital property under subsection (2) of this section except that the trust or other property interest allows principal or income to be distributed to other persons in addition to the surviving spouse, the executor may elect to set aside a share of the trust or other property interest as a separate share of the trust or property interest or as a separate trust, which shall qualify as Oregon special marital property if:

(a) The executor makes the election described in ORS 118.016 (1);

(b) Each permissible distributee makes the election described in ORS 118.016 (2);

(c) The surviving spouse makes the election described in ORS 118.016 (2); and

(d) All statements of election are attached to the estate tax return filed with respect to the estate of the decedent, or are filed or maintained as records as otherwise prescribed by the Department of Revenue by rule. [2005 c.124 §2; 2011 c.526 §4]

**118.016 Oregon special marital property election; rules; form.** (1) The executor of an estate containing property that the executor seeks to qualify as Oregon special marital property under ORS 118.013 shall make an election under this subsection in order for the property to be Oregon special marital property. The election shall be made:

(a) By attaching a statement to the estate tax return for the estate of the decedent that identifies the trust or other property interest that constitutes Oregon special marital property and that affirms that the identified

property meets the requirements of Oregon special marital property under ORS 118.013 and will be administered as required under ORS 118.013; or

(b) In such other manner as the Department of Revenue prescribes by rule.

(2) For a trust or other property interest described in ORS 118.013 (3), in order for any portion of the trust or other property interest to be Oregon special marital property, in addition to the election of the executor described in subsection (1) of this section, the surviving spouse and each permissible distributee who may be eligible for a distribution from the trust or other property interest shall make an election and provide written consent that is in substantially the following form:

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CONSENT TO ESTABLISHMENT OF  
OREGON SPECIAL MARITAL PROPERTY

(a) ELECTION TO BE SIGNED BY ALL PERMISSIBLE DISTRIBUTEES EXCEPT THE SURVIVING SPOUSE: Each of the undersigned acknowledge and consent to a portion of the \_\_\_\_\_ (name of trust or other property interest) being set aside as a separate share or trust in order to qualify for the Oregon special marital property election in accordance with ORS 118.013, for the primary purpose of reducing or eliminating the Oregon estate tax due on the estate of \_\_\_\_\_ (name of decedent). The undersigned together with the surviving spouse constitute all of the persons living on the date of this election who may be entitled to a distribution during the lifetime of the surviving spouse from the \_\_\_\_\_ (name of trust or other property interest). Each of the undersigned, both on behalf of the undersigned and on behalf of the unborn lineal descendants of the undersigned, irrevocably agrees to release all rights to any current interest in the Oregon special marital property during the lifetime of the surviving spouse. Each of the undersigned agrees that all other provisions of the \_\_\_\_\_ (name of trust or other property interest) shall remain in effect and that, upon the death of the surviving spouse, any remaining Oregon special marital property shall be distributed as otherwise provided in the trust or other property interest.

Signature of: \_\_\_\_\_  
(permissible distributee)

Signature of: \_\_\_\_\_  
(permissible distributee)

(b) ELECTION TO BE SIGNED BY THE SURVIVING SPOUSE: I am the surviving spouse of \_\_\_\_\_ (name of decedent). I acknowledge and consent to a portion of the \_\_\_\_\_ (name of trust or other property interest) being set aside as a separate share or trust in order to qualify as Oregon special marital property under ORS 118.013, for the primary purpose of reducing or eliminating the Oregon estate tax due on the estate of \_\_\_\_\_ (name of decedent). I, together with all of the other individuals executing the election in accordance with ORS 118.013, constitute all of the persons living on the date of this election who are permissible distributees or who may be entitled to a distribution from the Oregon special marital property to which this election applies. I agree that all other terms, conditions and provisions that apply to the \_\_\_\_\_ (name of trust or other property interest) shall apply to the Oregon special marital property to which this election applies, and that upon my death, any remaining Oregon special marital property shall be distributed as otherwise provided in the trust or other property interest.

Signature of: \_\_\_\_\_  
(surviving spouse)

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_

Notary Public of Oregon

My commission expires: \_\_\_\_\_

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(3) Elections made under this section are irrevocable.

(4) The custodial parent or court appointed guardian of a permissible distributee who is a minor, or any person who is authorized under ORS 130.110, may sign the election on behalf of the permissible distributee and the unborn lineal descendants of the permissible distributee. [2005 c.124 §3; 2011 c.526 §5]

118.019 [2005 c.124 §4; repealed by 2011 c.526 §29]

118.020 [Amended by 1961 c.455 §1; 1963 c.135 §1; 1971 c.652 §1; 1973 c.793 §1; 1977 c.666 §3; 1987 c.293 §67; repealed by 1997 c.99 §24]

118.025 [1987 c.646 §12; 1989 c.625 §80; repealed by 1997 c.99 §24]

118.030 [Repealed by 1997 c.99 §24]

118.035 [1973 c.759 §2; 1975 c.685 §4; 1977 c.666 §4; 1989 c.224 §8; repealed by 1997 c.99 §24]

118.037 [1975 c.685 §2; repealed by 1977 c.666 §36]

118.040 [Amended by 1959 c.418 §2; 1977 c.666 §5; repealed by 1997 c.99 §24]

118.050 [Amended by 1955 c.727 §2; 1963 c.392 §1; 1967 c.485 §1; 1975 c.687 §1; 1977 c.666 §6; repealed by 1997 c.99 §24]

118.060 [Repealed by 1997 c.99 §24]

118.070 [Amended by 1955 c.727 §3; 1959 c.418 §3; 1961 c.455 §2; 1963 c.283 §1; 1965 c.470 §2; 1969 c.493 §74; 1973 c.132 §1; 1973 c.299 §1; 1973 c.703 §1; 1975 c.762 §2; 1977 c.666 §7; 1983 c.632 §1; repealed by 1997 c.99 §24]

118.075 [1963 c.435 §6; 1969 c.493 §75; repealed by 1977 c.666 §36]

118.080 [Amended by 1959 c.418 §4; 1961 c.455 §3; 1973 c.703 §2; 1975 c.762 §3; 1977 c.666 §8; repealed by 1997 c.99 §24]

118.085 [1971 c.593 §2; repealed by 1997 c.99 §24]

118.090 [Amended by 1963 c.68 §1; 1977 c.666 §16; repealed by 1997 c.99 §24]

118.095 [1969 c.112 §1; repealed by 1977 c.666 §36]

**118.100 Time for filing return and paying tax; refunds; effects of change in federal estate tax return or special valuation disqualification.** (1) The tax provided for in ORS 118.010 shall take effect at and accrue upon the death of the decedent. A return shall be filed and the tax shall be paid to the Department of Revenue on the date the federal estate tax is payable or, if no federal estate tax return is required, no later than nine months following the date of death of the decedent. If the department determines, pursuant to an amended return or refund claim, that the amount of tax imposed by ORS 118.010 is less than the amount theretofore paid, the excess tax shall be refunded by the department with interest at the rate established by ORS 305.220 for each month or fraction thereof during a period beginning 45 days after the due date of the return or on the date the amended return or refund claim is filed, whichever is later, and ending at the time the refund is made.

