the personal representative to pay or deliver the property to the Division of State Lands to be placed in the escheat funds of the state. The personal representative shall take the receipt of the Division 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.

Section 14. 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 final decree, the court shall enter an order of discharge. The discharge so obtained shall operate as a release of the personal representative from further duties and shall operate as a bar to any suit against the personal representative and his surety. The court may, however, in its discretion and upon such terms as may be just, within one year after notice thereof, permit a suit to be brought against the personal representative and his surety if the order of discharge was taken through the claimant's mistake, inadvertence, surprise or excusable neglect.

Section 15. Recording of copies of records in other counties wherein real property is situated. (1) If real property belonging to the estate of decedent is situated in a county other than that in which the estate is being administered,

the personal representative shall cause to be recorded in the deed records of the county certified copies of:

(a) The petition for appointment of the personal representative.

shall be prior and superior to the rights of judgment creditors, heirs or assigns of the distributee.

Section 10. Distribution to foreign personal representative. When administration 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 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 beneficiaries of the estate in the foreign jurisdiction.

Section 11. Expenses of personal representative. A personal representative shall be allowed in the settlement of his 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 him. When any personal representative defends or prosecutes any proceeding in good faith and with just cause, whether successful or not, he shall be entitled to receive from the estate his necessary expenses and disbursements including reasonable attorney's fees in the proceedings.

Section 12. Compensation of personal representative. (1) Upon application to the court the personal representative shall be entitled to receive compensation for his 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 shall be a commission upon the whole estate accounted for which shall include:

(a) Property inventoried and subject to the jurisdiction of the court.

(b) Additions thereto such as income or realized gains.

(c) Property not included in the appraised value of the estate but reportable for Oregon inheritance or federal estate tax purposes.

(2) The commissions of the personal representative shall be:

(a) Four percent of the first $60,000, but not less than $250.

(b) Two percent of all above $60,000.

Subsection (3), which is adapted from the New York Statute on Pretermitted Heirs, would except from abatement specific bequests of tangible personal property, such as articles of jewelry, art objects and other gifts which are not properly susceptible of being subjected to abatement.

Subsection (4) would replace ORS 117.330 and 117.340 and conforms to the general purpose and effect of those sections.

Section 9. Right of retainer. The first sentence is Section 3-603 of the 1967 draft Uniform Probate Code. The second sentence is adapted from Section 471 of the Iowa Probate Code. The Iowa statute does not permit the right of retainer to be barred by the statute of limitations or by discharge in bankruptcy. It was the judgment of your committees that the personal representative should be subject to the same defenses that the decedent would have if he were alive.

It seemed desirable to your committees that the common law "right of retainer" should be codified although it is well established in our decisions. See Stanley vs. U.S. National Bank of Portland, 110 Or 648, 224 Pac 835, Boise Payette Lumber Co. vs. National Surety Corporation, 167 Or 553, 118 P2d 1006, and In Re Miller's Estate, 189 Or 246, 218 P2d 966.

Section 10. Distribution to foreign personal representative. For a comparison with the present language, see Section

12, Uniform Ancillary Administration of Estates Act. This section may be compared to ORS 116.186. However, no comparable statute now appears in Oregon Revised Statutes.

The proposed section codifies the statement in Thomas Kay Woolen Mills vs. Sprague, D.C. Or., 259 Fed 338, that in case of an ancillary administration here the probate court at the conclusion of such administration may direct either that the personal property be delivered to the legatees or next of kin or that it be transferred to the domiciliary executor or administrator.

The proposed section would give the court the right to authorize the local personal representative to make distribution of the net estate to a domiciliary personal representative where the property was needed in the other jurisdiction for payment of estate expenses or for distribution.

Section 11. Expenses of personal representative. The content of this section is substantially the same as ORS 117.660. The second sentence is Section 3-421 of the 1967 draft Uniform

(b) A statement that all creditors have been paid in full.

(c) The matters required to be included by subsection (3).

Section 4. Notice of time for filing objections to final account and petition for distribution. (1) Upon filing the final account and petition for order of distribution the personal representative shall fix a time for filing objections thereto. Not less than twenty days before the expiration of the time fixed for filing objections he shall cause notice thereof to be mailed to:

(a) Each heir at his last known address, if the decedent died intestate.

(b) Each devisee at his last-known address, if the decedent died testate.

(c) Creditors not receiving payment in full whose claims have not otherwise been barred.

(d) The Director of the Division of State Lands if it appears that there is no known person to take by descent the net intestate estate.

(e) Any other person known to the personal representative to have or to claim an interest in the estate being distributed.

(2) The notice does not have to be mailed to the personal representative.

(3) Proof of the mailing to those persons entitled to notice shall be made by affidavit and filed at or before approval of the final account.

Section 5. Objections to final account and petition. Any person entitled to notice under section 4 may, within the time

(d) All disbursements made during the period covered by the account. Vouchers for disbursements shall accompany the account, unless otherwise provided by order or rule of court.

(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.

(3) When the estate is ready for settlement and distribution, the account shall also include:

(a) A statement that all Oregon income and estate taxes, and personal property taxes, if any, have been paid and that appropriate receipts, releases and clearances therefor have been filed, or if not so paid, that payment of such taxes has been secured by bond, deposit or otherwise.

(b) A petition for an order authorizing the personal representative to distribute the estate to the persons and in the portions specified therein.

(4) If the beneficiaries consent thereto in writing, and all creditors of the estate have been paid in full, the personal representative, in lieu of the annual accounts required by paragraph (1) (a), and in lieu of the information required by subsection (2), may file as his final account a verified statement which shall include the following:

(a) The period of time covered by the account.

of their interest therein, subject only to the right of appeal and the right to vacate the decree.

Section 7. Effect of order settling account. To the extent that the final account is approved, the personal representative and his surety shall, subject to the right of appeal, to the power of the court to vacate its final orders, and to the provisions of ORS_____(Section 14), be relieved from liability for the administration of his 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 his right to receive compensation.

Section 8. 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), 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 _____ dealing with the shares of pretermitted heirs and in ORS_____, dealing with the share of the surviving spouse who elects to take against the will, 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) One percent of property, exclusive of life insurance proceeds, not included in the appraised value of the estate but reportable for Oregon inheritance or federal estate tax purposes, whichever is greater.

(3) The court may also allow just compensation for any unusual services not ordinarily required of personal representatives in such estates.

(4) When a decedent by his will has made special provision for the compensation of his personal representative the personal representative is not entitled to any other compensation for his services, unless prior to his appointment he subscribes and files with the clerk a written renunciation of the compensation provided by the will.

Section 12. Interest on pecuniary devises. General pecuniary devises bear interest at the rate of three percent per annum for a period beginning one year from the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

Section 13. Disposition of unclaimed assets. If a report filed by the personal representative not less than 30 days after entry of the decree of distribution shows that payment or delivery of property in his possession or under his control cannot be made to a distributee entitled to such payment or delivery, either because the distributee refuses to accept the property, or because he cannot be found, the court may direct

the personal representative to pay or deliver the property to the Division of State Lands to be placed in the escheat funds of the state. The personal representative shall take the receipt of the Division 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.

Section 14. 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 final decree, the court shall enter an order of discharge. The discharge so obtained shall operate as a release of the personal representative from further duties and shall operate as a bar to any suit against the personal representative and his surety unless such suit be commenced within one year from the date of the discharge.

Section 15. Recording of copies of records in other counties wherein real property is situated. (1) If real property belonging to the estate of decedent is situated in a county other than that in which the estate is being administered, the personal representative shall cause to be recorded in the deed records of the county certified copies of:

(a) The petition for appointment of the personal representative.

(b) The will, if any.

(c) The order appointing the personal representative.

(d) The decree of distribution.

(e) The order discharging the personal representative.

(2) If real property in such other county has been sold by the personal representative he shall also cause to be recorded a certified copy of any order authorizing sale of the real property.

Section 16. 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, insofar 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. (No change in present ORS 117.710, section 16.)

