

CLAIMS

Section 1. Presentation of claims; time limitations.

(1) Claims against the estate of a decedent, other than claims of the personal representative as creditor of the decedent, shall be presented to the personal representative.

(2) Claims presented within four months after the date of the first publication of notice of appointment of the personal representative shall be paid, as provided in ORS _____, before claims presented after the four-month period.

(3) Claims not presented before the expiration of 12 months after the date of the first publication of notice of appointment of the personal representative, or before the date the personal representative files his final account, whichever occurs first, are barred from payment.

(4) If a claim is presented after the expiration of the 12-month period, but before the final account is filed, the claim is not barred if the court shall find that the late presentment was caused by excusable neglect.

Section 2. Form and verification of claims. Each claim presented shall:

(1) Be in writing.

(2) Describe the nature and the amount thereof, if ascertainable.

(3) State the names and addresses of the claimant and his attorney.

(4) Be accompanied by the affidavit of the claimant or someone on his behalf who has personal knowledge of the fact, stating that the amount claimed is justly due, or if not due, when it will or may become due; that no payments have been made which are not credited; and that there is no just offset thereto, to the knowledge of the affiant, except as stated.

Section 3. Waiver of presentment or defect of form. The presentment of a claim and any defect of form or insufficiency of a claim presented may be waived by the personal representative or by the court.

Section 4. Written evidence of claim. When it appears that there is written evidence of a claim presented to the personal representative, the personal representative may demand that the evidence be produced or its nonproduction accounted for.

Section 5. Claims on debts due. If a claim on a debt due is presented and allowed, allowance shall be in the amount of the debt remaining unpaid on the date of allowance.

Section 6. Claims on secured debts due. (1) A claim on a debt due for which the creditor holds security may be presented as a claim on an unsecured debt due, or the creditor may elect to rely entirely on the security without presentation of the claim.

(2) If the claim is presented, it shall describe the security. If the security is an encumbrance that is recorded,

it is sufficient to describe the encumbrance by reference to the volume, page, date and place of recording.

(3) If the claim is presented and allowed, allowance shall be in the amount of the debt remaining unpaid on the date of allowance.

(4) If the creditor surrenders the security, payment shall be on the basis of the amount allowed.

(5) If the creditor does not surrender the security, payment shall be on the basis of:

(a) If the creditor exhausts the security before receiving payment, the amount allowed, less the amount realized on exhausting the security; or

(b) If the creditor does not exhaust the security before receiving payment or does not have the right to exhaust the security, the amount allowed, less the value of the security determined by agreement or as the court may order.

(6) The creditor shall not exercise remedies reserved under his security until 30 days after the claim is presented and after notice to the personal representative of his intention to exercise his remedy, but the court, on cause shown, may shorten the period.

(7) The personal representative may convey the secured property to the creditor in consideration of the release of the security and satisfaction or partial satisfaction of the claim.

Section 7. Debts not due. A claim on a debt not due, whether or not the creditor holds security therefor, may be presented as a claim on a debt due. If the claim is allowed, allowance shall be in an amount equal to the value of the debt on the date of allowance. Payment on the basis of the amount allowed discharges the debt and the security, if any, held by the creditor therefor; but the creditor, after allowance of the claim, may withdraw the claim without prejudice to his other remedies.

Section 8. Contingent and unliquidated claims. (1) A claim on a contingent or unliquidated debt shall be presented as any other claim.

(2) If the debt becomes absolute or liquidated before distribution of the estate, the claim shall be paid in the same manner as absolute or liquidated claims of the same class.

(3) If the debt does not become absolute or liquidated before distribution of the estate, the court shall provide for payment of the claim by any of the following methods:

(a) The creditor and personal representative may determine, by agreement, arbitration or compromise, the value of the debt, and upon approval thereof by the court, the claim may be allowed and paid in the same manner as a claim on an absolute or liquidated debt.

(b) The court may order the personal representative to make distribution of the estate, but to retain sufficient funds to pay the claim if and when the debt becomes absolute or

liquidated. The estate may not be kept open for this purpose more than two years after distribution of the remainder of the estate. If the debt does not become absolute or liquidated within that time, the funds retained, after payment therefrom of any expenses accruing during that time, shall be distributed to the distributees.

(c) The court may order the personal representative to make distribution of the estate as though the claim did not exist. If after distribution the debt becomes absolute or liquidated, the distributees are liable to the creditor to the extent of the estate received by them. Payment of the debt may be arranged by creating a trust, giving a mortgage, securing a bond from a distributee or by such other method as the court may order.

Section 9. Compromise of claims. The personal representative may compromise a claim of or against the estate of a decedent.

Section 10. Claims of personal representative. A claim of a personal representative shall be filed with the clerk of the court within the time required by law for presentment of claims and shall be presented to the court for allowance or disallowance. Upon application by the personal representative or by any person interested in the estate the claim may be reconsidered by the court on the hearing of the final account of the personal representative.

