

Proposed revised Oregon probate code  
EFFECT OF HOMICIDE ON INTESTATE SUCCESSION,  
WILLS, JOINT ASSETS, LIFE INSURANCE AND  
BENEFICIARY DESIGNATIONS  
2nd Draft  
August 25, 1967

Prepared by  
Stanton W. Allison

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

Section 1. Definitions. As used in this chapter:

(1) Slayer is a person who with felonious intent takes or procures the taking of the life of another.

(2) Decedent is the person whose life is taken by the slayer.

Section 2. Slayer deemed to predecease decedent. Property which would have passed from the decedent or his estate to the slayer under the statutes of descent and distribution, by will, or by trust shall pass and be vested as if the slayer had predeceased the decedent.

Section 3. Tenancy by the entirety. If the slayer and the decedent held property as tenants by the entirety or with a right of survivorship, upon the death of decedent an undivided one-half interest shall remain in the slayer for his lifetime and, subject thereto, the property shall vest in the heirs or devisees of the decedent.

Section 4. Vesting of property held jointly with slayer. If the slayer, the decedent and another or others were joint owners of property with a right of survivorship the slayer shall not take as a survivor as against the other surviving owner or owners.

Section 5. Reversions, vested remainders, contingent remainders, and future interests.

(1) Property in which the slayer holds a reversion or vested remainder subject to an estate for the lifetime of decedent shall pass to the heirs or devisees of the decedent for a period of time equal to the normal life expectancy of a person of the sex and age of the decedent at the time of his death; if the particular estate is held by a third person for the lifetime of the decedent it shall continue in such person for a period of time equal to the normal life expectancy of a person of the sex and age of the decedent at the time of his death.

(2) As to a contingent remainder or executory or other future interest held by the slayer subject to become vested in him or increased in any way for him upon the condition of the death of the decedent;

(a) If the interest would not have become vested or increased if he had predeceased the decedent, he shall be deemed to have so predeceased the decedent;

(b) In any case, the interest shall not be so vested or increased during a period of time equal to the normal life expectancy of a person of the sex and age of the decedent at the time of his death.

Section 6. Property appointed -- powers of revocation or appointment.

(1) Property appointed by the will of the decedent to or for

the benefit of the slayer shall be distributed as if the slayer had predeceased the decedent.

(2) Property held either presently or in remainder by the slayer, subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment, shall pass to the heirs or devisees of the decedent; and property so held by the slayer, subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons, or to a class of persons, shall pass to such person or persons or in equal shares to the members of such class of persons to the exclusion of the slayer.

Section 7. Proceeds of insurance on the life of decedent.

(1) Proceeds payable to or for the benefit of the slayer as beneficiary or assignee of the decedent of the following interests pass to the secondary beneficiary, or if there is no secondary beneficiary, to the personal representative of the decedent:

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

Section 8. Proceeds of insurance on the life of the slayer.

If the decedent is beneficiary or assignee of any policy or

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certificate of insurance on the life of the slayer, the proceeds shall be paid to the personal representative of the decedent unless:

- (1) The policy or certificate names some person other than the slayer or his personal representative as secondary beneficiary.
- (2) The slayer, by naming a new beneficiary, or assignee, performs an act which would have deprived the decedent of his interest if the decedent had been living.

Section 9. Payment by insurance company, bank, etc., no additional liability. Any insurance company making payment according to the terms of its policy, or any bank, trustee, or other person performing an obligation to the slayer shall not be subjected to additional liability because of the provisions of this chapter if the payment or performance is made without written notice by a claimant of a claim arising from the provisions of this chapter. Upon receipt of written notice the person to whom it is directed may withhold any disposition of the property pending determination of his duties.

Section 10. Rights of persons without notice dealing with slayer. The provisions of this chapter shall not affect the rights of any persons, who for value and without notice purchase or agree to purchase property that the slayer would have acquired except for the provisions of this chapter, but all proceeds received by the slayer from the sale shall be held by him in trust

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CORRECTION SHEET 3 8/95 as found by researcher

Please note the following:

Under References: Advisory Committee Minutes: 11/17, 18/65 pp. 1-5 & app.