Section 17. Payment of debt and delivery of property to foreign personal representative without local administration. (1) Three months after the death of a nonresident decedent,

any person indebted to the estate of the nonresident decedent or having possession of tangible 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 tangible personal property or the instrument evidencing the debt, obligation, stock or chose in action to the foreign personal representative of the noresident decedent upon an affidavit made by or on behalf of the 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,

(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 discharge of the debtor or person having possession of the personal property.

(3) Payment or delivery under subsection (1) may not be made 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.

Section 18. ORS 697.695 is amended to read:

697.695. Assignability of licenses; procedure on death of licensee. (1) Except as provided in subsection (2) of this section, any license granted under ORS 697.610 to 697.655 and 697.660 to 697.785 is a personal privilege and shall not be assignable.

(2) Upon the death of any licensee the commissioner shall have the right to transfer the license of the decedent to the

(2) If the mother described in subsection (1) of this section is dead or unknown, consent shall be obtained in the same manner as if such child had no living parent.

Section 22. ORS 109.330 is amended to read:

109.330. Notice to nonconsenting parent; notice where child has no parent, guardian or next of kin. (1) In the cases provided for in ORS 109.314, 109.322 and 109.324, where a parent does not consent to the adoption of his child, the court shall order a copy of the petition therefor and citation thereon to be served on him personally, if found in the state, and if not found in the state, then a copy of the citation to be published or served in the manner provided by ORS [116.750] 15.110 to 15.140 for the service of citation by publication or for personal service outside the state, and a copy of the citation to be deposited forthwith in the postoffice, directed to such parent at his place of residence, unless it appears that such residence is neither known to the petitioner nor can with reasonable diligence be ascertained by him; except that the citation so served by publication need not contain the names of the adoptive parents.

(2) If the child has no living parent and no guardian or next of kin in this state qualified to appear in its behalf, the court may order such notice, if any, to be given as it deems necessary or proper.

Section 23. Repeal of existing statutes. ORS 116.186, 116.190, 116.195, 117.010, 117.020, 117.310, 117.315, 117.320, 117.340, 117.610, 117.612, 117.615, 117.620, 117.630, 117.640, 117.650, 117.660, 117.670, 117.680, 117.690 and 722.385 are repealed.

Proposed revised Oregon probate code
ACCOUNTING AND DISTRIBUTION
Amended 2nd Draft
February 26, 1968

Prepared by
Stanton W. Allison

COMMENTS

Section 1. Liability of personal representative.
Section 2. Personal representative not liable.

These two sections are adapted from Section 172 of the Model Probate Code (1946), and would replace ORS 117.640 and 117.650. Similar language is found in Sections 157, 158 and 160 of the 1963 Iowa Probate Code. An addition to our statutory and case law in this area is subsection (2) of Section 1, which imposes liability upon the personal representative for property not a part of the estate if he has commingled it with estate property or it was received by him in his capacity as personal representative.

Section 3. Accounting and distribution. This section would replace ORS 117.010 and 117.610. Except as hereafter noted, it contains the content of these present sections. The wording is adapted from ORS 126.336, of the 1961 Guardianship Code. The provision for filing a semiannual account has been eliminated. This requirement has been criticized by attorneys for many years. In your committees' opinion there is no good reason for retaining it. The court is given authority to waive the annual account or to require an accounting at such other times as it may order. Paragraph (3)(a) accords with ORS 117.610, 118.250, 118.840 and 316.530.

Subsection (4) is a new provision which would eliminate the necessity of making detailed accounting in solvent estates where

all debts have been paid and all the beneficiaries consent to the elimination of the detailed account. This would avoid filling the probate files with detailed accountings in those estates where there is no real need for them.

Section 4. Notice of time for filing objections to final account and petition for distribution. This section is generally comparable to ORS 117.612, with the following changes. No publication of notice of final account is required. The proposed code provides for mailing notice to the heirs in the intestate estate and to the devisees in the testate estate at the time of the appointment of the personal representative. Thus the parties to whom the notice of the final account and petition for distribution is mailed have been informed of the probate at the initiation of proceedings. The section also requires notice to creditors whose claims have been filed but who have not received payment in full of their claim. Their interest in being notified of the accounting is obvious. The provision would cover the present requirement of ORS 117.615 for giving notice to the State Public Welfare Commission.

Section 5. Objections to final account and petition. This incorporates the substance of ORS 117.620. However, fundamental difference of procedure should be noted. Section 4 fixes a time for filing objections to the final account and petition for distribution. Section 5 provides that a time for hearing is

designated by the court when objections have been filed. Your committees felt that this change was sensibly in line with usual procedure, since ordinarily no objections are filed to the final account and in the vast majority of estates no hearing is necessary or is held. Objections may be filed only by those parties who are entitled to notice under the preceding section. Thus creditors whose claims have been barred by the nonclaim statute or whose claims have been paid would be not entitled to object.

Section 6. Decree of final distribution. The language is based on Section 183 of the Model Probate Code. The present Oregon code does not have a specific provision for a decree of final distribution. It was the intention of your committees to provide finality and conclusiveness to such a decree. It will be noted that the decree designates the parties in whom the property of the estate is vested and the property to which each is entitled, either by the will, by mutual agreement, or by intestate succession. The section requires a recital of findings of the court with respect to matters mentioned in paragraphs (a) through (j) of subsection (1).

Subsection (2) accords to the present ORS 118.250, 118.840 and 316.530.

Subsection (3) is drafted from paragraph (d) of Section 183 of the Model Probate Code. Your committees believe this section gives necessary finality and conclusiveness to the decree of distribution and to the determination of the successors in

interest of the property of the decedent, subject only to the right of appeal and the right to vacate the decree. By contrast ORS 117.630 provides that the decree is merely primary evidence of the correctness of the account and that the determination of the "names and ages of the heirs and legatees" is merely prima facie evidence of the facts set out in the order.

Section 7. Effect of order settling account. The language of this section is that of Section 179 of the Model Probate Code. In contrast to ORS 117.630, the decree approving the final account relieves the personal representative of liability subject only to the right of appeal, the right of the court to vacate its final orders and to proper distribution and discharge set out in Section 14.

Section 8. Distribution; order in which assets appropriated; abatement. This section is taken from Section 3-602 of the 1967 draft Uniform Probate Code. It follows the plan of abatement set out in ORS 117.330, 116.720, 116.730 and 116.735. However, the present statutory plan of abatement is modified because the proposed code makes no distinction between real and personal property, and title to both real and personal property vests in the heirs or devisees at the moment of death.

Subsection (2) preserves abatement as separately provided in the chapters on pretermitted heirs and election of the surviving spouse to take against a will.

Subsection (3), which is adapted from the New York Statute on Pretermitted Heirs, would except from abatement specific bequests of tangible personal property, such as articles of jewelry, art objects and other gifts which are not properly susceptible of being subjected to abatement.

Subsection (4) would replace ORS 117.330 and 117.340 and conforms to the general purpose and effect of those sections.

Section 9. Right of retainer. The first sentence is Section 3-603 of the 1967 draft Uniform Probate Code. The second sentence is adapted from Section 471 of the Iowa Probate Code. The Iowa statute does not permit the right of retainer to be barred by the statute of limitations or by discharge in bankruptcy. It was the judgment of your committees that the personal representative should be subject to the same defenses that the decedent would have if he were alive.

It seemed desirable to your committees that the common law "right of retainer" should be codified although it is well established in our decisions. See Stanley vs. U.S. National Bank of Portland, 110 Or. 648, 224 Pac. 835, Boise Payette Lumber Co. vs. National Surety Corporation, 167 Or 553, 118 P2d 1006, and In Re Miller's Estate, 189 Or. 246, 218 P2d 966.