Section 11. Payment of claims. Upon the expiration of four months from the date of the first publication of his notice of appointment, the personal representative shall, after making provision for family support, for expenses of administration, for claims already presented which have not been allowed or whose allowance has been appealed and for claims which may yet be presented, proceed to pay the claims presented within four months after the date of the first publication of notice of appointment and allowed against the estate, in the order of priority hereinafter prescribed. After payment of those claims, claims presented after the four-month period shall be paid in the same order.

Section 12. Order of payment of debts and expenses. (1)
If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

- (a) Family support.
- (b) Expenses of administration.
- (c) Expenses of a plain and decent funeral and disposition of the remains of decedent.
- (d) Debts and taxes with preference under federal law.
- (e) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him.
- (f) Taxes with preference under the laws of this state

which are due and payable while possession is retained by the personal representative.

(g) Debts owed employes of the decedent for labor performed within the 90 days immediately preceding the date of death of the decedent.

(h) The claim of the State Public Welfare Commission for the net amount of public assistance, as defined in ORS 411.010, paid to or for the decedent, and the claim of the Oregon State Board of Control for care and maintenance of any decedent who was at a state institution to the extent provided in ORS 179.610 to 179.770.

(i) All other claims against the estate.

(2) If the applicable assets of the estate are insufficient to pay all claims or expenses of any one class specified above in full, each claim or expense of that class shall be paid only in proportion to the amount thereof.

Section 13. Allowance and disallowance of claims. (1) A claim presented to the personal representative shall be considered allowed as presented unless within 60 days after the date of presentment of the claim the personal representative mails or delivers a notice of disallowance of the claim in whole or in part to the claimant or to his attorney. The personal representative shall file in the estate proceeding the claim as presented and the notice of disallowance.

(2) A notice of disallowance of a claim shall inform the claimant that the claim has been disallowed in whole or

in part and, to the extent disallowed, will be barred unless the claimant proceeds as provided hereafter.

(3) Not less than 30 days prior to the filing of the final account the personal representative may rescind his previous allowance of an unpaid claim, if the claim was allowed because of error, misinformation or excusable neglect. Notice of rescission of prior allowance of the claim shall be given by mailing or delivering a notice to the claimant or his attorney stating that the prior allowance had been rescinded and the reasons therefor.

Section 14. Procedure by claimant on disallowance of claim. (1) If the personal representative disallows a claim in whole or in part, the claimant, within 60 days after the date of mailing or delivery of the notice of disallowance, may either:

(a) File in the estate proceeding a request for summary determination of the claim by the probate court, with proof of service of a copy of the request upon the personal representative or his attorney; or

(b) Commence a separate action or suit against the personal representative on the claim in any court of competent jurisdiction. The action or suit shall proceed and be tried as any other action or suit.

(2) If the claimant fails to request a summary determination or fails to commence a separate action or suit as

provided in subsection (1), the claim, to the extent disallowed by the personal representative, is barred.

Section 15. Separate action or suit required by personal representative. If the claimant files a request for summary determination of the claim as provided in ORS _____, the personal representative, within 30 days after service of a copy of the request upon the personal representative or his attorney, may notify the claimant in writing that if he desires to prove the claim he must commence a separate action or suit against the personal representative on the claim, within 60 days after receipt of such notice. If the claimant fails to commence a separate action or suit within 60 days after the date of service of the notice, the claim, to the extent disallowed by the personal representative, is barred.

Section 16. Summary determination procedure. In a proceeding for summary determination by the probate court of a claim disallowed in whole or in part by the personal representative:

(1) The personal representative shall move or plead to the claim as though the claim were a complaint filed in an action or suit.

(2) The court shall hear the matter without a jury after notice to the claimant and personal representative. Upon the hearing the court shall determine the claim in a summary manner, and shall make an order allowing or disallowing the claim in whole or in part.

(3) No appeal may be taken from the order of the court made upon the summary determination.

Section 17. Interested persons heard in summary determination or in separate action or suit. Any person interested in the estate may be heard in a proceeding for summary determination by the probate court of a claim, and may intervene in a separate action or suit against the personal representative on the claim.

Section 18. Creditor may obtain order for payment. A creditor whose claim has been allowed or established by summary determination, action or suit, and has not received payment within six months after the date of the first publication of notice of appointment of personal representative may apply to the court and secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for such payment.

Section 19. Waiver of statute of limitations. A claim barred by the statute of limitations may not be allowed by the personal representative or by any court except upon the written direction or consent of those distributees and creditors who would be adversely affected by allowance of the claim.

Section 20. Extension of statute of limitations. If a claim is not barred by the statute of limitations on the date of death of the decedent, the claim is not barred by the statute of limitations thereafter until at least one year after the date of death.