SHOULD BE

11/19, 20/65 pp. 1-5 & app (pro. #7)

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for the persons entitled to the property as provided in this chapter. The slayer shall be liable for any portion of the proceeds of the sale that he may have expended and for the difference, if any, between the amount received from the sale and the actual value of the property.

Section 11. Record of conviction as evidence. The record of the conviction of a slayer for having participated in the death of decedent shall be admissible in evidence in any action arising under the provisions of this chapter.

Section 12. Repeal of existing statutes. ORS 111.060 is repealed.

References: Advisory Committee Minutes:  
8/13,14/65, pp. 13 and 14  
9/18/65, pp. 2 to 5  
11/17,18/65, pp. 1 to 5 and Appendix (Proposal #7)  
5/19,20/67 pp. 12 to 14

ORS 111.060

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

2nd Draft  
August 17, 1967

Prepared by  
Stanton W. Allison

COMMENTS

The section title used above is taken from Section 2-803 of the 1967 draft, Uniform Probate Code. For comparable legislation, see the 1965 Washington Probate Code, Chapter 11.84, and the 1963 Iowa Probate Code, Sections 535, 536 and 537.

This section would replace and supersede ORS 111.060.

Oregon badly needs a revision of the law in this area. See I Jaureguy and Love, Oregon Probate Law and Practice, Section 23, p. 36, for some of the problems arising under Oregon statutes. In light of this inadequate statute, and in view of the fact that the common law doctrines of the restatement, restitution, have not yet been generally accepted by the Oregon court, a complete statutory solution would seem to be desirable. As will be noted in the additional separate comments, the general language and format of the following is taken from the 1965 Washington Probate Code.

Section 1. Definitions. The general wording of this section is taken from Section 11.84.010 of the 1965 Washington Probate Code. However, the language has been changed to read: "a person who with felonious intent takes or procures the taking of the life of another." The present language of ORS 111.060 is: "Person who feloniously takes or causes or procures another so to take the life of another." Although "feloniously" is used

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in both the 1967 draft of the Uniform Probate Code and the Iowa Probate Code referred to, this word is criticized in the section of Oregon Probate Law and Practice above referred to. Your committees considered it preferable to use the phrase "with felonious intent." since this would exclude killing by involuntary manslaughter or gross negligence.

(Draftsman's Note: Your draftsman, after experiencing difficulty in rephrasing Section 2 of the first draft, has decided to omit this section entirely. It is far beyond the scope or content of the proposed section to prescribe a general rule that "no slayer shall acquire any property or receive any benefit as the result of the death of the decedent." The subject matter of this chapter must be limited to the provisions thereof. Your draftsman has concluded that the omitted section actually adds nothing to the content of this chapter. No such general provision in either the Uniform Code or the Iowa Code.)

Section 2. Slayer deemed to predecease decedent. Section 2 achieves the result spelled out in ORS 111.060, subsection (1). The determination of these rights is more easily arrived at by the language of the proposed new section. Also note that the proposed new section includes property passing by trust agreement.

Section 3. Tenancy by the entirety. The problem and the background on the proposed solution contained in this section is discussed in the scholarly memorandum by Otto J. Frohnmayer, the principal drafter of this chapter, as follows:

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We note

the problems which have arisen with tenancies by the entirety which have been held to be not within the intent of the statute, since it was held to deal only with interests which are deemed to pass upon death. In Wenker v. Landon, 161 Or. 265, 88 P 2d 971 (1939) it was held that an estate passing by right of survivorship does not in strict legal theory pass through the estate of the decedent. Hargrove v. Taylor, 236 Or. 451, 389 P. 2d 36 (1964) overruled Wenker v. Landon, but a majority of the court still held that tenancies by the entirety were not within the meaning of the present Oregon statute on felonious killing, ORS 111.060. A constructive trust solution was utilized in the latter case, since Justice O'Connell held that the failure of the legislature to extend the statute to cases where property is held by the entirety was not to be regarded as an indication of a legislative intent to permit a spouse to profit by his own felonious conduct.

Reference must be had, in any legislation on this subject, to Article I, section 25 of the Oregon Constitution, which states that "no conviction shall work corruption of blood, or forfeiture of estate." The desirable policy would seem to be that heirs should be precluded from taking through a murder, but that they should not be prohibited from taking in their own right as next of kin.