(2) If the amount of federal estate tax reported on a federal estate tax return is changed or corrected by the Internal Revenue Service or other competent authority, resulting in a change in the Oregon taxable estate, the executor shall report the change or correction in federal estate tax to the department. If the federal change or correction results in a reduction of the Oregon taxable estate, the report of the change or correction shall be treated by the department as a claim for refund pursuant to ORS 305.270 and, notwithstanding the limitations of ORS 305.270, shall be deemed timely if filed with the department within two years after the federal correction

was made. If the change or correction results in an increase in the Oregon taxable estate, the department may issue a notice of deficiency within two years after the federal change or correction was made or within two years after receiving a report of the federal change or correction, whichever is the later. Any executor filing an amended federal estate tax return shall also file an amended return with the department within 90 days thereafter.

(3)(a) In the case of an estate that contains property that is valued under section 2032A of the Internal Revenue Code for federal estate tax purposes (relating to the valuation of certain farm or other property) and that ceases to qualify for valuation under section 2032A, an additional tax under ORS 118.005 to 118.540 shall be imposed in the amount attributable to the change in the value of the estate resulting from the imposition of additional federal estate tax under section 2032A.

(b) The department shall be notified of the disqualification of the property from valuation under section 2032A in the same time and manner as the federal Internal Revenue Service is notified of the disqualification.

(c) The period for assessment of the tax imposed under this subsection, including any penalty or interest, shall be two years from the date on which the department receives the notice described in paragraph (b) of this subsection.

(d) The other provisions of ORS 118.005 to 118.540 and ORS chapter 305 shall apply to the additional tax imposed under this subsection in the same manner in which those provisions apply to the tax imposed under ORS 118.010.

(4) For purposes of this section, a change or correction of a federal estate tax return is deemed to be made on the date of the federal audit report.

(5) The executor shall, upon request of the department, supply a copy of the federal estate tax return which the executor has filed or may file with the federal government, or a copy of any federal agent's report upon any audit or adjustment of the federal estate tax return.

(6) The executor shall explain, on the return, how the reported values were determined and attach copies of any appraisals. [Amended by 1959 c.418 §5; 1971 c.732 §1; 1973 c.703 §3; 1975 c.685 §6; 1977 c.666 §9; 1979 c.582 §1; 1987 c.646 §4; 1989 c.626 §1; 1997 c.99 §8; 2011 c.526 §6]

118.110 [Amended by 1953 c.704 §1; 1961 c.455 §4; 1973 c.268 §1; 1975 c.685 §5; 1977 c.666 §10; 1979 c.582 §2; repealed by 1997 c.99 §24]

**118.120 Qualified family-owned business interests; additional tax.** (1) In the case of an estate that contains a qualified family-owned business interest, an additional tax shall be imposed under ORS 118.005 to 118.540 if:

(a) The value of the interest was originally taken as a deduction under section 2057(a) of the Internal Revenue Code in computing the value of the taxable estate for federal estate tax purposes; and

(b) An additional federal estate tax is imposed with respect to the qualified family-owned business interest for the reasons stated in section 2057(f) of the Internal Revenue Code.

(2)(a) The additional tax imposed under this section shall equal the amount of any allowable increase in the state death tax credit under section 2011 of the Internal Revenue Code if the applicable percentage of the family-owned business interest that is being disqualified under section 2057(f) of the Internal Revenue Code were added to the taxable estate for federal estate tax purposes.

(b) The applicable percentage to be used in calculating the additional tax under this subsection shall equal the applicable percentage used in calculating the additional federal estate tax under section 2057(f)(2)(B) of the Internal Revenue Code.

(3) The Department of Revenue must be notified of the qualified family-owned business interest being made subject to additional federal estate tax under section 2057(f) of the Internal Revenue Code at the same

time and in the same manner as the Internal Revenue Service is notified of the additional federal tax.

(4) The period for assessment of the additional tax imposed under this section, including any penalty or interest, shall be two years from the date on which the department receives the notice described in subsection (3) of this section.

(5) The other provisions of ORS 118.005 to 118.540 and ORS chapter 305 shall apply to the additional tax imposed under this section in the same manner in which those provisions apply to the tax imposed under ORS 118.010. [1999 c.90 §27]

**118.140 Credit based upon value of natural resource or commercial fishing property; rules.** (1) As used in this section:

(a) “Adjusted gross estate” means the value of the gross estate reduced by the sum of the amounts allowable under sections 2053 and 2054 of the Internal Revenue Code.

(b) “Family member” means a member of the family, as defined in section 2032A of the Internal Revenue Code, of the decedent.

(c) “Farm business” means a business operated for the primary purpose of obtaining a profit in money by:

(A) Raising, harvesting or selling fruit or crops;

(B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or bees, or the produce thereof;

(C) Dairying and selling dairy products;

(D) Breeding, stabling or training equines;

(E) Propagating, cultivating, maintaining or harvesting aquatic species, birds or animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

(F) Raising nursery stock;

(G) Practicing animal husbandry; or

(H) Raising other agricultural or horticultural products.

(d) “Farm use” has the meaning given that term in ORS 308A.056.

(e) “Fishing business” has the meaning given that term in section 1301(b)(4) of the Internal Revenue Code.

(f) “Forestland” has the meaning given that term in ORS 321.201.

(g) “Forestry business” means a business operated for the primary purpose of obtaining a profit in money by the planting, cultivating, caring for, preparing, harvesting or cutting of timber or trees for market.

(h) “Homesite” has the meaning given that term in ORS 308A.250.

(i) “Natural resource property” means the following property in this state, if on the date of the decedent’s death the property is owned by the decedent and used in the operation of a farm business, forestry business or fishing business owned by the decedent:

(A) Real property used as forestland or as forestland homesites, not to exceed 5,000 acres, or that is in farm use.

(B) Timber or trees.

(C) Crops, fruit or other horticultural products, both growing and stored.

(D) Forestry business or farm business equipment.

(E) Livestock, poultry, fur-bearing animals, bees, dairying animals, equines, aquatic species, birds or other animal species, including stored products or by-products.



(F) Nursery stock as defined in ORS 571.005.

(G) Boats, gear, equipment, vessel licenses or permits, commercial fishing licenses or permits and other real or personal property used in the operation of a fishing business.

(H) Real or personal property used to process and sell the catch of a fishing business in fresh, canned or smoked form directly to consumers, including a restaurant with seating capacity of fewer than 15 seats at which catch from the fishing business is prepared and sold.

(I) An operating allowance.

(J) Any other tangible and intangible personal property used in the operation of a farm business, forestry business or fishing business.

(j) “Operating allowance” means cash or a cash equivalent that is spent, maintained, used or available for the operation of a farm business, forestry business or fishing business and not spent or used for any other purpose.