Section 21. Repeal of existing statutes. ORS 116.510, 116.515, 116.520, 116.525, 116.530, 116.535, 116.540, 116.545, 116.550, 116.555, 116.560, 116.565, 116.570, 116.575, 116.580, 116.585, 117.030, 117.110, 117.120, 117.130, 117.140, 117.150, 117.160, 117.170, 117.330, 117.340, 117.380 and 117.390 are repealed.

Proposed revised Oregon probate code
CLAIMS
2nd Draft
February 13, 1968

Prepared by
Stanton W. Allison

COMMENTS

Section 1. Presentation of claims; time limitations.

This section would replace ORS 116.510 with, however, two differences. First, as noted in the comment on Section 8 of the chapter on Duties and Powers of Personal Representatives, the period for priority of claims has been shortened from six months to four months. Second, while under the present statute claims are barred if not presented before the final account is filed, subsection (3) would bar claims if they are not presented either before the expiration of 12 months from the first publication of notice to creditors, or before the filing of the final account, whichever occurs first. However, a claim presented after the 12-month period but before the final account is filed is not barred if the court finds the late filing was the result of excusable neglect. The purpose of the 12-month provision is to permit a determination of the estate indebtedness and partial distribution within a reasonable time when estates cannot be closed for an extended period.

Section 2. Form and verification of claims. This section is a rewritten version of ORS 116.515. However, subsections (2) and (3) call for necessary information which is not detailed by the present section.

Section 3. Waiver of presentment or defect of form. This section is taken from Section 302, Texas Probate Code, and does not have an exact counterpart in the present code. It

provides protection to the personal representative in making payment on a claim which does not comply with statutory requirements but represents a legal obligation of the estate.

Section 4. Written evidence of claim. This is an edited version of the last sentence of ORS 116.515.

Section 5. Claims on debts due. This section and the sections on secured debts, debts not yet due, and contingent claims would replace ORS 117.120, 117.130 and 117.170. Your committees considered it preferable to treat in separate sections the classes of claims covered by the present section. Section 5 provides, as does ORS 117.170, that the allowance of a due claim shall be in the amount of its value at the date of allowance.

Section 6. Claims on secured debts due. This section follows the general wording of Section 3-511, 1967 draft Uniform Probate Code. It expresses the option of the creditor to either file a claim as a nonsecured debt, with surrender of his security, or to rely on his security without presentation of a claim. On the other hand, if the creditor files a claim but retains his security, he is entitled to the value of the claim less the amount already realized on the security or less the agreed value of the security upon which the value of the security has not been realized.

To provide the personal representative an opportunity to deal with the secured creditor and protect the interests of the estate before a foreclosure of the security is instituted,

subsection (6) requires that foreclosure of the security cannot be commenced until a claim is filed, notice is given the personal representative, and 30 days elapse after the claim is filed, unless the court shortens the time.

Subsection (7) gives the personal representative the right to convey the secured property to the creditor in satisfaction of the claim and in consideration of the release of the security.

Section 7. Debts not due. The effect of this section is the same as ORS 117.170 which states: "A debt not due upon being presented shall, if absolute, be satisfied by the payment of such sum as the court or judge thereof may prescribe by order to be equal to its present value." Since the provision would in effect require a discount of the unmatured claim as of the present value the creditor is for his protection given the right to withdraw the claim after allowance without prejudice to his other remedies on the claim.

Section 8. Contingent and unliquidated claims. This section follows the same format as the preceding sections. The language follows closely Section 424 of the 1963 Iowa Probate Code. It meets the problem of the contingent or unliquidated claim by giving the personal representative and the creditor the option of reaching an understanding on the value of the debt and, upon approval by the court, having the claim paid in the same manner as an absolute or liquidated debt. On the other hand, the court may order the personal representative to withhold sufficient funds to pay the claim if and when the debt

becomes absolute or liquidated. However, there is a limitation of two years on the time the estate may be held open for this purpose. If distribution is made subject to the contingent or unliquidated claim, liability therefor is transferred to the distributees and broad discretion is given the court to secure the payment of the debt when and if it may become payable.

Section 9. Compromise of claims. For a similar provision, see Section 473.427 of the Missouri Probate Code and Section 859.31 of the 1967 Wisconsin Probate Code. No comparable provision is found in Oregon Revised Statutes, but the good sense of this provision to estate administration seems clear. In view of the broad discretion and the responsibility and accountability given the personal representative in the proposed code, court approval is not required when a claim by the estate or against the estate is compromised. It should be borne to mind, however, that the personal representative is authorized to seek the guidance and direction of the court whenever he so desires.

Section 10. Claims of personal representative. This section would replace ORS 116.580 and 116.585. The section requires presentation to the court for allowance or rejection as now provided. Upon application of the personal representative or other interested person reconsideration may be had at the hearing on the final account.