The draft submitted for consideration follows very closely the suggested statute presented in Wade "Acquisition of property by willfully killing another -- a statutory solution", 49 Harv. L. Rev. 715 (1936). The new Washington probate code chapter 11.84 also follows this statutory solution practically verbatim.

Section 4. Vesting of property held jointly with slayer.

Section 4 suggests a solution to the problem of a joint interest held by three or more persons including the slayer and the decedent victim under joint tenancy or survivorship. If there are other survivorship tenants who survive the decedent victim beside

the slayer, the survivorship title will be vested in the other surviving joint tenants to the exclusion of the slayer. This is a provision and solution which does not appear in the present ORS section.

Section 5. Reversions, vested remainders, contingent remainders, and future interests. The general outline of Section 5 is taken from the 1965 Washington Probate Code referred to. These provisions covering an area which is not touched by the present ORS section. The general content and effect of the section would be to provide that where the slayer has a reversion or vested remainder, contingent remainder, or other executory future interest, the enjoyment of this interest will be postponed for a period equal to the normal life expectancy of the decedent if he hadn't been killed by the slayer.

Section 6. Property appointed - powers of revocation or appointment. This section is taken from Section 11.84.090 of the 1965 Washington Probate Code. It covers material not touched upon in ORS 111.060. The general content of the section is clear in preventing the slayer from benefiting from a power of appointment by the death of the decedent victim.

Section 7. Proceeds of insurance on the life of decedent. This section is a general paraphrase of paragraph 2 of ORS 111.060. It should be noted, however, that the proposed chapter

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does not have any provisions similar to the present ORS language covering disability policies. This particular area was seriously considered by the joint committees, who decided first that problems of profiting by a disablement of a person did not properly belong in a felonious death statute. It was then reported by the vice-chairman that he had questioned insurance people and had been told that none of those questioned had ever heard of disability insurance being payable to a beneficiary other than the disabled, and therefore reference to such insurance is omitted from the proposed chapter. It should be also noted, however, that reference to profit-sharing, pension plans, and employe benefit provisions have been included within the coverage of the proposed chapter.

Section 8. Proceeds of insurance on the life of the slayer. This is an area not touched upon by the present ORS legislation. The language is taken from Section 11.84.100 of the 1965 Washington Probate Code. The effect is to prevent the slayer from benefiting by the death of the decedent where decedent was the beneficiary of insurance on the life of the slayer.

Section 9. Payment by insurance company, bank, etc., no additional liability. Section 9 makes provision for the protection of people making payment in areas covered by the proposed chapter where payment is made without written notice of claim

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by someone who would be otherwise entitled under the terms of this chapter. The provision is similar to the second sentence of ORS 111.060(2).

Section 10. Rights of persons without notice dealing with slayer. Section 10 is taken verbatim from Section 11.84.120 of the 1965 Washington Probate Code.

Section 11. Record of conviction as evidence. This section is similar in content to Section 11.84.130 of the 1965 Washington Code. The joint committees engaged in extended discussion on the approach to this problem of requiring a criminal conviction. It was brought out that there are situations where after a criminal conviction of a felony death the slayer sues an insurance company and convinces the jury that he did not feloniously slay the other party. Another reason for not requiring a criminal felony conviction is that determination of rights under this chapter which might otherwise be arrived at without contest might be delayed for years if the determination were made contingent on a felony conviction: (e.g. first degree murder conviction being appealed to the U.S. Supreme Court.) The consensus was that it was proper to use the conviction record as admissible evidence.

Proposed revised Oregon probate code  
CONSEQUENCES TO SLAYER FOR FELONIOUSLY  
CAUSING DEATH OF ANOTHER

1st Draft  
March 23, 1967

CONSEQUENCES TO SLAYER FOR FELONIOUSLY  
CAUSING DEATH OF ANOTHER

Section 1. Definitions. As used in this chapter:

(1) Slayer is a person who with felonious intent takes or procures the taking of the life of another.

Note: Would it be better to set out, by section number, the crimes included in those with "felonious intent?" e.g. Any person convicted under ORS \_\_\_\_\_ is a slayer.

(2) Decedent is any person whose life is taken by a slayer.