(k) “Qualified beneficiary” has the meaning given that term in ORS 130.010.

(L) “Real property” means real property, as defined in ORS 307.010, that is in this state.

(2)(a) An estate shall be allowed a credit for the value of natural resource property claimed. Any operating allowance claimed under this section may not exceed the lesser of \$1 million or 15 percent of the total value of natural resource property claimed, not including the operating allowance.

(b) The credit allowed under this section shall be computed by multiplying the tax that would be payable under this chapter absent the credit by a ratio, the numerator of which is an amount equal to the lesser of the amount of natural resource property claimed under this section or \$7.5 million, and the denominator of which is an amount equal to the total adjusted gross estate.

(c) An executor may:

(A) Elect not to claim the credit allowed under this section;

(B) Elect to claim less than the full amount of the credit allowed under this section; or

(C) Elect to claim the credit only for the value of certain assets.

(3) Except as provided in subsections (4), (7) and (8) of this section, a credit is allowed under this section only if:

(a) The total adjusted gross estate does not exceed \$15 million;

(b) The total value of natural resource property in the estate is at least 50 percent of the total adjusted gross estate that is in this state;

(c) The natural resource property is transferred to a family member; and

(d) During an aggregate period of five out of the eight years ending on the date of the decedent’s death, the decedent or a family member operated a farm business, forestry business or fishing business and the property for which a credit is claimed under this section is part of the business.

(4) Property that otherwise meets the requirements of this section shall be allowed a credit under this section if:

(a) The property is the subject of a net cash lease to or from the decedent or a qualified beneficiary who is a family member;

(b) The property is held in trust for a qualified beneficiary who is a family member; or

(c) The property replaces natural resource property, and the replacement property would otherwise meet the definition of natural resource property except that it was acquired after the date of the decedent’s death but before the estate tax return is filed. In order to qualify under this paragraph, real property must be replaced with

real property.

(5) A credit is allowed under this section for the following real property only if the real property was owned by the decedent or a family member during an aggregate period of five out of the eight years ending on the date of the decedent's death and used in a business described in subsection (3)(d) of this section:

- (a) Real property used as forestland or as forestland homesites, not to exceed 5,000 acres.
- (b) Real property used in farm use.

(6) A credit is allowed under this section for property used in the operation of a fishing business only if the decedent or a family member, during an aggregate period of five out of the eight years ending on the date of the decedent's death:

- (a) Owned a vessel used in taking food fish or shellfish for commercial purposes as defined in ORS 506.006;
- (b) Held a boat license as provided in ORS 508.260;
- (c) Held a commercial fishing license under ORS 508.235; and
- (d) Held one or more restricted fisheries permits as provided in ORS chapter 508 or an equivalent restricted vessel permit system under the laws of another state.

(7) For the purpose of meeting the requirements of subsection (5) of this section, in determining the period of time during which the decedent or a family member owned real property received in exchange under section 1031 of the Internal Revenue Code or acquired in an involuntary conversion under section 1033 of the Internal Revenue Code, the period during which the decedent or a family member owned the exchanged or acquired real property, if the exchanged or acquired real property was used in the farm business or forestry business, may be included.

(8) Property that otherwise meets the requirements of this section and that is owned indirectly by the decedent or a family member qualifies for a credit under this section if the property is owned through an interest in a limited liability company or in a corporation, partnership or trust as the terms corporation, partnership or trust are used in section 2032A(g) of the Internal Revenue Code. In order to qualify under this subsection, at least one family member must materially participate in the business after the transfer. For purposes of this subsection, "materially participate" means to engage in active management, as defined in section 2032A of the Internal Revenue Code, of the farm business, forestry business or fishing business. The Department of Revenue may adopt rules to administer this subsection consistent with this definition.

(9)(a) A disposition shall occur and an additional tax under ORS 118.005 to 118.540 shall be imposed if the natural resource property for which a credit is allowed under this section is not used in the operation of a farm business, forestry business or fishing business for at least five out of the eight calendar years following the decedent's death or is transferred to a person other than a family member or another entity eligible for the credit allowed under this section.

(b) The use of cash or other assets for which a credit is claimed under this section for the payment of federal estate taxes or state inheritance or estate taxes shall be a disposition and an additional tax shall be imposed under this subsection.

(c) The conveyance after the decedent's death of property that otherwise meets the requirements of this section and is conveyed as a qualified conservation contribution, as defined in section 170(h) of the Internal Revenue Code, is not a disposition requiring payment of additional tax under this subsection.

(d) Natural resource property may be replaced with real property or personal property after the credit is claimed and not result in a disposition subject to an additional tax if the replacement property is used in the operation of the farm business, forestry business or fishing business. Real property for which a credit is claimed under this section may be replaced only with real property that would otherwise qualify as natural resource

property and that replacement must be made within one year to avoid a disposition and additional tax, except that a replacement of property that is involuntarily converted under section 1033 of the Internal Revenue Code must occur within two years.

(e) The additional tax liability shall be the amount of additional tax that would have been imposed, had the disqualified property not been included in the numerator of the ratio in subsection (2)(b) of this section, multiplied by ((five minus the number of years the property was used as natural resource property) divided by five). The additional tax liability is the responsibility of the owner of the property at the time of the disposition or disqualifying event and is due within six months after the date on which the disposition or event occurs. The Department of Revenue may establish by rule procedures for reporting the additional tax due, consistent with ORS chapter 305.

(f) Prior to the executor's identification of property for which a credit under this section is claimed, the executor shall notify the transferee of the potential for tax consequences to the transferee if the transferee fails to meet the conditions of paragraph (a) of this subsection. The transferee's written acknowledgment of this notice shall be attached to the estate tax return.

(10) The executor shall identify property for which a credit under this section is claimed, by asset, on a form prescribed by the department and filed with the estate tax return. Transferees of property for which a credit under this section has been claimed shall file a report with the department on a form prescribed by the department. This report shall be filed annually until the requirements of subsection (9)(a) of this section are met and shall require tracking of each asset for which the credit has been claimed, with confirmation that each asset falls into one of the following categories:

(a) The asset is still used in the operation of a farm business, forestry business or fishing business;

(b) The asset has been replaced with property that meets the requirements of subsection (9)(d) of this section; or

(c) The asset has been subject to a disposition under subsection (9) of this section, resulting in additional tax. [2007 c.843 §68; 2008 c.28 §1; 2011 c.526 §7; 2015 c.301 §1]

Note: Section 2, chapter 301, Oregon Laws 2015, provides:

Sec. 2. The amendments to ORS 118.140 by section 1 of this 2015 Act apply to estates of decedents dying on or after January 1, 2015. [2015 c.301 §2]

118.150 [Formerly 118.640; 1971 c.652 §2; 1973 c.498 §1; 1975 c.762 §4; 1977 c.666 §11; 1985 c.761 §1; repealed by 1997 c.99 §24]

118.155 [1973 c.503 §13; 1975 c.762 §5; 1977 c.666 §11a; 1979 c.553 §12; 1981 c.804 §70; 1991 c.459 §341; repealed by 1997 c.99 §24]

**118.160 When tax return is required; lists of property transfers and other data.** (1) Except as provided in subsection (2) of this section:

(a) An inheritance tax return is not required with respect to the estates of decedents who die on or after January 1, 1987, and before January 1, 2003, unless a federal estate tax return is required to be filed;

(b) An inheritance tax return is not required with respect to the estates of decedents who die on or after:

(A) January 1, 2003, and before January 1, 2004, unless the value of the gross estate is \$700,000 or more;

(B) January 1, 2004, and before January 1, 2005, unless the value of the gross estate is \$850,000 or more;

(C) January 1, 2005, and before January 1, 2006, unless the value of the gross estate is \$950,000 or more;

or

(D) January 1, 2006, and before January 1, 2012, unless the value of the gross estate is \$1 million or more;

and

(c) An estate tax return is not required with respect to the estates of decedents who die on or after January 1, 2012, unless the value of the gross estate is \$1 million or more.