Section 10. Expenses of personal representative. The content of this section is substantially the same as ORS 117.660. The second sentence is Section 3-421 of the 1967 draft Uniform

Probate Code. In several areas, such as abatement, exoneration, partial distribution and apportionment of estate taxes, the proposed code provides for contribution by heirs and devisees. This would require the personal representative in some cases to bring an action against the heir or devisee. Litigation may well ensue in the case of contested claims. It was deemed advisable to include adequate protection to the personal representative for his necessary expenses and reasonable attorneys' fees.

Section 11. Compensation of personal representative. This section would replace ORS 117.660, 117.670 and 117.680.

Subsection (1) is comparable to ORS 117.680, "The compensation provided by law for an executor or administrator is a commission upon the whole estate accounted for by him." Your committees felt they should clarify the language quoted as it had been construed by subsequent Oregon decisions. The provision for dividing the statutory compensation among more than one personal representative seems a protection to the estate and would remove uncertainty.

The section provides some increase over the present compensation. The two percent figure will apply to value above $60,000, rather than above $50,000, as in the present statute. The four percent bracket will apply to the first $60,000 with $250 minimum charge. Provision is also made for a fee of one percent on the nonprobate assets reportable for estate tax purposes.

The present section was last amended in 1951. Since that date there has been no increase in the compensation of the personal

representative, although during this period the duties of the personal representative have increased tremendously in the area of state and federal income taxes and state and federal estate taxes. Reference is made to a study by the American College of Probate Counsel, revised as of July 1, 1966, of fees of executors, administrators and testamentary trustees.

Subsection (3) is subsection (2) of ORS 117.680 with editorial changes. Subsection (4) accords with ORS 117.660, except that the personal representative must file his renunciation of the compensation provided by the will prior to his appointment.

Section 12. Interest on pecuniary legacies. The language is adapted from Section 3-604 of the 1967 draft Uniform Probate Code. The committees felt that nominal interest of three percent should be paid to the distributees of general pecuniary legacies where the funds are not paid by the personal representative for more than a year from his appointment. If the will provides otherwise it would control.

Section 13. Disposition of unclaimed assets. This section would replace subsection (2) of ORS 117.310 with the following changes. The period during which the personal representative must retain the asset awaiting delivery or payment has been reduced from three months to 30 days. The language has been rewritten to include the common case where a legatee refuses to accept a bequest. The present requirement of paying these funds to the

County Treasurer for him to hold for one year has been eliminated. In the proposed section the personal representative pays the money upon court order direct to the Division of State Lands. With these two changes, the procedure conforms to the present code. For comparable legislation, see Section 109 of the 1963 Iowa Probate Code and Section 3-612 of the 1967 draft Uniform Probate Code.

Section 14. Discharge of personal representative. The language of this section is that of Section 193 of the Model Probate Code. The committees, however, changed the period for commencement of a suit against the personal representative and the surety from two years to one year from the date of discharge. Except as provided in ORS 116.195 there is no specific provision in the present code for an order closing the estate, although that is the regular procedure. It was considered desirable that there be provision for an order of discharge which would relieve the personal representative of liability, subject only to the one year limitation for legal action against him.

Section 15. Recording of copies of records in other counties wherein real property is situated. This section is a rewrite of ORS 116.190. The only fundamental change in this section is in regard to the sale of real property. The proposed code does not contemplate that in the usual sale a court order will be required. The committees agreed that recording the deed

of the personal representative in the county where the property was situated would furnish adequate record of the sale. Where a court order is required by the proposed code a certified copy of the order must be recorded.

Section 16. Reopening estate of decedent. ORS 117.710 has been included here without change. Your committees submitted this amended section to the Law Improvement Committee which introduced it in the 1965 Legislature. It was passed as chapter 345, section 1 of the 1965 Session Laws.

Section 17. Payment of debt and delivery of property to foreign personal representative without local administration. This is Sections 4-201, 4-202 and 4-203 of the 1967 draft Uniform Probate Code. It would replace ORS 116.186. The proposed section would eliminate the publication required by the present statute when the property is over $500 in value. It would shorten the period to 30 days after the death, where now 90 days is required after the first publication, or after the death if no publication is required. The requirement that certified copy of letters be furnished is eliminated. A creditor may still require that he be furnished copy of letters in addition to the affidavit if he desires it for his protection. The requirement of a release by the State Treasurer is eliminated.

Your committees decided the simpler procedure provided by the Uniform Probate Code was an improvement over ORS 116.186. They believed the present release requirement from the State

Treasurer is of no particular practical utility, since these releases are apparently furnished quite routinely at the present time.

Sections 18 to 22 are technical amendments which have been included in this chapter as a matter of convenience.

Proposed revised Oregon probate code
ACCOUNTING AND DISTRIBUTION
Amended 2nd Draft
February 26, 1968

Prepared by
Stanton W. Allison

COMPARATIVE SECTION TABLE

Draft Sections	ORS Sections
1	117.640, 117.650
2	117.640, 117.650
3	117.010, 117.610
4	117.612, 117.615
5	117.620
6	117.010, 117.630
7	117.630
8	116.720, 116.730, 116.735, 117.330, 117.340
9	
10	117.660
11	117.660, 117.670, 116.680
12	
13	117.310
14	116.195
15	116.190, 116.195
16	117.710
17	116.186
18	697.695
19	697.165
20	419.488
21	109.326
22	109.330
23	Repealer

Proposed revised Oregon probate code
ACCOUNTING AND DISTRIBUTION
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Prepared by

Stanton W. Allison

Section 1. Liability of personal representative. Every personal representative shall be liable for and chargeable in his accounts with:

(1) All of the estate of the decedent which comes into his possession at any time, including the income therefrom.

(2) All property not a part of the estate if:

(a) He has commingled the property with the assets of the estate.

(b) The property was received under a duty imposed on him by law in the capacity of personal representative.

(3) Any loss to the estate arising from:

(a) Neglect or unreasonable delay in collecting the credits or other assets of the estate or in selling, mortgaging or leasing the property 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 his corepresentatives which he could have prevented by the exercise of ordinary care.

(g) Any other negligent or wilful act or nonfeasance in

fixed for such filing, file his objections to the account in the court in which such proceedings are pending, specifying the particulars of the objections. Upon the filing of objections the court shall designate the time for hearing thereon.

Section 6. Decree of final distribution. (1) In its decree of final distribution the court shall designate the persons in whom title to the estate available for distribution is vested and the property to which each is entitled under the will, by agreement approved by the court, or pursuant to intestate succession. The decree of distribution shall also contain any findings of the court with respect to:

(a) Advancements.

(b) Election by 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 which 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 his final account until personal property taxes and Oregon income and estate taxes, if any, have been paid and appropriate receipts, releases and clearances therefor have been filed, or until payment of such taxes has been secured by bond, deposit or otherwise.

(3) The decree of distribution shall be a conclusive determination of the persons who are the successors in interest to the estate of the decedent and of the extent and character

shall be prior and superior to the rights of judgment creditors, heirs or assigns of the distributee.

Section 10. Expenses of personal representative. A personal representative shall be allowed in the settlement of his 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 him. When any personal representative defends or prosecutes any proceeding in good faith and with just cause, whether successful or not, he shall be entitled to receive from the estate his necessary expenses and disbursements including reasonable attorney's fees in the proceedings.

Section 11. Compensation of personal representative. (1) Upon application to the court the personal representative shall be entitled to receive compensation for his 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 shall be a commission upon the whole estate accounted for which shall include:

(a) Property inventoried and subject to the jurisdiction of the court.

(b) Additions thereto such as income or realized gains.

(c) Property not included in the appraised value of the estate but reportable for Oregon inheritance or federal estate

tax purposes.

(2) The commissions of the personal representative shall be:

(a) Four percent of the first $60,000, but not less than $250.

(b) Two percent of all above $60,000.

the personal representative to pay or deliver the property to the State Land Board to be placed in the escheat fund of the state. The personal representative shall take the receipt of the State Land Board 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.

Section 14. 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 final decree, the court shall enter an order of discharge. The discharge so obtained shall operate as a release of the personal representative from further duties and shall operate as a bar to any suit against the personal representative and his sureties unless such suit be commenced within one year from the date of the discharge.