Section 2. Slayer not to benefit from death of decedent, generally. No slayer shall acquire any property or receive any benefit as the result of the death of the decedent and the property passes as provided in this chapter.

Section 3. Slayer regarded as having predeceased decedent. The slayer is regarded as having predeceased decedent as to property that would have passed from the decedent or his estate to slayer because of:

- (1) Statutes of descent and distribution.
- (2) Statutory right as the surviving spouse of the decedent.
- (3) The will of the decedent or by trust.
- (4) Property appointed by the will of the decedent.
- (5) A contingent remainder or executory or other future interest held by the slayer, subject to become vested in him or increased in any way for him upon condition of the death of the decedent:

(a) If the interest would not have become vested or increased if the slayer had predeceased the decedent.

(b) In any case, the interest does not vest or increase during the period of time equal to the normal life expectancy of a person of the sex and age of the decedent at the time of his death.

Section 4. Other property. (1) Proceeds payable to or for the benefit of the slayer as beneficiary or assignee of the decedent of the following interests pass to the secondary beneficiary, or if there is no secondary beneficiary, to the personal representative of the decedent:

(a) Policy or certificate of insurance.

(b) Certificate of membership in any benevolent association or organization on the life of decedent.

(c) Rights of decedent as survivor of a joint life policy.

(d) Proceeds under any pension, profit-sharing or other plan.

(2) The slayer is entitled to an undivided one-half interest for his lifetime in property held by the slayer and decedent as tenants by the entirety or with a right of survivorship, and subject thereto the property so held passes to the heirs, devisees and legatees of the decedent.

(3) The slayer, if one of joint owners with decedent, decedent and another or others with the right of survivorship, takes nothing as survivor among the owners because of the death of the decedent.

(4) Property in which the slayer holds a reversion or vested remainder subject to an estate in the decedent for

his lifetime passes to the heirs, devisees and legatees of the decedent for a period of time equal to the normal life expectancy of a person of the decedent's sex and age at the time of his death.

(5) Property held by a third person for the lifetime of the decedent continues in that person for a period of time equal to the normal life expectancy of a person of the sex and age of the decedent at the time of death.

(6) Property held either presently or in remainder by the slayer, subject to divestment by a power exercisable by decedent passes:

(a) To the heirs, devisees or legatees of the decedent if it was property subject to a power of revocation or a general power of appointment.

(b) To the person or persons or to a class of persons if the power of appointment was limited or only exercisable in that manner.

(c) In any case the property or any benefit therein does not pass to the slayer.

(7) If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer, the proceeds shall be paid to the personal representative of the decedent unless:

(a) The policy or certificate names some person other than the slayer or his personal representative as secondary beneficiary.

(b) The slayer, by naming a new beneficiary, or assignee, performs an act which would have deprived the decedent of his interest if the decedent had been living.

Section 5. Payment by insurance company, bank, etc.,  
no additional liability. Any insurance company making pay-  
ment according to the terms of its policy, or any bank,  
trustee, or other person performing an obligation to the  
slayer shall not be subjected to additional liability because  
of the provisions of this chapter if the payment or performance  
is made without written notice by a claimant of a claim  
arising from the provisions of this chapter. Upon receipt  
of written notice the person to whom it is directed may  
withhold any disposition of the property pending determina-  
tion of his duties.

Section 6. Rights of persons without notice dealing  
with slayer. The provisions of this chapter shall not affect  
the rights of any persons, who for value and without notice,  
purchase or agree to purchase property that the slayer would  
have acquired except for the provisions of this chapter. All  
proceeds received by the slayer from the sale shall be held  
by him in trust for the persons entitled to the property as  
provided in this chapter. The slayer shall be liable for  
any portion of the proceeds of the sale that he may have  
expended and for the difference, if any, between the amount  
received from the sale and the actual value of the property.

Section 7. Record of conviction as evidence against  
claimant of property. The record of the conviction of a  
slayer for having participated in the death of decedent shall  
be admitted in evidence in any action arising under the pro-  
visions of this chapter.

Section 8. Repeal of existing statutes. ORS 111.060  
is repealed.

References:

Minutes

8/13, 14/65, pp. 13 and 14

9/18/65, pp. 2 to 5

11/19, 20/65, pp. 1 to 5;

and appendix (Proposal # 7)

ORS 111.060