(2) In every estate, whether or not subject to administration and whether or not a federal estate tax return is required to be filed, the executor shall at such times and in such manner as required by rules of the Department of Revenue, file with the department a return in a form provided by the department setting forth a list and description of all transfers of property, in trust or otherwise, made by the decedent in the lifetime of the decedent as a division or distribution of the estate of the decedent and any further data that the department requires to determine estate tax under this chapter. [Formerly 118.660; 1971 c.567 §5; 1977 c.666 §12; 1985 c.565 §10a; 1987 c.646 §5; 2003 c.806 §7; 2011 c.526 §8]

**118.165 Notice of deficiency.** (1) At any time within three years after the date that an estate tax return is filed, the Department of Revenue may give notice of deficiency as prescribed in ORS 305.265.

(2) If the department finds that the value of the gross estate has been undervalued on the estate tax return by an amount greater than 25 percent, notice of deficiency may given at any time within five years after the date that the return is filed.

(3) The limitations to the giving of notice of a deficiency provided in this section do not apply to a deficiency resulting from a false or fraudulent estate tax return or in a case where no return has been filed. [2011 c.526 §28]

118.170 [1969 c.591 §221; 1971 c.567 §6; repealed by 1977 c.870 §16 (118.171 enacted in lieu of 118.170)]

**118.171 Application of ORS chapter 305.** The provisions of ORS chapter 305 as to the audit and examination of reports and returns, determination of deficiencies, assessments, claims for refund, conferences and appeals to the Oregon Tax Court, and the procedures relating thereto, shall apply to the determination of estate taxes under this chapter, except where the context requires otherwise. [1977 c.870 §17 (enacted in lieu of 118.170, 118.180 and 118.360); 1995 c.650 §50; 2011 c.526 §9]

118.180 [Formerly 118.700; 1971 c.567 §7; 1973 c.100 §1; 1975 c.762 §6; repealed by 1977 c.870 §16 (118.171 enacted in lieu of 118.180)]

118.190 [1973 c.100 §2; repealed by 1977 c.870 §59]

LIEN; PAYMENT;

COMPROMISE OF TAX

**118.210 Liability for tax.** All heirs, legatees, devisees, administrators, executors and trustees, and any grantee or donee under a conveyance or gift made during the grantor's or donor's life if the conveyance or gift is subject to tax under ORS 118.010, are, respectively, liable for any and all taxes mentioned in ORS 118.010, with interest thereon, until the same have been paid as in ORS 118.005 to 118.540 provided.

118.220 [Amended by 1973 c.254 §1; 1975 c.762 §7; 1977 c.666 §13; 1997 c.99 §9; repealed by 2011 c.526 §29]

**118.225 Extension of time for payment.** (1) Upon application of the executor and the securing of all taxes that are payable by bond, deposit or other good collateral acceptable to the Department of Revenue, the department may extend the time for payment of any part of the amount imposed by ORS 118.005 to 118.540.

(2) The extension under this section shall be for a period not in excess of 14 years from the date prescribed by ORS 118.100 for payment of the tax.

(3) Under rules prescribed by the department, the department may extend the time for the payment of any deficiency of a tax imposed by ORS 118.005 to 118.540 for a reasonable period not to exceed four years from the date otherwise fixed for the payment of the deficiency. [1977 c.666 §13d; 1997 c.99 §10; 2011 c.526 §10]

**118.227 Time period for refund.** The period prescribed for the Department of Revenue to allow or make a refund of any tax, or portion of tax, paid under this chapter shall be as provided in ORS 314.415. [2009 c.358 §3]

Note: 118.227 was added to and made a part of ORS chapter 118 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**118.230 Lien of tax; liability for payment; assessment and collection of taxes.** (1) Every tax imposed by ORS 118.005 to 118.540 is a lien upon the property embraced in any inheritance, devise, bequest, legacy or gift until paid, and the person to whom such property is transferred, and the personal representatives and trustees of every estate embracing such property are personally liable for such tax until its payment, to the extent of the value of such property.

(2) Taxes imposed under ORS 118.005 to 118.540 may be assessed and collected by the Department of Revenue in the same manner as income taxes are assessed and collected under ORS chapter 314. The department may issue a warrant as provided in ORS 314.430 and record the warrant in the County Clerk Lien Record maintained under ORS 205.130. A warrant issued under this section has the same force and effect as a warrant issued under ORS 314.430. [Amended by 1969 c.591 §214; 1975 c.762 §8; 1977 c.870 §26; 1985 c.85 §4; 1987 c.758 §5; 2003 c.806 §8]

118.240 [Amended by 1973 c.254 §2; 1997 c.99 §11; repealed by 2011 c.526 §29]

**118.250 To whom tax payable; issuing receipts.** (1) The taxes imposed by ORS 118.005 to 118.540 are payable to the Department of Revenue.

(2) The department shall give the personal representative, trustee or other person paying such tax, a receipt.

(3) The department shall issue to any interested person demanding the same a copy of a receipt that may have been given by such department for the payment of tax under ORS 118.005 to 118.540. [Amended by 1965 c.727 §4; 1971 c.652 §3; 1973 c.254 §3; 1975 c.593 §1; 1975 c.762 §9; 1977 c.666 §13a; 1985 c.565 §10b; 1987 c.646 §6]

**118.260 Penalties for delinquency, failure to file and fraud; interest; deposit where tax not determined.** (1) If no return has been filed as required by this chapter, there shall be added to the amount of tax required to be shown on the return a delinquency penalty of five percent of the amount of such tax.

(2) If the failure to file a return continues for a period in excess of three months after the due date, there shall be added to the amount of tax required to be shown as tax on the return a failure to file penalty of 20 percent of the amount of such tax. This penalty is in addition to the delinquency penalty imposed by subsection (1) of this section.

(3) If any part of any deficiency is due to fraud with intent to evade tax, then 100 percent of the total amount of the deficiency shall be assessed and collected.