Section 11. Payment of claims. This section embodies the provisions of ORS 117.030 and 117.110. The language is adapted from Section 3-508 of the 1967 draft Uniform Probate Code. The

present six months' period for priority of claims payment has been changed to four months as commented upon previously. Priority claims may be paid as soon as the four months' period has expired, and the personal representative does not have to wait for court order or account to be filed.

Section 12. Order of payment of debts and expenses.

Although this section preserves the priorities as set out in ORS 117.030 and 117.110, except as noted later, the language follows Section 3-506 of the 1967 draft Uniform Probate Code. However, the priority of the expenses of last sickness has been changed to conform to the priority of federal taxes under federal law. Secured debts are covered by Section 6 and are not given priority as now provided by ORS 117.110. The provision for "expenses of last sickness" has been reworded to include not only medical and hospital expenses but expenses for compensation of persons attending the deceased. Subsection (2) is a paraphrase of ORS 117.140.

Section 13. Allowance and disallowance of claims. Subsection (1) embodies a different approach than that now provided by ORS 116.520, in that under the proposed code it is unnecessary to endorse the allowance on the claim. Under the proposed code, unless the personal representative within 60 days after the claim is presented sends a notice of disallowance to the claimant, the claim is automatically allowed. Your committees considered that the present practice of requiring an

endorsement of allowance upon each claim imposes an unnecessary duty on the personal representative. It was recognized that ordinarily the claims filed are examined and allowed and that affirmative action should be required only in the case of claims which had to be disallowed. The present provision for automatic rejection unless action is taken seemed to your committees opposed to usual practice, in that a legitimate claimant should be entitled to assume he would receive payment of his debt in the same manner as if the decedent were alive, unless notified to the contrary.

Subsection (3), however, provides protection to the personal representative by allowing him a rescission of a previous allowance of the claim by reason of error, misinformation or excusable neglect, with notice to the claimant or his attorney.

Section 14. Procedure by claimant on disallowance of claim. This and the following sections covering the procedure on disallowance of a claim would replace ORS 116.525 through 116.550. Under the proposed code the claimant is given the option of either asking a summary hearing or having the matter tried as a separate action or suit. However, the proposed code, in giving the same election as now provided by Oregon Revised Statutes, departs from present practice in that, if a summary hearing is requested, no appeal may be taken from the order on the summary hearing. The claimant is given 60 days to request summary determination or commence a separate action.

Section 15. Separate action or suit required by

personal representative. This section gives the personal representative the right to ask a separate action or suit as is now provided by ORS 116.525. Unless after such a demand a claimant files the action, the claim is considered barred. This is similar to the provision in ORS 116.545.

Section 16. Summary determination procedure. This section is similar in content to ORS 116.530 except that guidelines are provided for the procedure involved. However, as mentioned, it should be noted that no appeal may be taken from the summary determination by the probate court. This provision was put in so that the present duplicate procedure on contesting rejected claims would be eliminated under the proposed code. Please note that the requirement of ORS 116.555 of testimony other than that of the claimant has been eliminated. It was considered preferable not to bind the court in this matter.

Section 17. Interested persons heard in summary determination or in separate action or suit. It is deemed important that specific rights be given to interested persons to appear either in the summary hearing on disallowance of a claim or in the separate action or suit brought for its determination. Reference is made here to the definition of interested person, which includes heirs, devisees, creditors and others having a property right in or claim against the estate and fiduciaries representing interested persons. The general wording of this section is taken from Section 312,

Texas Probate Code. It carries out the same provision for appearance by interested parties as ORS 116.580 and 116.585.

Section 18. Creditor may obtain order for payment. The language is taken from Section 3-508 of the 1967 draft Uniform Probate Code. This useful section should enable allowed or contested claims to be paid after determination without undue delay, and will be of benefit in expediting the closing of estates.

Section 19. Waiver of statute of limitations. This section is a departure from ORS 116.555 which provides for an absolute bar whether the statute is pleaded or not. See Section 411, 1963 Iowa Probate Code, which allows the personal representative discretion whether or not to plead the Statute of Limitations on a claim he believes to be just. Your committees decided that a better approach was to give the right to waive the statute to those distributees and creditors who would be adversely affected if the statute were waived. Situations can be visualized in solvent estates where the beneficiaries would desire that an otherwise just claim be paid and the statute not be invoked.

Section 20. Extension of statute of limitations. Your committees felt the one year extension would be sufficient to allow a creditor to file his claim or to institute administration proceedings. The language is that of Section 412, 1963 Iowa Probate Code, except that the period has been changed from six months to one year. The one year period conforms to ORS 12.190 and 12.220.

Proposed revised Oregon probate code
CLAIMS
2nd Draft
February 13, 1968

Prepared by
Stanton W. Allison

COMPARATIVE SECTION TABLE

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10	116.580, 116.585
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Proposed revised Oregon Probate Code
CLAIMS
1st Draft
March 30, 1967

CLAIMS

Section 1. Presentation of claims; time limitations.