Section 15. Recording of copies of records in other counties wherein real property is situated. (1) If any real property belonging to the estate of decedent is situated in any county other than that in which the estate is being administered, the personal representative shall cause to be recorded in the deed records of the county, certified copies of:

(a) The petition for appointment of the personal

Proposed revised Oregon probate code
ACCOUNTING AND DISTRIBUTION
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Prepared by

Stanton W. Allison

Section 1. Liability of personal representative. Every personal representative shall be liable for and chargeable in his accounts with:

(1) All of the estate of the decedent which comes into his possession at any time, including the income therefrom.

(2) All property not a part of the estate if:

(a) He has commingled the property with the assets of the estate.

(b) The property was received under a duty imposed on him by law in the capacity of personal representative.

(3) Any loss to the estate arising from:

(a) Neglect or unreasonable delay in collecting the credits or other assets of the estate or in selling, mortgaging or leasing the property of the estate.

(b) Neglect in paying over money or delivering property of the estate.

(c) Failure 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 his corepresentatives which he could have prevented by the exercise of ordinary care.

(g) Any other negligent or wilful act or nonfeasance in

his administration of the estate by which loss to the estate arises.

Section 2. Personal representative not liable. The personal representative shall not be liable or chargeable for:

(1) Debts due the decedent or other assets of the estate which remain uncollected without his fault.

(2) Loss by the decrease in value or destruction of property of the estate if the loss is caused without his fault.

Section 3. Accounting and distribution. (1) The personal representative shall make and file in the estate proceeding a verified account of his administration:

(a) Annually within thirty days after the anniversary day of his appointment unless the court orders otherwise.

(b) Within thirty days after the date of his removal or resignation or the revocation of his letters.

(c) When the estate is ready for settlement and distribution.

(d) At such other times as the court may order.

(2) Each account shall include the following information:

(a) The period of time covered by the account.

(b) The total value of the property with which he is chargeable according to the inventory, or, if there had been a prior accounting, 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 shall accompany the account, unless otherwise provided by order or rule of court.

(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.

(3) When the estate is ready for settlement and distribution, the account shall also include:

(a) A statement that all Oregon income and inheritance taxes, and personal property taxes, if any, either have been paid or will be paid prior to final closing of the estate and that appropriate receipts, releases or clearances therefor will be procured and filed prior to such closing or that such taxes will be secured by bond, deposit or otherwise.

(b) A petition for an order authorizing the personal representative to distribute the estate to the persons and in the portions specified therein.

(4) If the beneficiaries consent thereto in writing, and all creditors of the estate have been paid in full, the personal representative, in lieu of the annual accounts required by subsection (1)(a), and in lieu of the information required by subsection (2), may file as his final account a verified statement which shall include the following:

(a) The period of time covered by the account.

(b) A statement that all creditors have been paid in full.

(c) The matters required to be included by subsection (3).

Section 4. Notice of time for filing objections to final account and petition for distribution. (1) Upon filing the final account and petition for order of distribution the personal representative shall fix a time for filing objections thereto. Not less that twenty days before the expiration of the time fixed for filing objections he shall cause notice thereof to be mailed to:

(a) Each heir at his last-known address, if the decedent died intestate.

(b) Each devisee at his last-known address, if the decedent died testate.

(c) Creditors not receiving payment in full whose claims have 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 does not have to be mailed to the personal representative.

(3) Proof of the mailing to those persons entitled to notice shall be made by affidavit and filed at or before approval of the final account.

Section 5. Objections to final account and petition. Any person entitled to notice under section 4 may, within the time

fixed for such filing, file his objections to the account in the court in which such proceedings are pending, specifying the particulars of the objections. Upon the filing of objections the court shall designate the time for hearing thereon.

Section 6. Decree of final distribution. (1) In its decree of final distribution the court shall designate the persons in whom title to the estate available for distribution is vested and the property to which each is entitled under the will, by agreement approved by the court, or pursuant to intestate succession. The decree of distribution shall also contain any findings of the court with respect to:

(a) Advancements.

(b) Election by 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 which have been allowed and are still unpaid.

(2) The decree of distribution shall be a conclusive determination of the persons who are the successors in interest to the estate of the decedent and of the extent and character

of their interest therein, subject only to the right of appeal and the right to vacate the decree.

Section 7. Effect of order settling account. To the extent that the final account is approved, the personal representative and his surety shall, subject to the right of appeal and to the power of the court to vacate its final orders, be relieved from liability for the administration of his trust, including the investment of the assets of the estate. The court may disapprove the account in whole or in part and surcharge the personal representative for any loss caused by any breach of duty.

Section 8. 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), 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_____dealing with the shares of pretermitted heirs and in ORS_____, dealing with the share of the surviving spouse who elects to take against the will, 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.

A general devise charged on any specific property or fund is, for purposes of abatement, deemed 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 deemed a general devise to the extent of this failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received had full distribution of the property been made in accordance with the terms of the will.

(3) Persons to whom the will gives tangible personal property not used in trade, agriculture or other business are not required to contribute from such property, unless the particular gift forms a substantial amount of the total estate and the court specifically orders contribution because of such gift.

(4) 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.

Section 9. Right of 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 distributee's interest; but the distributee shall have the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt. The right of offset and retainer

shall be prior and superior to the rights of judgment creditors, heirs or assigns of the distributee.

Section 10. Expenses of personal representative. A personal representative shall be allowed in the settlement of his 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 him.

Section 11. Compensation of personal representative. (1) Upon application to the court the personal representative shall be entitled to receive compensation for his 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 shall be a commission upon the whole estate accounted for which shall include:

(a) Property inventoried and subject to the jurisdiction of the court.

(b) Additions thereto such as income or realized gains.

(c) Property not included in the appraised value of the estate but reportable for Oregon inheritance or federal estate tax purposes.

(2) The commissions of the personal representative shall be:

(a) Four percent of the first $60,000, but not less than $250.

(b) Two percent of all above $60,000.

(c) One percent of property, exclusive of life insurance proceeds, not included in the appraised value of the estate but reportable for Oregon inheritance or federal estate tax purposes, whichever is greater.

(3) The court may also allow just compensation for any unusual services not ordinarily required of personal representatives in such estates.

(4) When a decedent by his will has made special provision for the compensation of his personal representative the personal representative is not entitled to any other compensation for his services, unless prior to his appointment he subscribes and files with the clerk a written renunciation of the compensation provided by the will.

Section 12. Interest on pecuniary legacies. Pecuniary legacies shall bear interest at the rate of three percent per annum beginning 12 months from the filing of the petition for the appointment of a personal representative until the payment of the legacies, unless a contrary intent is indicated in the will.

Section 13. Disposition of unclaimed assets. If a report filed by the personal representative not less than 30 days after entry of the decree of distribution shows that payment or delivery of property in his possession or under his control cannot be made to a distributee entitled to such payment or delivery, either because the distributee refuses to accept the property, or because he cannot be found, the court may direct

the personal representative to pay or deliver the property to the State Land Board to be placed in the escheat fund of the state. The personal representative shall take the receipt of the State Land Board 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.

Section 14. Discharge of personal representative. Upon the filing of receipts, releases and clearances for Oregon income, estate and inheritance taxes, and personal property taxes, and upon the filing of receipts or other evidence satisfactory to the court that distribution has been made as ordered in the final decree, the court shall enter an order of discharge. The discharge so obtained shall operate as a release of the personal representative from further duties and shall operate as a bar to any suit against the personal representative and his sureties unless such suit be commenced within one year from the date of the discharge.

Section 15. Recording of copies of records in other counties wherein real property is situated. (1) If any real property belonging to the estate of decedent is situated in any county other than that in which the estate is being administered, the personal representative shall cause to be recorded in the deed records of the county, certified copies of:

(a) The petition for appointment of the personal

representative.

(b) The will, if any.

(c) The order appointing the personal representative.