(4) Except for a deferral of payment pursuant to an extension granted under ORS 118.225 or a timely election made under ORS 118.300, if the taxes imposed by ORS 118.005 to 118.540 are not paid on or before the date on which payment of the tax is required to be made under ORS 118.100, there shall be added to the amount of tax required to be shown on the return a delinquency penalty of five percent of the amount of such tax.

(5)(a) Except as provided in subsection (6) of this section and paragraph (b) of this subsection, if the tax imposed by ORS 118.005 to 118.540 is not paid on or before the date on which payment of the tax is required to be made under ORS 118.100, interest shall be charged and collected thereon at the rate established under ORS 305.220 for each month or fraction thereof from the time when the tax became due and payable.

(b) If payment of the tax or deficiency is extended under ORS 118.225, interest shall be charged and

collected on any amount for which extension is granted from the date the tax or deficiency is otherwise due and payable to the date of payment at the rate established under ORS 305.220, without regard to ORS 305.222, for each month or fraction thereof.

(6) In all cases in which a bond is given, under the provisions of ORS 118.300, interest shall be charged at the rate established under ORS 305.220, without regard to ORS 305.222, for each month or fraction thereof from the time when the tax became due and payable, until the date of payment.

(7) If the tax has not been determined, a deposit may be made to avoid interest. Should the amount of such payment exceed the sum subsequently determined to be due, the Department of Revenue shall refund the excess with interest at the rate established under ORS 305.220, for each month or fraction of a month during a period beginning 45 days after the due date of the return or the date that the return is filed, whichever is later, and ending at the time the refund is made.

(8) Payments made on the tax shall be applied first to penalty and interest and then to the principal.

(9) For purposes of this section, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be lawfully claimed upon the return. [Amended by 1971 c.732 §2; 1973 c.332 §1; 1975 c.593 §2; 1977 c.666 §13b; 1982 s.s.1 c.16 §3; 1993 c.726 §1; 1997 c.99 §12; 2011 c.526 §11]

**118.265 Application for determination of tax due; discharge from personal liability; rules.** (1) If the executor or trustee of an estate makes a written application to the Department of Revenue for a determination of the tax due under this chapter and discharge from personal liability therefor, the department shall notify the executor or trustee of the amount of tax due under this chapter. The department shall give this notice:

(a) As soon as possible, and in any event within 18 months of the application; or

(b) If the application is made before the return is filed, by the earliest of the following:

(A) Eighteen months after the return is filed.

(B) The expiration of the period prescribed for the assessment of the tax under ORS 305.265.

(C) The expiration of the period prescribed for the issuance of a notice of deficiency under ORS 314.410.

(2) After payment of the amount in the notice, other than any amount for which the time for payment is extended by the department, the executor or trustee shall be discharged from personal liability for any deficiency in tax. The department shall furnish to the executor or trustee a receipt or writing showing the discharge.

(3) The department shall adopt by rule policies and procedures for administration of applications under this section.

(4) The expiration of the period prescribed for the issuance of a notice of deficiency concerning any tax due under this chapter shall be as provided under ORS 314.410. [2009 c.358 §2]

Note: 118.265 was added to and made a part of ORS chapter 118 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**118.270 Property from which tax is collectible.** Except as to real property located outside of the state passing in fee from the decedent owner, the tax imposed under ORS 118.010 shall be assessed against and be collected from property of every kind, which, at the death of the decedent owner is subject to, or thereafter, for the purpose of distribution, is brought into this state and becomes subject to the jurisdiction of the courts of this state for distributive purposes, or which was owned by any decedent domiciled within the state at the time of the death of the decedent even though the property was situated outside of the state. [Amended by 1997 c.99 §13]

**118.280 Power to sell for payment of tax; tax lien transferred to proceeds when property of estate sold or mortgaged.** (1) Every executor, administrator or trustee has power to sell as much of the property

embraced in any inheritance, devise, bequest or legacy, as will enable the executor, administrator or trustee to pay the tax imposed by ORS 118.005 to 118.540, in the same manner as the executor, administrator or trustee is authorized to do for the payment of the debts of a decedent.

(2) Any part of the gross estate sold for the payment of claims against the estate and expenses of administration, for the payment of the tax imposed by ORS 118.005 to 118.540, or for purposes of distribution, shall be divested of the lien of such tax, and such lien shall be transferred to the proceeds of such sale. A mortgage on property executed for payment of claims against the estate and expenses of administration and for payment of the tax imposed by ORS 118.005 to 118.540 shall constitute a lien upon said property prior and superior to the estate tax lien, which estate tax lien shall attach to the proceeds of such mortgage. [Amended by 1957 c.362 §1; 1969 c.591 §215; 2011 c.526 §12]

**118.290 Duty of recipient when legacy payable out of property; legacy for limited period.** (1) If any bequest or legacy is charged upon or payable out of any property, the heir or devisee shall deduct from the property the tax imposed by ORS 118.005 to 118.540 and pay the tax to the administrator, executor or trustee, and the tax shall remain a lien or charge on the property until paid. The payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the bequest or legacy is enforced, or by the Department of Revenue in the same manner as income taxes are collected under ORS chapter 314.

(2) If any bequest or legacy is given in money for a limited period, the administrator, executor or trustee shall retain the tax upon the whole amount. If any bequest or legacy is not given in money, the administrator, executor or trustee shall make application to the court having jurisdiction of an accounting by the administrator, executor or trustee to make an apportionment, if the case requires, of the sum to be paid by such legatee or beneficiary, and for such further order relative thereto as the case may require. [Amended by 1961 c.455 §5; 1985 c.85 §5; 2009 c.33 §2]

**118.300 Deferred payment election; bond or letter of credit.** Any beneficiary of any property chargeable with a tax under this chapter and personal representatives and trustees, may elect, on or before the date on which the estate tax is due and payable under ORS 118.100, not to pay the tax until the person or persons beneficially interested therein shall come into actual possession or enjoyment thereof. If it is personal property, the person or persons so electing shall give a bond or irrevocable letter of credit to the state in double the amount of the tax, with such sureties or issued by such insured institution as defined in ORS 706.008 as the Director of the Department of Revenue may approve, conditioned for the payment of the tax and interest thereon, at such time and period as the person or persons beneficially interested therein may come into actual possession or enjoyment of the property, which bond shall be executed and filed, and a full return of the property made to the Director of the Department of Revenue within six months from the date of transfer thereof, as in this section provided. The bond or letter of credit must be renewed every five years. [Amended by 1969 c.591 §216; 1975 c.762 §10; 1977 c.666 §14; 1991 c.331 §34; 1997 c.99 §14; 1997 c.631 §406; 2011 c.526 §13]

**118.310 Transfer of stock or obligations by foreign representative or trustee; payment of tax prior to transfer.** If a foreign executor, administrator or trustee assigns or transfers any stock or obligations in this state standing in the name of the decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the Department of Revenue on or before the transfer thereof, and no such assignment or transfer is valid unless such tax is paid.