Except as otherwise provided (insert "by law" or references to appropriate sections):

(1) All claims against the estate of a decedent, other than claims of the personal representative as creditor of the decedent, shall be presented to the personal representative.

(2) Claims presented within four months after the date of the first publication of notice of the appointment of the personal representative shall be paid, as provided in section 12 of this Act, before claims presented after the four-month period.

(3) Claims not presented before the expiration of 12 months after the date of the first publication of notice of the appointment of the personal representative, or before the date the personal representative files his final account, whichever occurs first, are barred from payment; but the claim of a claimant entitled to equitable relief due to peculiar circumstances is not so barred.

References: Advisory Committee Minutes
4/15,16/66 pp. 20 to 24, 34
5/20,21/66 p. 11

Gooding's Draft, 4/1/66 sections 1 and 4

ORS 116.510

Section 2. Revival of action without claims presentation.

An action against a decedent commenced before and pending on the date of his death may be revived as provided by law without presentation of a claim against the estate of the decedent.

References: Advisory Committee Minutes

Gooding's Draft, 4/1/66, section 1

Section 3. Form and verification of claims. (1) Each claim presented shall:

(a) Be in writing.

(b) Describe the nature and the amount thereof, if ascertainable.

(c) State the names and addresses of the claimant and his attorney.

(d) Be accompanied by the affidavit of the claimant, or someone on his behalf who has personal knowledge of the fact, to the effect that the amount claimed is justly due, or if not due, when it will or may become due; that no payments have been made thereon which are not credited; and that there is no just offset thereto, to the knowledge of the affiant, except as therein stated.

(2) Any defect of form or any insufficiency of a claim presented may be waived by the personal representative or the court.

References: Advisory Committee Minutes
4/15,16/66 pp. 21 and 22

Section 4. Written evidence of claim. When it appears or is alleged that there is any written evidence of a claim presented to the personal representative, the personal representative may demand that the evidence be produced or its nonproduction accounted for.

References: Advisory Committee Minutes
4/15,16/66 p. 21

Gooding's Draft, 4/1/66, section 2

ORS 116.515 and 126.321

Section 5. Claims not due. A claim on a debt not due, whether or not the creditor holds security therefor, may be presented as a claim on a debt due. If the claim is presented and allowed, allowance shall be in an amount equal to the value of the debt on the date of allowance. Payment on the basis of the amount finally allowed discharges the debt and the security, if any, held by the creditor therefor; but the creditor, after allowance of the claim, may withdraw the claim without prejudice to other remedies.

References: Advisory Committee Minutes
4/15,16/66 pp. 25 to 28, 31 and 32
5/20,21/66 pp. 3 to 8

Gooding's Draft, 4/1/66, sections 6 and 7

Gooding's Draft, 5/20/66, sections 6 and 7

ORS 116.510 and 117.170

Section 6. Secured claims due. (1) A claim on a debt due for which the creditor holds security may be presented as a claim on an unsecured debt due, or the creditor may elect to rely entirely on the security without presentation of the

claim.

(2) If the claim is presented, it shall describe the security. If the security is an encumbrance that is recorded, it is sufficient to describe the encumbrance by date and refer to the volume, page and place of recording.

(3) If the claim is presented and allowed, allowance shall be in the amount of the debt remaining unpaid on the date of allowance.

(4) If the claim is presented and allowed and if the creditor surrenders the security, payment shall be on the basis of the amount finally allowed.

(5) If the claim is presented and allowed, but the creditor does not surrender the security, payment shall be on the basis of:

(a) If the creditor exhausts the security before receiving payment, the amount finally allowed, less the amount realized on exhausting the security; or

(b) If the creditor does not exhaust the security before receiving payment or does not have the right to exhaust the security, the amount finally allowed, less the value of the security determined by agreement or as the court may order.

References: Advisory Committee Minutes
4/15,16/66 pp. 31 to 33
5/20,21/66 pp. 8 and 9

Gooding's Draft, 4/1/66, section 7
Gooding's Draft, 5/20/66, section 7a

Section 7. Contingent and unliquidated claims. (1) A claim on a contingent or unliquidated debt shall be presented as any other claim.

(2) If the debt becomes absolute or liquidated before distribution of the estate, the claim shall be paid in the same manner as absolute or liquidated claims of the same class.

(3) If the debt does not become absolute or liquidated before distribution of the estate, the court shall provide for payment of the claim by any of the following methods:

(a) The creditor and personal representative may determine, by agreement, arbitration or compromise, the value of the debt, and upon approval thereof by the court, the claim may be allowed and paid in the same manner as a claim on an absolute or liquidated debt.

