

Proposed revised Oregon probate code
ANCILLARY ADMINISTRATION
1st Draft
March 16, 1967

This draft is based primarily on a draft by Professor Mapp and Mr. Riddlesbarger dated March 16, 1967, and the action taken by the committees at the March 17, 18, 1967 meeting.

Section 1. Ancillary probate based upon domiciliary probate.

(1) The written will of a testator who died domiciled outside this state, which upon probate may operate upon any property in this state, may be admitted to probate upon petition therefor upon proof that it stands probated or established in the jurisdiction where the testator died domiciled. Rights to take against the will are not affected by this section.

(2) A will offered for probate under this section may, however, be contested for a cause which would be grounds for rejection of a will of a testator who died domiciled in this state.

Section 2. Original probate. Original probate of the will of a testator who died domiciled outside this state, which upon probate may operate upon any property in this state, may be granted unless the will stands rejected from probate or establishment in the jurisdiction where the testator died domiciled for a cause which would be grounds for rejection of a will of a testator who died domiciled in this state.

Section 3. Effect of rejection of will at domicile after local probate. If, after a will has been admitted to probate in this state under section 1 or section 2, the will has been rejected or set aside in the jurisdiction where the testator died domiciled, for a cause which would be grounds for rejecting or setting aside a will of a testator who died domiciled

in this state, probate shall be set aside in this state upon application therefor filed within six months after the rejection or setting aside of the will in the jurisdiction where the testator died domiciled has become final.

Section 4. Granting letters to domiciliary. (1) Any domiciliary personal representative upon petition therefor and upon filing of copy of the domiciliary letters with the probate court, may be granted letters in this state.

(2) If the domiciliary personal representative is a foreign corporation, it need not qualify under any law of this state except those provisions of this Act generally applicable to the qualification of personal representatives, to authorize it to act as ancillary personal representative in the particular estate.

(3) If application is made for the issuance of letters, any interested person may intervene and petition for the appointment of any person who is eligible under this Act or the law of this state. The court may give preference in appointment to the domiciliary personal representative if it finds such preference to be in the best interests of the estate.

Section 5. Distribution of estate by ancillary personal representative. (1) If under the law of the jurisdiction where the testator died domiciled the probate or establishment of his will is subject to contest within a period specified after probate or establishment, no property shall be distributed to beneficiaries under the will during such period except upon order of the court. Distribution made by an ancillary personal representative in good faith and pursuant to an order under this subsection operates as a complete discharge to the ancillary

personal representative even if the probate or establishment of the will at the domicile is thereafter rejected or set aside for any cause whatever.

(2) When administration in this state has been completed and the estate is in a condition to be distributed, the court may, upon application by the ancillary personal representative, authorize the delivery of such property to the domiciliary personal representative as the court finds necessary for the payment of debts, taxes, or other charges, or for distribution to beneficiaries of the estate of the decedent.

Section 6. Proof of documents; certification; translation.

(1) Proof of documents required by this Act may be made as follows:

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

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

(c) That a will has been rejected or set aside, by a certified copy of the order rejecting or setting aside the will.

(d) Of letters, by a certified copy thereof.

(2) Copies may be certified by the clerk of the court, or other official having custody of the original document.

(3) If the respective documents or any part thereof are not in the English language, verified translations may be attached thereto and shall be regarded as sufficient proof of the contents of the documents unless objection is made thereto.

If any person in good faith relies upon such proof under this Act he shall not thereafter be prejudiced because of inaccuracy of such translations, or because of proceedings based upon documents so proved.

Section 7. Application of general law. Except where special provision is made otherwise, the law of this state relating to wills and to the probate, contest and effect thereof shall apply in the case of a nondomiciliary testator and the law and procedure of this state relating generally to administration and to representatives shall apply to ancillary administration and representatives.

Comment: Based on §1613 New York Probate Code.

References: Advisory Committee Minutes:
Draft dated 4/28/66
4/15, 16/66 pp. 18 and 19
8/19, 20/66 pp. 21 to 23
Report dated October 3, 1966
10/14, 15/66 pp. 20 and 21
1/20, 21/67 pp. 7 to 11; and Appendix A
2/17, 18/67 pp. 5 to 9
3/17, 18/67 pp. 2 to 6; and Appendix

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