118.320 [Amended by 1969 c.178 §1; 1973 c.254 §4; 1975 c.762 §11; 1985 c.85 §6; repealed by 1987 c.646 §9]

118.330 [Amended by 1969 c.178 §2; repealed by 1975 c.762 §19]

118.340 [Amended by 1973 c.254 §5; repealed by 1975 c.762 §19]

**118.350 Compromise and compounding tax; approval by court; proceedings in case of actions or**

**suits involving title to real property.** (1) Whenever an estate, devise, legacy or beneficial interest therein, charged or sought to be charged with the estate tax is of such nature or is so disposed that the liability of the same is doubtful, or the value thereof cannot with reasonable certainty be ascertained under the provisions of law, the Department of Revenue may compromise with the beneficiaries or representatives of such estate, and determine the tax. The payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate.

(2) In any suit or action involving the title to real property, in which it appears, by the pleadings or otherwise, that an estate tax is or might be payable to the State of Oregon by reason of the death of any person whose estate has not been administered in Oregon, a copy of the pleadings shall be served upon the Department of Revenue, such service to be made as summons is served in any cause in the circuit court of this state. Thereupon further proceedings in the cause shall be suspended until the department has had an opportunity to appear therein, such appearance to be made within the time that is required by the service of summons upon a private person or corporation. The department shall appear in the cause and present the claims of the state, if any, to an estate tax, and it is the duty of the Attorney General of the state to represent the state and the department in such proceedings, and the department may compromise and compound the tax claimed to be due upon the passing of such real property. Such settlement and compromise shall be entered of record in the register of such court. Thereafter the payment of the amount of taxes so agreed upon shall discharge the estate tax lien against the property. If a compromise is not effected, the amount of tax, if any, due upon the passing of the real property shall be determined by the court as are other questions involved in such litigation, and subject to the same right of appeal to the Court of Appeals. The judgment of the court or of the Court of Appeals, if there is an appeal, is conclusive as to the amount of taxes due upon the passing of the real property and payment thereof shall discharge the lien against the property. [Amended by 1969 c.591 §217; 1971 c.567 §8; 1979 c.562 §6; 1985 c.540 §29; 1987 c.758 §8; 2003 c.576 §381; 2011 c.526 §14]

118.360 [Amended by 1959 c.273 §2; repealed by 1977 c.870 §16 (118.171 enacted in lieu of 118.360)]

118.370 [Amended by 1955 c.727 §5; 1959 c.273 §3; 1971 c.567 §9; repealed by 1985 c.85 §13]

118.380 [Amended by 1959 c.273 §4; 1967 c.162 §1; repealed by 1971 c.652 §4]

118.390 [Amended by 1971 c.296 §1; 1971 c.621 §24; repealed by 1973 c.254 §6]

## ADMINISTRATION OF

## ESTATE TAX ACT

**118.410 Jurisdiction of tax cases.** The Oregon Tax Court has sole jurisdiction to hear and determine all questions arising under the provisions of ORS 118.005 to 118.540, and to any act in relation thereto authorized by law to be done by such court in other matters or proceedings coming within its jurisdiction. [Amended by 1971 c.567 §10]

118.420 [Amended by 1963 c.68 §2; 1967 c.132 §1; repealed by 1969 c.591 §305]

118.440 [Amended by 1961 c.455 §6; 1973 c.338 §1; 1979 c.516 §1; repealed by 1985 c.565 §10c]

118.450 [1967 c.161 §1; 1973 c.254 §7; 1975 c.593 §3; repealed by 1997 c.99 §24]

118.460 [Amended by 1975 c.762 §12; repealed by 1979 c.516 §6]

118.470 [Amended by 1955 c.727 §6; 1973 c.254 §8; repealed by 2011 c.526 §29]

118.480 [Repealed by 1975 c.762 §19]

118.490 [Repealed by 1981 c.705 §8]

118.500 [Repealed by 1969 c.591 §305]

**118.510 Disposition of revenues.** The net revenue from the taxes imposed by ORS 118.005 to 118.540 (including temporary payments under ORS 118.260 and fees, taxes, interest and penalties), after deduction of



refunds, shall be credited to the General Fund to be available to meet any expense or obligation of this state lawfully incurred. [Amended by 1959 c.273 §1; 1969 c.479 §4; 1997 c.99 §15]

118.520 [Repealed by 1959 c.273 §8]

**118.525 Disclosure of return information.** (1) It shall be unlawful for the Department of Revenue or any of its officers or employees to divulge or make known in any manner any particulars disclosed in any return or supporting data required under this chapter. Except for executors or beneficiaries and their authorized representatives, it shall be unlawful for any person or entity who has acquired information pursuant to subsections (3) and (4) of this section to divulge or make known such information for any purpose other than that specified in the provisions of law authorizing the use or disclosure. No subpoena or judicial order shall be issued compelling the department, or its officers or employees, or persons described in subsections (3) and (4) of this section, to divulge or make known any particulars disclosed in any such return or supporting data except where the liability for estate taxes is to be adjudicated by the Oregon Tax Court. Nothing in this section shall prohibit the publication of statistics so classified as to prevent the identification of particulars in any return or supporting data covered by this section.

(2) As used in this section:

(a) “Officer,” “employee” or “person” includes an authorized representative of the officer, employee or person, or former officer, employee or person, or an authorized representative of such former officer, employee or person.

(b) “Particulars” includes, but is not limited to, a taxpayer’s name, address, telephone number, Social Security number and the amount of refund claimed by or granted to a taxpayer.

(3) Notwithstanding subsection (1) of this section, the department may permit, for tax purposes only, the Commissioner of Internal Revenue or authorized representatives, or an officer or employee of any state or the District of Columbia which has a provision of law which meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality to inspect any return or supporting data referred to in subsection (1) of this section. The department may disclose to the executor or beneficiary of any estate, or an authorized representative thereof, any information or particulars otherwise made confidential by this section, if the department determines that the executor or beneficiary has a material interest which will be affected by such information or particulars.

(4) The department may disclose a taxpayer’s name, address, telephone number, Social Security number, refund amount or tax due to the extent necessary in connection with collection activities or the processing or mailing of returns, correspondence or forms with respect to the tax imposed under this chapter.

(5) The department also may disclose and give access to information described in subsection (1) of this section to those persons, agencies or entities, described in ORS 314.840 (2)(f), (g), (h) and (i) to the extent authorized by said paragraphs; and to any agency of the State of Oregon or any person, or any officer or employee of such agency or person to whom disclosure or access is given by state law and not otherwise referred to in this section, including but not limited to the Secretary of State and the officers and employees thereof, for the uses and purposes described in ORS 297.060.