(b) The court may order the personal representative to make distribution of the estate, but to retain sufficient funds to pay the claim if and when the debt becomes absolute or liquidated. The estate proceeding may not be kept open for this purpose more than two years after distribution of the remainder of the estate. If the debt does not become absolute or liquidated within that time, the funds retained, after payment therefrom of any expenses accruing during that time, shall be distributed to the distributees. If the debt thereafter becomes absolute or liquidated, the distributees are liable to the creditor to the extent of the estate

received by them. The court may require the distributees to give bond approved by the court and executed by a surety company qualified to transact surety business in this state, for the satisfaction of their liability to the creditor.

(c) The court may order the personal representative to make distribution of the estate as though the claim did not exist. If the debt thereafter becomes absolute or liquidated, the distributees are liable to the creditor to the extent of the estate received by them. The court may require the distributees to give bond approved by the court and executed by a surety company qualified to transact surety business in this state, for the satisfaction of their liability to the creditor.

(d) Such other method as the court may order.

References: Advisory Committee Minutes
4/15, 16/66 pp. 28 to 31
5/20, 21/66 pp. 9 and 10

Gooding's Draft, 4/1/66, section 8
Gooding's Draft, 5/20/66, section 8

ORS 116.510 and 117.170

Section 8. Claims of personal representative. If the personal representative is a creditor of the decedent, his claim against the estate of the decedent shall be filed with the clerk of the court within the time required by law for presentment of claims to a personal representative, and shall be presented to the court for allowance or disallowance. Upon application by the personal representative or any person interested in the estate, the allowance or disallowance of the

claim may be reconsidered by the court on the hearing of the final account of the personal representative.

References: Advisory Committee Minutes
4/15,16/66 pp. 33 to 38
5/20,21/66 pp. 11 to 15

Gooding's Draft, 4/1/66, section 9
Gooding's Draft, 5/20/66, section 9

ORS 116.580 and 116.585

Section 9. Classification of debts and expenses. If the estate of a decedent is or appears to be insufficient to satisfy all debts and expenses, the personal representative shall classify debts and expenses as follows:

- (1) Expenses of administration.
- (2) Reasonable expenses for the disposition of the remains of the decedent.
- (3) Debts and taxes having preference under the laws of the United States.
- (4) Expenses of last sickness of the decedent.
- (5) Taxes having preference under the laws of this state.
- (6) Debts owed employes of the decedent for labor performed within the 90 days immediately preceding the date of death of the decedent.
- (7) The claim of the State Public Welfare Commission for the net amount of public assistance, as defined in ORS 411.010, paid to or for the decedent, and the claim of the Oregon State Board of Control for care and maintenance of any decedent who was at a state institution to the extent provided in ORS 179.610 to 179.770.

(8) All other claims against the estate.

References: Advisory Committee Minutes
5/20,21/66 pp. 17 and 18
6/17,18/66 p. 5

Gooding's Draft, 4/1/66, section 11

ORS 117.110, 117.120 and 117.160

Section 10. Funeral and burial expenses. The funeral and disposition of the remains of a decedent may be in a manner and at an expense according to the circumstances and condition of the decedent in life; but only the expense necessary to effect a plain and decent funeral and burial of the decedent may be allowed and paid from the estate of the decedent if the estate is insufficient to satisfy in full all other debts and expenses and any devises and bequests.

References: Advisory Committee Minutes
4/15/66 pp. 24 and 25
6/17,18/66 pp. 4 and 5

Gooding's Draft, 4/1/66, section 5

ORS 117.150

Section 11. Compromise of claims. The personal representative and creditor, with prior or subsequent approval by the court, may compromise a claim against the estate of a decedent, whether the debt is due or not due, absolute or contingent, liquidated or unliquidated.

References: Advisory Committee Minutes
4/15,16/66 pp. 29 and 30
5/20,21/66 pp. 10 and 11

Gooding's Draft, 5/20/66, section 8a

Section 12. Payment of claims and expenses. (1) Claims

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against the estate of a decedent presented by action or suit within four months after the date of the first publication of notice of the appointment of the personal representative shall be paid in the order specified in section 9 of this Act. After payment of those claims, claims presented and allowed or established after the four-month period shall be paid in the same order and manner.

(2) If, after the expiration of four months after the date of the first publication of notice of the appointment of the personal representative, the estate is sufficient to satisfy in full all claims, including expenses of administration, funeral and burial of the decedent, the personal representative may pay the claims so allowed or established. If the estate is insufficient to satisfy in full those claims, the personal representative shall report to the court the financial situation of the estate, and the court shall determine the percentage of the claims the estate is sufficient to pay and shall order payment accordingly. If the estate is insufficient to satisfy all claims or expenses of any one class specified in section 9, each claim or expense of that class shall be paid only in proportion to the amount thereof.

References: Advisory Committee Minutes
5/20,21/66 pp. 18 to 20
6/17,18/66 p. 3

Gooding's Draft, 4/1/66, section 12

ORS 117.030

Section 13. Creditor may obtain order for payment.