(d) The order determining heirship, if any.

(e) The order discharging the personal representative.

(2) If real property in such other county has been sold by the personal representative he shall also cause to be recorded a certified copy of any order authorizing sale of the real property.

Section 16. 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. (No change in present ORS 117.710 - section 16)

Section 17. ORS 116.186 is amended to read:

116.186. Delivery of personal property and payment of debts to foreign administrators and executors; publication of

notice; effect of payment or delivery. (1) Foreign administrators and executors may receive payment of, and discharge, debts owing by residents of this state and accept delivery of, and give acquittances for, personal property in the possession of residents of this state, upon complying with the provisions of this section.

(2) If the indebtedness is in an amount, or the personal property is of a value, in excess of[$500], $1,000 such payment or delivery shall not be made until 90 days after first publication of notice, as provided in subsection (3) of this section. If such notice is not required, such payment or delivery shall not be made until 90 days after the date of death of the deceased owner.

(3) (a) If the indebtedness is in an amount, or the personal property is of a value, in excess of [$500] $1,000, the foreign administrator or executor shall publish a notice once each week for four successive weeks in a newspaper of general circulation in the county in which the debtor or person in possession of personal property resides or is engaged in business, describing the debt or personal property, identifying the debtor or person in possession thereof, showing his residence or business address, stating that, after 90 days from the date of first publication, payment or delivery of such indebtedness or personal property to such foreign administrator or executor will be requested, and directing any person objecting to such payment or delivery to give notice in writing

to the debtor or person in possession of personal property that he objects thereto. Such notice shall be directed to all persons interested as creditors or beneficiaries in the estate of the decedent.

(b) If the person indebted to, or holding personal property of, the decedent maintains branch offices, the publication shall be in the county where it is located, and the notices and consent by claimants shall be given to, the office or branch at which the account evidencing the indebtedness or credit is carried, or at which the personal property is located or controlled.

(4) Upon expiration of 90 days after the first publication of such notice, if required, or upon the expiration of 90 days after the date of death of the deceased owner, if such notice is not required, the debtor or person in possession of personal property may pay such debt or deliver such personal property to the foreign administrator or executor if, prior to such payment or delivery, he shall not have received written notice of objections thereto and he shall have received:

(a) Proof of publication of notice, as provided in ORS 193.070, if such notice be required by subsection (3) of this section;

(b) An affidavit of the executor or administrator averring to the best of his knowledge and belief that no other letters on said estate are then outstanding that no petition for such letters is then pending in this state, that no ancillary

proceedings will be brought and that there are no unpaid creditors of the decedent or the estate in this state who have not consented to such payment or delivery;

(c) Copy of letters testamentary or of administration, certified by the clerk of the court out of which such letters issued. The certificate of the clerk shall be dated no more than 30 days prior to the date of delivery thereof to the debtor or person in possession of personal property and shall declare that, at the date thereof, the person therein named is the duly appointed, qualified and acting executor or administrator of the estate of the decedent; and

(d) Release in writing of such indebtedness or personal property, given by the State Treasurer in respect to inheritance taxes.

(5) Payment or delivery of personal property to a foreign administrator or executor, as provided in this section, shall constitute an acquittance and discharge of the debtor or person in possession of personal property, to the extent thereof.

Section 18. ORS 697.695 is amended to read:

697.695. <u>Assignability of licenses; procedure on death of licensee</u>. (1) Except as provided in subsection (2) of this section, any license granted under ORS 697.610 to 697.655 and 697.660 to 697.785 is a personal privilege and shall not be assignable.

(2) Upon the death of any licensee the commissioner shall have the right to transfer the license of the decedent to the

[executor or administrator] personal representative of his estate for the period of the unexpired term of the license and thereupon the court having jurisdiction of the probate of the estate of said decedent may authorize such [executor or administrator] personal representative to continue the business of debt consolidating formerly carried on by the decedent pursuant to the provisions of ORS [116.170 to 116.180] _____, and upon such other terms and conditions as the court may prescribe.

Section 19. ORS 697.165 is amended to read:

697.165. License or certificate as personal privilege; procedure on death of licensee. (1) Except as provided in subsection (2) of this section, any certificate or license granted under ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470 shall be a personal privilege and shall not be assignable.

(2) Upon the death of any collection agency licensee, the Real Estate Division shall have the right to transfer the license of the decedent to the [executor or administrator] personal representative of his estate for the period of the unexpired term of the license and thereupon the court having jurisdiction of the probate of the estate of said decedent may authorize such [executor or administrator] personal representative to continue the collection agency business of the decedent pursuant to the provisions of ORS [116.170 to 116.180] _____ _____, and upon such other terms and conditions as

the court may prescribe.

(3) The death of the operator of a corporate licensee shall in no way interfere with the continuation of the licensed business providing another licensed operator is placed in management control of the corporate licensee.

Section 20. ORS 419.488 is amended to read:

419.488. Service of summons and process; travel expenses of person summoned. (1) Summons or other process issuing from the juvenile court may be served without further indorsement in any county of the state by an officer of the county in which the proceeding is pending, by an officer of the county in which the person to be served is found or by any person authorized by the court to serve the process. Except as otherwise provided in ORS 419.472 to 419.587, the provisions of law applicable to summons in civil cases apply to summons issued from juvenile court.

(2) If the parent, parents or guardian required to be summoned as provided in subsection (4) of ORS 419.486 cannot be found within the state, summons may be served on him or them in any of the following ways:

(a) If the address of the parent or guardian is known, by sending him a copy of the summons by registered mail with a return receipt to be signed by the addressee only.

(b) By personal service outside the state in the manner provided in [subsection (3) of ORS 116.750] ORS 15.110.

(c) If, after reasonable inquiry, the whereabouts of the

parent or guardian cannot be ascertained, by publishing a summons in a newspaper having general circulation in the county in which the proceeding is pending. In lieu of the brief statement of facts required by subsection (2) of ORS 419.486, the published summons shall simply state that a proceeding concerning the child is pending in the court and an order making an adjudication will be entered therein. The summons shall be published once a week for a period of three weeks, making three publications in all. If the names of one or both parents or the guardian are unknown, he or they may be summoned as "The parent(s) or guardian of (naming or describing the child), found (stating the address or place where the child was found)."

(3) Service as provided in this section shall vest the court with jurisdiction over the parents or guardian in the same manner and to the same extent as if the person served were served personally within this state.

(4) The court may authorize payment of travel expenses of any person summoned, as provided in ORS 139.140.

Section 21. ORS 109.326 is amended to read:

109.326. Consent where parents not married to each other.

(1) The consent of the mother of the child is sufficient, and for the purpose of giving such consent the mother of the child shall be deemed to have arrived at the age of majority and for all purposes relating to the adoption of the child the father of the child shall be disregarded just as

if he were dead, when it is shown in the court in which the adoption proceedings are pending that:

(a) The mother of the child was unmarried at the time of the conception of the child to be adopted and remained unmarried at the time of the birth of the child and was not married to the father of the child at the time of her consent to the adoption or surrender of the child for the purpose of adoption under ORS 418.270; or

(b) When the mother of the child was married at the time of the conception or birth of the child, and it has been judicially determined that her husband at such time or times was not the father of the child. Such determination of nonpaternity may be made by any court having adoption or juvenile court jurisdiction. The testimony or affidavit of the mother or such husband shall constitute competent evidence before the court making such determination. Before making such determination of nonpaternity, citation to show cause why such husband's parental rights should not be terminated shall be served on him personally, if found in the state, and if not found in the state, then a copy of the citation shall be published or served in the manner provided by ORS [116.750] <u>15.110 to 15.140</u> for the service of citation by publication or for personal service outside the state; except that the citation so served by publication need not contain the names of the adoptive parents.

(2) If the mother described in subsection (1) of this section is dead or unknown, consent shall be obtained in the same manner as if such child had no living parent.