(6) Each officer or employee of the department and each person described or referred to in subsection (5) of this section to whom disclosure or access to tax information is given, prior to beginning employment or the performance of duties involving such disclosure or access, shall be advised in writing of the provisions of subsection (1) of this section and ORS 118.990 (3), and shall as a condition of employment or performance of duties execute a certificate for the department, stating in substance that the person has read these provisions of law, that the person has had them explained and that the person is aware of the penalties for the violation of subsection (1) of this section. [1979 c.690 §4; 1983 c.633 §1; 1985 c.565 §10d; 1987 c.158 §18; 1987 c.646 §6a; 1993 c.726 §51; 2011 c.526 §15; 2013 c.36 §70]

**118.535 Appraisal by department; costs.** (1) If the Department of Revenue determines that the executor has not made an appraisal that is needed in order to comply with the provisions of ORS 118.005 to 118.540, the department may cause an appraisal to be made by a fee appraiser to so ensure compliance.

(2) The cost of the appraisal including the appraiser's fee as a witness in the event of an appeal shall be paid out of the taxes collected under this chapter before the net revenue is credited to the General Fund as provided in ORS 118.510. [1979 c.516 §3; 1997 c.99 §16]

Note: 118.535 was added to and made a part of ORS chapter 118 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**118.540 Department agreements with taxing officials of other states.** When the Department of Revenue and the taxing official of one or more other states each claims that the state of that official respectively was the domicile of the decedent for the purpose of estate taxes or claims taxing authority over the same property in an estate, the department may negotiate, and enter into an agreement, with the taxing official of the other state and with the executor to accept payment of estate tax, together with any interest and penalties. The department may enter into binding arbitration or into a compromise agreement with respect to disputed liability for estate taxes with each taxing official and with the executor. [2011 c.526 §27]

118.610 [Amended by 1967 c.131 §1; repealed by 1969 c.591 §305]

118.620 [Repealed by 1969 c.591 §305]

118.630 [Amended by 1963 c.68 §3; repealed by 1969 c.591 §305]

118.640 [Amended by 1961 c.455 §7; 1969 c.591 §218; renumbered 118.150]

118.650 [Amended by 1959 c.273 §5; 1963 c.68 §4; 1967 c.133 §1; repealed by 1969 c.591 §305]

118.660 [Amended by 1955 c.727 §7; 1963 c.68 §5; 1969 c.111 §1; 1969 c.591 §219; renumbered 118.160]

118.670 [Repealed by 1969 c.591 §305]

118.680 [Amended by 1963 c.68 §6; repealed by 1969 c.591 §305]

118.690 [Repealed by 1969 c.591 §305]

118.700 [Amended by 1963 c.68 §7; 1969 c.198 §58; 1969 c.591 §222; renumbered 118.180]

118.810 [Repealed by 2011 c.526 §29]

118.820 [Repealed by 2011 c.526 §29]

118.830 [Amended by 2003 c.576 §382; 2009 c.33 §3; repealed by 2011 c.526 §29]

118.840 [Repealed by 2011 c.526 §29]

118.855 [1959 c.573 §1; repealed by 2011 c.526 §29]

118.860 [1959 c.573 §2; 1991 c.249 §16; repealed by 2011 c.526 §29]

118.865 [1959 c.573 §§3,5; 1987 c.758 §9; repealed by 2011 c.526 §29]

118.870 [1959 c.573 §4; 2009 c.33 §4; repealed by 2011 c.526 §29]

118.875 [1959 c.573 §6; 1975 c.593 §4; repealed by 2011 c.526 §29]

118.880 [1959 c.573 §7; repealed by 2011 c.526 §29]

## PENALTIES

**118.990 Penalties.** (1) Failure, neglect or refusal by any person in possession or control of any record, file or paper containing information relating to the estate of a deceased person or any interest therein to exhibit the same upon the written request of the department specifying and describing such instrument is a misdemeanor.

(2) Any person who willfully makes a false statement in a report required by ORS 118.160 shall be guilty

of false swearing and upon conviction, shall be punished as provided by law.

(3) Violation of ORS 118.525 is a Class C felony. If the offender is an officer or employee of the state the offender shall be dismissed from office and shall be incapable of holding any public office in this state for a period of five years thereafter. [Amended by 1961 c.455 §8; subsection (2) enacted as 1969 c.210 §1; 1969 c.591 §223; 1973 c.254 §9; 1975 c.762 §13; 1979 c.690 §5; 1981 c.724 §6]

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## 2016 Oregon Laws Ch 19

### REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (2015)

SECTION 1. Sections 2 to 18 of this 2016 Act may be cited as the Revised Uniform Fiduciary Access to Digital Assets Act (2015).

SECTION 2. As used in sections 2 to 18 of this 2016 Act:

(1) “Account” means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives or stores a digital asset of the user or provides goods or services to the user.

(2) “Agent” means a person designated as an agent under a power of attorney in accordance with ORS 127.005 to 127.045.

(3) “Carries” means engages in the transmission of an electronic communication.

(4) “Catalogue of electronic communications” means information that identifies each person with which a user has had an electronic communication, the time and date of the communication and the electronic address of the person.

(5) “Conservator” has the meaning given that term in ORS 125.005.

(6) “Content of an electronic communication” means information concerning the substance or meaning of the communication that:

(a) Has been sent or received by a user;

(b) Is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and

(c) Is not readily accessible to the public.

(7) “Court” means a circuit court in this state.

(8) “Custodian” means a person that carries, maintains, processes, receives or stores a digital asset of a user.

(9) “Designated recipient” means a person chosen by a user using an online tool to administer digital assets of the user.

(10) “Digital asset” means an electronic record in which an individual has a right or interest. “Digital asset” does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

(11) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(12) “Electronic communication” has the meaning set forth in 18 U.S.C. 2510(12).

(13) “Electronic communication service” means a custodian that provides to a user the ability to send or

receive an electronic communication.

(14) “Fiduciary” means a person that is an original, additional or successor personal representative, conservator, agent or trustee.

(15) “Information” means data, text, images, videos, sounds, codes, computer programs, software, databases and similar intelligence of any nature.

(16) “Online tool” means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms of service agreement between the custodian and the user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

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

(18) “Personal representative” means an executor, administrator or special administrator, or a person legally authorized to perform substantially the same functions.

(19) “Power of attorney” means a record that grants an agent authority to act in the place of a principal.

(20) “Principal” means an individual who grants authority to an agent in a power of attorney.

(21) “Protected person” means an individual for whom a conservator has been appointed. “Protected person” includes an individual for whom an application for the appointment of a conservator is pending.

(22) “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.

(23) “Remote computing service” means a custodian that provides to a user computer processing services or the storage of digital assets by means of an electronic communications system as defined in 18 U.S.C. 2510(14).

(24) “Terms-of-service agreement” means an agreement that controls the relationship between a user and a custodian.

(25) “Trustee” means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another person. “Trustee” includes a successor trustee.

(26) “User” means a person that has an account with a custodian.

(27) “Will” includes a codicil, testamentary instrument that only appoints an executor and instrument that revokes or revises a testamentary instrument.