A creditor whose claim against the estate of a decedent is allowed or established by action or suit may apply to the court, not less than six months after the date of first publication of notice of the appointment of the personal representative, for an order directing that payment be made. Upon that application, the court shall order the issuance of a citation to the personal representative requiring him to appear and show cause why the order for payment should not be made. If it appears to the court that the estate has sufficient available funds for payment of the claim, the court shall order payment. If it appears to the court that the estate does not have sufficient available funds and that to await the receipt of funds from other sources would unreasonably delay payment, the court may order the sale of property of the estate sufficient to pay the claim.

References: Advisory Committee Minutes
5/20,21/66 pp. 23 to 25

Gooding's Draft, 4/1/66, section 15

Section 14. Payment of contingent and unliquidated claims by distributees. (1) If a claim on a contingent or unliquidated debt is presented and allowed as provided in section 7, all the estate is distributed and the debt thereafter becomes absolute or liquidated, the creditor has the right to recover on the debt against the distributees whose shares were increased by reason of the fact that the amount

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of the claim as finally allowed was not paid before final distribution if an action therefor is commenced within one year after the date the debt becomes absolute or liquidated.

(2) Those distributees are jointly and severally liable, but no distributee is liable for an amount exceeding the amount of the estate received by him.

(3) If more than one distributee is liable to the creditor, the creditor shall make parties to the action all distributees who can be reached by process.

(4) By its judgment in the action, the court shall determine the amount of the liability of each of the defendants as among themselves, but if any distributee is insolvent, unable to pay his proportion or beyond the reach of process, the others, to the extent of their respective liabilities, are liable to the creditor for the full amount of the debt.

(5) If any person liable for the debt fails to pay his just proportion to the creditor, he is liable to indemnify all others who, by reason of that failure, have paid more than their just proportion of the debt. The indemnity may be recovered in the same action or in separate actions.

References: Advisory Committee Minutes
5/20,21/66 pp. 20 to 23

Gooding's Draft, 4/1/66, section 13

Section 15. Claims considered allowed if not disallowed.

A claim presented to the personal representative is considered

considered allowed as presented unless the personal representative disallows the claim in whole or in part as provided in section 16 of this Act.

References: Advisory Committee Minutes
7/15,16/66 p. 11

Lundy's Draft, 7/14/66, section 1

ORS 116.520 and 126.136

Section 16. Disallowance of claims by personal representative. (1) If the personal representative disallows a claim in whole or in part, he shall do so within 60 days after the date of presentment of the claim, and, within that 60-day period, shall cause a notice of disallowance to be mailed or delivered to the claimant or his attorney. The personal representative shall file in the estate proceeding the claim as presented and a copy of the notice of disallowance.

(2) A notice of disallowance of a claim shall inform the claimant that the claim has been disallowed in whole or in part and, to the extent disallowed, will be barred unless the claimant proceeds as provided in section 17 of this Act.

References: Advisory Committee Minutes
7/15,16/66 p. 11

Lundy's Draft, 7/14/66, section 2

ORS 116.520

Section 17. Procedure by claimant on disallowance of claim. (1) If the personal representative disallows a claim in whole or in part, the claimant, within 60 days after the date of mailing or delivery of the notice of disallowance

may either:

(a) File in the estate proceedings a request for summary determination of the claim by the probate court, with proof of service of a copy of the request upon the personal representative or his attorney; or

(b) Commence a separate action or suit against the personal representative on the claim in any court of competent jurisdiction. The action or suit shall proceed and be tried as any other action or suit.

(2) If the claimant fails to request a summary determination or commence a separate action or suit as provided in subsection (1) of this section, the claim, to the extent disallowed by the personal representative is barred.

References: Advisory Committee Minutes
7/15,16/66 p. 11

Lundy's Draft, 7/14/66, section 3

ORS 116.525

Section 18. Separate action or suit required by personal representative. If the claimant files a request for summary determination of the claim as provided in section 17 of this Act, the personal representative, within 30 days after the date of service of a copy of the request upon the personal representative or his attorney, may require that the claimant commence a separate action or suit against the personal representative on the claim, which action or suit shall proceed and be tried as any other action or suit. The personal

representative shall serve a notice of that requirement upon the claimant or his attorney. If the claimant fails to commence a separate action or suit within 60 days after the date of service of the notice, the claim, to the extent disallowed by the personal representative is barred.

References: Advisory Committee Minutes
7/15,16/66 p. 11

Lundy's Draft, 7/14/66, section 4

ORS 116.525 and 116.140

Section 19. Summary determination procedure. In a proceeding for summary determination by the probate court of a claim disallowed in whole or in part by the personal representative:

(1) The personal representative shall move or plead to the claim in the same manner as though the claim were a complaint filed in an action or suit.

(2) The court shall hear the matter after notice to the claimant and personal representative. Upon the hearing the court shall determine the claim in a summary manner without a jury, and shall make an order allowing or disallowing the claim in whole or in part.

(3) No appeal may be taken from the order of the court made upon the summary determination.