Section 22. ORS 109.330 is amended to read:

109.330. Notice to nonconsenting parent; notice where child has no parent, guardian or next of kin. (1) In the cases provided for in ORS 109.314, 109.322 and 109.324, where a parent does not consent to the adoption of his child, the court shall order a copy of the petition therefor and citation thereon to be served on him personally, if found in the state, and if not found in the state, then a copy of the citation to be published or served in the manner provided by ORS [116.750] 15.110 to 15.140 for the service of citation by publication or for personal service outside the state, and a copy of the citation to be deposited forthwith in the postoffice, directed to such parent at his place of residence, unless it appears that such residence is neither known to the petitioner nor can with reasonable diligence be ascertained by him; except that the citation so served by publication need not contain the names of the adoptive parents.

(2) If the child has no living parent and no guardian or next of kin in this state qualified to appear in its behalf, the court may order such notice, if any, to be given as it deems necessary or proper.

Section 23. Repeal of existing statutes. ORS 116.190, 116.195, 117.010, 117.020, 117.310, 117.315, 117.320, 117.340, 117.610, 117.612, 117.615, 117.620, 117.630, 117.640, 117.650, 117.660, 117.670, 117.680, 117.690 and 722.385 are repealed.

Prepared by
Legislative Counsel

Proposed revised Oregon probate code
ACCOUNTING AND DISTRIBUTION
1st Draft
April 10, 1967

This draft is based primarily on a draft by Campbell Richardson, William Tassock and William Keller dated November 14, 1966, and the action of the committees at the November 18, 19, 1966 meeting.

Section 1. Liability of personal representative. Every personal representative shall be liable for and chargeable in his accounts with:

(1) All of the estate of the decedent which comes into his possession at any time, including the income therefrom.

(2) All property not a part of the estate if:

(a) He has commingled the property with the assets of the estate.

(b) The property was received under a duty imposed on him by law in the capacity of personal representative.

(3) Any loss to the estate arising from:

(a) Neglect or unreasonable delay in collecting the credits or other assets of the estate or in selling, mortgaging or leasing the property of the estate.

(b) Neglect in paying over money or delivering property of the estate.

(c) Failure to account for or to close the estate within the time provided by law.

(d) Embezzlement or commingling of the assets of the estate with other property.

(e) Unauthorized self-dealing.

(f) Wrongful acts or omissions of his corepresentatives which he could have prevented by the exercise of ordinary care.

(g) Any other negligent or wilful act or nonfeasance in his administration of the estate by which loss to the estate arises.

Section 2. Personal representative not liable. The personal representative shall not be liable or chargeable for:

(1) Debts due the decedent or other assets of the estate which remain uncollected without his fault.

(2) Loss by the decrease in value or destruction of property of the estate if caused without his fault.

The personal representative shall not be entitled to any profit by the increase in value of any property in the estate.

References: Advisory Committee Minutes:
11/18,19/66 pp. 3 to 7; and Appendix

ORS 117.010
117.020
117.030

Section 3. Accounting and distribution. (1) The personal representative shall make and file in the estate proceeding a written verified account of his administration:

(a) Unless the court orders otherwise, annually within thirty days after the anniversary day of his appointment.

(b) Upon the appointment of a successor personal representative, after the resignation, death or removal of the incumbent representative.

(c) When the estate is ready for settlement and distribution.

(d) At such other times as the court may order.

(2) Each account made and filed by a personal representative shall include the following information:

(a) The period of time covered by the account.

(b) The amount of the property of the estate according to the inventory, or if there was a previous account, the amount of the balance of the next previous account, and all property, rents, income, issues, profits and proceeds from property received during the periods covered by the account.

(c) All disbursements made during the period covered by the account. Vouchers for disbursements shall accompany the account.

(d) The property of the estate on hand.

(e) Such other information as the personal representative considers necessary to show the condition of the affairs of the estate or as the court may order.

(3) When the estate is ready for settlement and distribution, the account shall also include:

(a) An affirmative statement that all Oregon income, inheritance and personal property taxes, if any, either have been paid or will be paid prior to final closing of the estate and that appropriate receipts, releases or clearances therefor will be procured and filed prior to such closing or that such taxes will be secured by bond, deposit or otherwise.

(b) A petition for an order authorizing the personal

representative to distribute the estate to the persons and in the portions specified therein.

References: Advisory Committee Minutes:
11/18/66, pp. 8,13,14 pp. 8 and 9; and Appendix

ORS 117.010
117.610
126.336

Section 4. Notice, hearing on settlement of account and petition for distribution. (1) Upon the filing of the final account and petition for order of distribution, the personal representative shall fix a day for hearing of objections thereto and the personal representative shall, not less than 20 days before expiration of the time fixed for the hearing, cause notice of the time and place thereof to be mailed to:

(a) Each heir at his last known address, if the decedent died intestate.

(b) Each legatee and devisee at his last known address, if the decedent died testate.

(c) Creditors not receiving payment in full whose claims have 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 does not have to be mailed to the personal representative.

(3) Proof of the mailing to those persons entitled to

notice shall be made by affidavit and filed at or before approval of the final account.

References: Advisory Committee Minutes:
11/15, 16/66 pp. 15 and 16; and Appendix

ORS 117.615
117.612

Section 5. Objections to final account and petition. Any person entitled to notice under section 3 may, within the time appointed for such filing, file his objections to the account and petition or to any part thereof specifying the particulars of the objections. Upon the filing of objections the court shall designate the time for hearing thereon.

References: Advisory Committee Minutes:
11/18,19/66 p. 20; and Appendix

ORS 117.620

Section 6. Conclusiveness of order settling account. To the extent of approval of the final account, the personal representative and his sureties shall, subject to the right of appeal and to the power of the court to vacate its final orders, be relieved from liability for the administration of his trust during the accounting period, including the investment of the assets of the estate. The court may disapprove the account in whole or in part and surcharge the personal representative for any loss caused by any breach of duty.

References: Advisory Committee Minutes:
11/18,19/66 p. 20; and Appendix

Section 7. Decree of final distribution. (1) In its

decree of final distribution the court shall designate the persons to whom distribution is to be made and the proportions or parts of the estate or the amounts to which each is entitled under the will or by agreement approved by the court or pursuant to law. The decree of distribution shall also contain the findings of the court with respect to:

(a) Advancements.

(b) Election by 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 which have been duly allowed and are still unpaid, and whether the distributees take the property subject to a claim of this kind.

(j) A specific description of real property to be distributed.

(2) The decree of final distribution shall be a conclusive determination of the persons who are the successors in interest to the estate of the decedent and of the extent and character of their interest therein, subject only to the right of appeal and the right to reopen the decree. It

shall operate as the final adjudication of the transfer of the right, title and interest of the decedent to the distributees therein designated.

References: Advisory Committee Minutes:
11/18,19/66 pp. 16 to 18; and Appendix

ORS 117.310
117.315
117.320
117.330
117.350
117.361
117.370
117.380
117.390

Section 8. Disposition of unclaimed assets. Any personal representative having in his possession or under his control any property due or to become due to any other person to whom payment or delivery cannot be made, as shown by the report of the personal representative on file, may, upon order of the court, pay or deliver the property to the State Land Board and take the receipt of the State Land Board for the property. The receipt shall specifically state from whom the property was received, a description of the property, and the name of the person entitled to the property. Thereafter the property shall be held and disposed of by the State Land Board in accordance with ORS chapter 98.

References: Advisory Committee Minutes:
11/18,19/66 p. 20; and Appendix

ORS 117.310

Section 9. Order in which assets appropriated; abatement. (1) Except as provided in subsection (3) of this section, shares of the distributees shall abate for the payment of claims, legacies, the family allowance, the shares

of the pretermitted heirs or the share of the surviving spouse who elects to take against the will, 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 gifts;

(c) General gifts not charged on any specific property or fund; and

(d) Specific gifts.