SECTION 3. (1) Sections 2 to 18 of this 2016 Act apply to:

(a) A fiduciary acting under a will or power of attorney executed before, on or after the effective date of this 2016 Act;

(b) A personal representative acting for a decedent who died before, on or after the effective date of this 2016 Act;

(c) A conservatorship proceeding commenced before, on or after the effective date of this 2016 Act; and

(d) A trustee acting under a trust created before, on or after the effective date of this 2016 Act.

(2) Sections 2 to 18 of this 2016 Act apply to a custodian if the user resides in this state or resided in this state at the time of the user’s death.

(3) Sections 2 to 18 of this 2016 Act do not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

SECTION 4. (1) A user may use an online tool to direct the custodian to disclose to a designated recipient or not to disclose some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney or other record.

(2) If a user has not used an online tool to give direction under subsection (1) of this section, or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney or other record disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

(3) A user's direction under subsection (1) or (2) of this section overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

SECTION 5. (1) Sections 2 to 18 of this 2016 Act do not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(2) Sections 2 to 18 of this 2016 Act do not give a fiduciary or a designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

(3) A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law or by a terms-of-service agreement if the user has not provided direction under section 4 of this 2016 Act.

SECTION 6. (1) When disclosing digital assets of a user under sections 2 to 18 of this 2016 Act, the custodian may, in the custodian's sole discretion:

(a) Grant a fiduciary or designated recipient full access to the user's account;

(b) Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(c) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(2) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under sections 2 to 18 of this 2016 Act.

(3) A custodian need not disclose under sections 2 to 18 of this 2016 Act a digital asset deleted by a user.

(4) If a user directs, or a fiduciary requests, a custodian to disclose some, but not all, of the user's digital assets under sections 2 to 18 of this 2016 Act, the custodian need not disclose the digital assets if segregation of the digital assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

(a) A subset limited by date of the user's digital assets;

(b) All of the user's digital assets to the fiduciary or designated recipient;

(c) None of the user's digital assets; or

(d) All of the user's digital assets to the court for review in camera.

SECTION 7. If a deceased user consented to, or a court directs, disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the personal representative gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) A certified copy of the death certificate of the user;

(3) A certified copy of the letter of appointment of the personal representative or a small estate affidavit or court order;

(4) Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney or other record evidencing the user's consent to disclosure of the content of electronic communications; and

(5) If requested by the custodian:

(a) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) Evidence linking the account to the user; or

(c) A finding by the court that:

(A) The user had a specific account with the custodian, identifiable by the information specified in paragraph (a) of this subsection;

(B) Disclosure of the content of electronic communications of the user would not violate 18 U.S.C. 2701 et seq., 47 U.S.C. 222 or other applicable law;

(C) Unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or

(D) Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

SECTION 8. Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user if the personal representative gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) A certified copy of the death certificate of the user;

(3) A certified copy of the letter of appointment of the personal representative or a small estate affidavit or court order; and

(4) If requested by the custodian:

(a) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) Evidence linking the account to the user;

(c) An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(d) A finding by the court that:

(A) The user had a specific account with the custodian, identifiable by the information specified in paragraph (a) of this subsection; or

(B) Disclosure of the user's digital assets is reasonably necessary for administration of the estate.

SECTION 9. To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

(3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(4) If requested by the custodian:

(a) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(b) Evidence linking the account to the principal.

SECTION 10. Unless otherwise ordered by the court, directed by the principal or provided in a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) An original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

(3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(4) If requested by the custodian:

(a) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(b) Evidence linking the account to the principal.

SECTION 11. Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

SECTION 12. Unless otherwise ordered by the court, directed by the user or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received or stored by the custodian in the account of the trust if the trustee gives the custodian:

- (1) A written request for disclosure in physical or electronic form;
- (2) A certified copy of the trust instrument or a certification of the trust under ORS 130.860 that includes consent to disclosure of the content of electronic communications to the trustee;
- (3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
- (4) If requested by the custodian:
  - (a) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
  - (b) Evidence linking the account to the trust.

SECTION 13. Unless otherwise ordered by the court, directed by the user or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account a catalogue of electronic communications sent or received by an original or successor user and stored, carried or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

- (1) A written request for disclosure in physical or electronic form;
- (2) A certified copy of the trust instrument or a certification of the trust under ORS 130.860;
- (3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
- (4) If requested by the custodian:
  - (a) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
  - (b) Evidence linking the account to the trust.

SECTION 14. (1) After an opportunity for a hearing, the court may grant a conservator access to the digital assets of a protected person.

(2) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to the conservator the catalogue of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator gives the custodian:

- (a) A written request for disclosure in physical or electronic form;
- (b) A certified copy of the court order that gives the conservator authority over the digital assets of the protected person; and
- (c) If requested by the custodian:
  - (A) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or
  - (B) Evidence linking the account to the protected person.

(3) A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate the account of the protected



person for good cause. A request made under this subsection must be accompanied by a certified copy of the court order giving the conservator authority over the protected person's property.

SECTION 15. (1) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

- (a) The duty of care;
- (b) The duty of loyalty; and
- (c) The duty of confidentiality.

(2) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

- (a) Except as otherwise provided in section 4 of this 2016 Act, is subject to the applicable terms of service;
- (b) Is subject to other applicable law, including copyright law;
- (c) In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and
- (d) May not be used to impersonate the user.

(3) A fiduciary with authority over the property of a decedent, protected person, principal or settlor has the right to access any digital asset in which the decedent, protected person, principal or settlor has a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

(4) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including this state's laws on unauthorized computer access.

(5) A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal or settlor:

- (a) Has the right to access the property and any digital asset stored in the property; and

(b) Is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including this state's laws on unauthorized computer access.

(6) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(7) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:

- (a) If the user is deceased, a certified copy of the death certificate of the user;

(b) A certified copy of the letter of appointment of the personal representative, a small estate affidavit or court order, a court order, a power of attorney or a trust giving the fiduciary authority over the account; and

- (c) If requested by the custodian:

(A) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

- (B) Evidence linking the account to the user; or

(C) A finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A) of this paragraph.

SECTION 16. (1) Not later than 60 days after receipt of the information required under sections 7 to 15 of this 2016 Act, a custodian shall comply with a request from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(2) An order under subsection (1) of this section directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. 2702.

(3) A custodian may notify the user that a request for disclosure or to terminate an account was made under sections 2 to 18 of this 2016 Act.

(4) A custodian may deny a request under sections 2 to 18 of this 2016 Act from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(5) Sections 2 to 18 of this 2016 Act do not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination to obtain a court order that:

(a) Specifies that an account belongs to the protected person or principal;

(b) Specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and

(c) Contains a finding required by law other than under sections 2 to 18 of this 2016 Act.

(6) A custodian and the custodian's officers, employees and agents are immune from liability for an act or omission done in good faith in compliance with sections 2 to 18 of this 2016 Act.

SECTION 17. 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 enacting states.

SECTION 18. Sections 2 to 18 of this 2016 Act modify, limit or supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but do not modify, limit or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

Approved by the Governor March 3, 2016

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