References: Advisory Committee Minutes
7/15,16/66 pp. 12 and 13

Lundy's Draft, 7/14/66, section 5

ORS 116.530, 116.535, 116.540, 116.545,
116.550, see also 126.331 (2)

Section 20. Interested persons heard in summary determination or separate action or suit. In a proceeding for summary determination by the probate court of a claim disallowed in whole or in part by the personal representative or in a separate action or suit against the personal representative on the claim, any person interested in the estate may be heard on the matter of allowance or disallowance of the claim.

References: Advisory Committee Minutes
7/15,16/66 p. 13

Lundy's Draft, 7/14/66, section 6

Section 21. Proof of claim for court allowance. A claim disallowed in whole or in part by the personal representative may not be allowed by any court except upon some competent and satisfactory evidence other than the testimony of the claimant.

References: Advisory Committee Minutes
7/15,16/66 p. 13

Lundy's Draft, 7/14/66, section 7

ORS 116.555

Section 22. Waiver of statute of limitations. A claim barred by the statute of limitations may not be allowed by the personal representative or any court except upon the written direction of distributees and creditors who would be adversely affected by allowance of the claim.

References: Advisory Committee Minutes
7/15,16/66 p. 13

Lundy's Draft, 7/14/66, section 8

ORS 116.555

Section 23. ORS 12.190 is amended to read:

12.190. Effect of death on limitations. (1) If a person entitled to bring an action dies before the expiration of the time limited for its commencement, and the cause of action survives, an action may be commenced by his personal representative [s] after the expiration of [the] that time, and within one year [from] after his death.

(2) If a person against whom an action may be brought dies before the expiration of the time limited for its commencement [, and the cause of action survives,] an action may be commenced against his personal representative [s] after the expiration of that time, and within one year after his death. [the issuing of letters testamentary or of administration; but no suit or action for collection of any claim against the estate of a decedent may be maintained, when no letters testamentary or of administration shall have been issued before the expiration of six years after the death of the decedent.]

References: Advisory Committee Minutes
7/15,16/66 p. 13

Lundy's Draft, 7/14/66, section 9

ORS 12.190

Section 24. Extension of statute of limitations. If a claim is not barred by the statute of limitations on the date

of death of the decedent, the claim is not barred by the statute of limitations thereafter until at least one year after the date of death.

References: Advisory Committee Minutes
7/15,16/66 p. 14

Lundy's Draft, 7/14/66, section 10

Iowa Code (1963), section 412

Section 25. Claim barred when personal representative appointed. A claim against the estate of a decedent is barred, and an action or suit on the claim may not be commenced, after the expiration of six years after the date of death of the decedent if a personal representative is appointed and qualifies within the six-year period.

References: Advisory Committee Minutes
7/15,16/66 p. 14

Lundy's Draft, 7/14/66, section 11

Section 26. ORS 13.080 is amended to read:

13.080. Nonabatement of action or suit by death, disability or transfer; continuing proceedings. (1) No action or suit shall abate by the death or disability of a party, or by the transfer of any interest therein, if the cause of action survives or continues.

(2) In case of the [death or] disability of a party, the court may, at any time within one year thereafter, on motion, allow the action or suit to be continued by or against his

[personal] legal representative [s] or successors in interest.

(3) In case of the death of a party, the court shall, on motion, allow the action or suit to be continued:

(a) By his personal representative or successors in interest at any time within one year after his death.

(b) Against his personal representative or successors in interest at any time within four months after the date of the first publication of notice of the appointment of the personal representative, but not more than one year after his death.

References: Advisory Committee Minutes
7/15,16/66 pp. 19 to 21

Lundy's Draft, 7/14/66, section 12

ORS 13.080

Section 27. Continuation of action or suit without claim presentation. An action or suit against a decedent commenced before and pending on the date of his death may be continued as provided in paragraph (b) of subsection (3) of ORS 13.080 without presentation of a claim against the estate of the decedent.

References: Advisory Committee Minutes
7/15,16/66 p. 21

Lundy's Draft, 7/14/66, section 13

Section 28. Enforcement of encumbrances. Sections (insert references to appropriate sections) do not affect or prevent any action, suit or proceeding to enforce any encumbrance upon property of the estate.

References: Advisory Committee Minutes
7/15,16/66 p. 21

Lundy's Draft, 7/14/66, section 14

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Section 29. Repeal of existing statutes. ORS

116.175, 116.505, 116.510, 116.515, 116.520, 116.525,
116.530, 116.535, 116.540, 116.545, 116.550, 116.555,
116.560, 116.565, 116.570, 116.575, 116.580, 116.585,
116.590, 116.595, 117.110, 117.120, 117.130, 117.140,
117.150, 117.160, 117.170, 117.310, 117.315, 117.320,
117.330, 117.340, 117.350, 117.361, 117.370, 117.380 and
117.390 are repealed.