(2) A general gift charged on any specific property or fund is, for purposes of abatement, deemed property specifically given 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 deemed a specific gift to the extent of such failure or insufficiency. Abatement within each classification is in proportion to the amounts of the property each of the distributees would have received had full distribution of such property been made in accordance with the terms of the will (p. 82 the last sentence is taken from Wisc. code, sec. 863.11).

(3) If the provisions of the will or the testamentary plan or the express or implied purpose of the gift would be defeated by the order of abatement stated in subsection (1) of this section, the shares of distributees shall abate in such other manner as may be found necessary to give effect to the intention of the testator.

References: Advisory Committee Minutes:
11/18,19/66 pp. 21-22; and Appendix

Section 10. Contribution. When real or personal property which has been specifically given, or charged with a legacy, shall be sold or taken by the personal representative for the payment of claims, family allowance, or an election to take against the will, other legatees and devisees shall contribute according to their respective interests to the legatee or devisee whose legacy or device has been sold or taken, so as to accomplish an abatement in accordance with the provisions of sec._____ hereof. The court shall, at the time of the hearing on the petition for final distribution, determine the amounts of the respective contributions and whether the same shall be made before distribution or shall constitute a lien on specific property which is distributed.

References: Advisory Committee Minutes:
11/18,19/66 pp. 21 to 23

ORS 117.340

Section 11. Retainer. When a distributee of an estate is indebted to the estate, or if a distributee takes as an heir of a deceased devisee indebted to the estate, the amount of the present worth of the indebtedness, if not due, shall be treated as an offset and retained by the personal representative out of any testate or intestate property of the estate to which the distributee is entitled. The right of offset and retainer shall be prior and superior to the rights of judgment creditors, heirs or assigns of such distributee and shall not be barred by the statute of limitations or by a discharge in bankruptcy.

References: Advisory Committee Minutes
2/18,19/66 p. 6; and Appendix

Section 12. Interest on general legacies. General legacies shall bear interest at the rate of three percent per annum beginning 12 months from the filing of the petition for the appointment of a personal representative until the payment of the legacies, unless a contrary intent is indicated in the will.

References: Advisory Committee Minutes:
11/18/66 p. 23

Section 13. Discharge of personal representative. Upon the filing of receipts, releases and clearances for Oregon income, estate, inheritance, and for personal property taxes on all taxable personal property, and upon the filing of receipts or other evidence satisfactory to the court that distribution has been made as ordered in the final decree, the court shall enter an order of discharge. The discharge so obtained shall operate as a release of the personal representative from further duties and shall operate as a bar to any suit against the personal representative and his sureties unless such suit be commenced within two years from the date of the discharge.

References: Advisory Committee Minutes:
11/18,19/66 pp. 24 and 25; and Appendix

Section 14. Expenses and compensation of personal representative. A personal representative shall be allowed in the settlement of his final account:

(1) All necessary expenses incurred in the care, management and settlement of the estate; and

(2) Any fee paid to an attorney for any party whose rights had to be resolved in order to properly administer the estate.

References: Advisory Committee Minutes:
11/18,19/66 and Appendix
1/20,21/67 pp. 2 to 4
2/17,18/67 pp. 3 to 5

ORS 117.660

REOPENING ESTATES

Section 15. Reopening estate of decedent. Upon the petition of any interested person, the court, with such notice as it may require, 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 any other acts as are considered necessary. The provisions of law as to the 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 filed in the reopened administration.

References: Advisory Committee Minutes:
11/18,19/66 and Appendix
1/20,21/67 p.2

ORS 117.710

Section 16. Recording of copies of records in other counties wherein real property is situated. If any property belonging to the estate of decedent is situated in any

county other than that in which the estate is being administered, the personal representative shall cause to be recorded in the deed records of those counties, certified copies of:

(1) The will, if any.

(2) The petition for appointment of the personal representative.

(3) The order appointing the personal representative.

(4) The order determining heirship, if any.

(5) The order authorizing sale of property.

(6) The order confirming sale of property.

(7) The order closing the estate.

References: Advisory Committee Minutes:
7/15,16/66 pp. 4 and 5; and Appendix

ORS 116.190

Section 17. Suit to set aside transfer of property. the personal representative may bring suit to set aside and void any transfer or change of interest in property of the decedent which was made or suffered:

(1) To delay, hinder or defraud creditors; or

(2) If it was accomplished in a manner so as to be void or contrary to the laws of this state.

References: Advisory Committee Minutes:
7/15,16/66 pp. 8 to 10; and Appendix

ORS 116.330
116.335
116.340

Section 18. Compensation of personal representative. (1) Upon application to the court the personal representative shall be entitled to receive compensation for his 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 shall be a commission upon the whole estate accounted for which shall include:

(a) Property inventoried and subject to the jurisdiction of the court.

(b) Additions thereto such as income or realized gains.

(c) Property not included in the appraised value of the estate but reportable for Oregon inheritance or federal estate tax purposes.

(2) The commissions of the personal representative shall be:

(a) Four percent of the first $60,000, but not less than $250.

(b) Two percent of all above $60,000.

(c) One percent of property, exclusive of life insurance proceeds, not included in the appraised value of the estate but reportable for Oregon inheritance or federal estate tax purposes, whichever is greater.

(3) The court may also allow just compensation for any unusual services not ordinarily required of personal representatives in such estates.

(4) When a decedent by his will has made special provision for the compensation of his personal representative the personal representative is not entitled to any other compensation for his services, unless prior to his appointment he subscribes and files with the clerk a written renunciation of the compensation provided by the will.

References: Advisory Committee Minutes:
11/18,19/66 pp. 3 to 7; and Appendix
2/17,18/66 pp. 3 to 5; and Appendix

ORS 117.660

Section 19. 116.186. Delivery of personal property and payment of debts to foreign administrators and executors; publication of notice; effect of payment or delivery.

(1) Foreign administrators and executors may receive payment of, and discharge, debts owing by residents of this state and accept delivery of, and give acquittances for, personal property in the possession of residents of this state, upon complying with the provisions of this section.

(2) If the indebtedness is in an amount, or the personal property is of a value, in excess of $500, such payment or delivery shall not be made until 90 days after first publication of notice, as provided in subsection (3) of this section. If such notice is not required, such payment or

delivery shall not be made until 90 days after the date of death of the deceased owner.

(3) (a) If the indebtedness is in an amount, or the personal property is of a value, in excess of $500, the foreign administrator or executor shall publish a notice once each week for four successive weeks in a newspaper of general circulation in the county in which the debtor or person in possession of personal property resides or is engaged in business, describing the debt or personal property, identifying the debtor or person in possession thereof, showing his residence or business address, stating that, after 90 days from the date of first publication, payment or delivery of such indebtedness or personal property to such foreign administrator or executor will be requested, and directing any person objecting to such payment or delivery to give notice in writing to the debtor or person in possession of personal property that he objects thereto. Such notice shall be directed to all persons interested as creditors or beneficiaries in the estate of the decedent.

(b) If the person indebted to, or holding personal property of, the decedent maintains branch offices, the publication shall be in the county where it is located, and the notices and consent by claimants shall be given to, the office or branch at which the account evidencing the indebtedness or credit is carried, or at which the personal property is located or controlled.

(4) Upon expiration of 90 days after the first publication of such notice, if required, or upon the expiration of 90 days after the date of death of the deceased owner, if such notice is not required, the debtor or person in possession of personal property may pay such debt or deliver such personal property to the foreign administrator or executor if, prior to such payment or delivery, he shall not have received written notice of objections thereto and he shall have received:

(a) Proof of publication of notice, as provided in ORS 193.070, if such notice be required by subsection (3) of this section;

(b) An affidavit of the executor or administrator averring to the best of his knowledge and belief that no other letters on said estate are then outstanding, that no petition for such letters is then pending in this state, that no ancillary proceedings will be brought and that there are no unpaid creditors of the decedent or the estate in this state who have not consented to such payment or delivery;

(c) Copy of letters testamentary or of administration, certified by the clerk of the court out of which such letters issued. The certificate of the clerk shall be dated no more than 30 days prior to the date of delivery thereof to the debtor or person in possession of personal property and shall declare that, at the date thereof, the person therein named is the duly appointed, qualified and acting executor or administrator of the estate of the decedent; and

(d) Release in writing of such indebtedness or personal property, given by the State Treasurer in respect to inheritance taxes.

(5) Payment or delivery of personal property to a foreign administrator or executor, as provided in this section, shall constitute an acquittance and discharge of the debtor or person in possession of personal property, to the extent thereof.

Section 20. 3.340. Probate jurisdiction; summary or plenary action on rejected probate claims. There also is conferred upon, and vested in, the circuit court of a judical district described in ORS 3.310 full, complete, general and exclusive jurisdiction, authority and power in equity, in the first instance, in all matters whatever pertaining to a court of probate, including the construing of, and declaration of rights under, wills and codicils, and therein the determining of question of title to real, personal or mixed properties; and in a probate proceeding in which a claim is rejected by the executor or administrator, the claimant may present such claims to the circuit court, or a judge thereof, for allowance, as provided by ORS[116.525] _____ and [116.530] _____, or he may, and if such executor or administrator demand it in writing, he shall, in the first instance bring a separate plenary action or suit against such executor or administrator on the claim.

Section 21. 3.140. Application of laws governing county courts to circuit courts exercising judicial jurisdiction formerly vested in county courts; power to make rules. (1) The circuit courts and the judges thereof are governed by the existing laws relating to the exercise of the judicial jurisdiction, authority, powers, functions and duties transferred under ORS 3.130, in so far as they are applicable, as though the circuit courts and the judges thereof were originally referred to in the existing laws; except that, in those counties in which probate jurisdiction, authority, powers, functions and duties are transferred under ORS 3.130, the circuit courts and the judges thereof shall have in the first instance exclusive jurisdiction in equity in all matters pertaining to probate, including the construction and declaration of rights under wills and the determination of questions of title to real, personal or mixed property thereunder, and in a probate proceeding in which a claim is rejected by the executor or administrator, the claimant may present the claim to the circuit court for allowance as provided in ORS [116.525] _____ and [116.530] _____, or he may, and if the executor or administrator demands it in writing, he shall, in the first instance bring a separate plenary action or suit against the executor or administrator on the claim.

(2) The judges of the circuit courts may make all rules and regulations, not inconsistent with law, to

facilitate the transaction of business and render effectual the provisions of ORS 3.130, 3.140 and 7.230.

Section 22. 697.695. Assignability of licenses; procedure on death of licensee. (1) Except as provided in subsection (2) of this section, any license granted under ORS 697.610 to 697.655 and 697.660 to 697.785 is a personal privilege and shall not be assignable.

(2) Upon the death of any licensee the commissioner shall have the right to transfer the license of the decedent to the [executor or administrator] personal representative of his estate for the period of the unexpired term of the license and thereupon the court having jurisdiction of the probate of the estate of said decedent may authorize such executor or administrator to continue the business of debt consolidating formerly carried on by the decedent pursuant to the provisions of ORS [166.170 to 166.180] _____, and upon such other terms and conditions as the court may prescribe.

Section 23. 722.385. Penalty provisions inapplicable. The penalty provided in ORS [116.990] _____ does not apply to transactions had under ORS 722.375.

Section 24. 107.280. Decreeing disposition of property. Whenever a decree of permanent or unlimited separation from bed and board has been granted, the party at whose prayer such decree was granted shall be awarded in individual right such undivided or several interest in any right,

interest or estate in real or personal property owned by the other or owned by them as tenants by the entirety at the time of such decree, as may be just and proper in all circumstances, in addition to the decree of maintenance. [The court may, in making such award, decree that dower and curtesy, as well as homestead rights under ORS 116.010 and the election provided in ORS 113.050, are extinguished and barred.]

Section 25. 697.165. License or certificate as personal privilege; procedure on death of licensee. (1) Except as provided in subsection (2) of this section, any certificate or license granted under ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470 shall be a personal privilege and shall not be assignable.

(2) Upon the death of any collection agency licensee, the Real Estate Division shall have the right to transfer the license of the decedent to the [executor or administrator] personal representative of his estate for the period of the unexpired term of the license and thereupon the court having jurisdiction of the probate of the estate of said decedent may authorize such [executor or administrator] personal representative to continue the collection agency business of the decedent pursuant to the provisions of ORS [116.170 to 116.180] _____, and upon such other terms and conditions as the court may prescribe.

(3) The death of the operator of a corporate licensee

shall in no way interfere with the continuation of the licensed business providing another licensed operator is placed in management control of the corporate licensee.

Section 26. 419.488. Service of summons and process; travel expenses of person summoned. (1) Summons or other process issuing from the juvenile court may be served without further indorsement in any county of the state by an officer of the county in which the proceeding is pending, by an officer of the county in which the person to be served is found or by any person authorized by the court to serve the process. Except as otherwise provided in ORS 419.472 to 419.587, the provisions of law applicable to summons in civil cases apply to summons issued from juvenile court.

(2) If the parent, parents or guardian required to be summoned as provided in subsection (4) of ORS 419.486 cannot be found within the state, summons may be served on him or them in any of the following ways:

(a) If the address of the parent or guardian is known, by sending him a copy of the summons by registered mail with a return receipt to be signed by the addressee only.

(b) By personal service outside the state in the manner provided in [subsection (3) of ORS 116.750] ORS _____.

(c) If, after reasonable inquiry, the whereabouts of the parent or guardian cannot be ascertained, by publishing a summons in a newspaper having general circulation in the county in which the proceeding is pending. In lieu of the brief statement of facts required by subsection (2) of

ORS 419.486, the published summons shall simply state that a proceeding concerning the child is pending in the court and an order making an adjudication will be entered therein. The summons shall be published once a week for a period of three weeks, making three publications in all. If the names of one or both parents or the guardian are unknown, he or they may be summoned as "The parent (s) or guardian of (naming or describing the child), found (stating the address or place where the child was found)."

(3) Service as provided in this section shall vest the court with jurisdiction over the parents or guardian in the same manner and to the same extent as if the person served were served personally within this state.

(4) The court may authorize payment of travel expenses of any person summoned, as provided in ORS 139.140.

Section 27. 109.330. Notice to nonconsenting parent; notice where child has no parent, guardian or next of kin. (1) In the cases provided for in ORS 109.314, 109.322 and 109.324, where a parent does not consent to the adoption of his child, the court shall order a copy of the petition therefor and citation thereon to be served on him personally, if found in the state, and if not found in the state, then a copy of the citation to be published or served in the manner provided by ORS [116.750] _____ for the service of citation by publication or for personal service outside the state, and a copy of the citation to be deposited forthwith

in the postoffice, directed to such parent at his place of residence, unless it appears that such residence is neither known to the petitioner nor can with reasonable diligence be ascertained by him.

(2) If the child has no living parent and no guardian or next of kin in this state qualified to appear in its behalf, the court may order such notice, if any, to be given as it deems necessary or proper.

Section 28. Repeal of existing statutes. ORS 116.005, 116.010, 116.015, 116.020, 116.025, 116.105, 116.110, 116.115, 116.120, 116.125, 116.130, 116.135, 116.140, 116.150, 116.155, 116.160, 116.165, 116.190, 116.195, 116.305, 116.310, 116.315, 116.320, 116.325, 116.330, 116.340, 116.405, 116.410, 116.415, 116.420, 116.425, 116.430, 116.435, 116.440, 116.445, 116.450, 116.455, 116.460, 116.465, 116.705, 116.710, 116.715, 116.720, 116.725, 116.730, 116.735, 116.740, 116.745, 116.750, 116.755, 116.760, 116.765, 116.770, 116.775, 116.780, 116.785, 116.790, 116.795, 116.800, 116.805, 116.811, 116.815, 116.820, 116.825, 116.830, 116.835, 116.840, 116.850, 116.860, 116.870, 116.880, 116.890, 116.900 and 116.990 are repealed.