Prepared by
Legislative Counsel

Proposed revised Oregon probate code
ESCHEAT
1st Draft
April 12, 1967

ESCHEAT

Section 1. Property in this state of a decedent in respect of which the decedent dies intestate escheats to the State of Oregon if the decedent leaves no heirs of him surviving.

Section 2. If property escheats to the State of Oregon there shall be the following consequences:

(1) The state shall be considered as though it were the sole heir at law; (or natural heir).

(2) The state shall be given all notices and shall be served with all process, required to be given to, or served on heirs generally;

(3) In addition to the other requirements of this section, the state shall be notified by registered or certified mail of any proposed sale of property at least 10 days before sale of the property;

(4) The state shall have the right to pay claims, expenses of administration and encumbrances, and if the state exercises that right, upon completion of the administration, the state shall have the right to receive distribution of the property in kind.

Section 3. For the purpose of mailing any notice to the state, or the service of any process, as provided in this section, the post office of the Clerk of the State Land Board,

Salem, Oregon, shall be considered the postoffice address of the state, and the Clerk or any of his deputies shall be considered the agent of the state for receiving service of any notice or process.

Section 4. If at the time of the filing the petition for letters of administration there are no known heirs, the petition shall state that fact and shall state that the State of Oregon is the sole heir at law. If, at any time after the petition is filed, but during the administration, it appears that there are no known heirs, the State of Oregon shall be considered the sole heir at law as of that time.

Section 5. ORS 120.130 is amended to read:

120.130. (1) Within 10 years after judgment in any proceeding in the [circuit] court escheating [real] property to the state, or after the order of the court [having probate jurisdiction] directing the conveyance of escheated [real] property to the state [, and in all other cases within 10 years after payment of the proceeds of escheated personal property to the State Land Board,] a claim may be made for the property escheated [, or the proceeds thereof,] by or on behalf of a person not a party or privy to such proceeding, nor having actual knowledge of the making of such judgment or order. [or of such payment to the State Land Board.]

(2) The claim shall be made by a petition filed with the Clerk of the State Land Board. The claim shall be considered

a contested case as provided in ORS 183.310 and there shall be the right of judicial review as provided in ORS 183.480. [in the court in which the escheat proceedings were held.] The petition shall be verified in the same manner as a complaint and shall state:

(a) The age and place of residence of the claimant by whom or on whose behalf the petition is filed;

(b) That the claimant lawfully is entitled to such property or proceeds, briefly describing the same;

(c) That at the time the property escheated to the state the claimant had no knowledge or notice thereof;

(d) That the claimant claims the property or proceeds as an heir or next of kin, or as [executor, administrator] personal representative, guardian or conservator of either, setting forth the relationship of the decedent, who at the time of his death was the owner of same;

(e) That 10 years have not elapsed since the making of the judgment or order escheating the property to the state [, or since the payment of the proceeds of the escheated estate by the administrator thereof to the State Land Board pursuant to the order of the court having probate jurisdiction]; and

(f) If the petition is not filed by the claimant himself, the status of the petitioner, whether [executor, administrator,] personal representative, conservator or guardian.

[(3) The State Land Board shall be made a defendant in the proceeding, and a copy of the petition must be served upon the clerk of the board at least 20 days before the hearing of the petition. The court must try the issue, as issues are tried in civil actions, with the aid of a jury, if requested by either party.]

[(4)](3) If it is determined that the claimant is entitled to [such] the property [or the proceeds thereof, the court must order the same to be delivered] the Clerk of of the State Land Board shall deliver the property to the petitioner, subject to and charged with the inheritance tax thereon, if any, and the costs and expenses of the state in connection therewith. [The order for delivery shall be an order upon the State Land Board to draw its warrant on the State Treasurer for the payment of the same, but without interest or cost to the state, a certified copy of which order shall be sufficient voucher for drawing such warrants.]

[(5)] (4) If the person whose property or funds escheated or reverted to the state was at any time an inmate of a state institution in Oregon for the insame or feeble-minded, the reasonable unpaid cost, as determined by the State Board of Control, of the care and maintenance of the person while a ward of such institution, regardless of when the cost was incurred, may be deducted from, or, if necessary, be offset in full against, the amount of the escheated property. [or funds, and, for the purpose of collecting the charge, the

State Board of Control shall have the right to intervene and file an account in any proceeding, whether in the circuit court or before the State Land Board for the recovery of such property or funds.]

Section 6. ORS 120.210 Escheat of money or property deposited with institution on death, escape or parole of inmate; notice and publication. All money, certificates of deposit, securities, assets or other personal property which have been or shall be taken charge of by the officials of the state institutions listed in ORS 179.320, belonging to patients or inmates committed to any of such institutions and who die inmates thereof or escape or who are paroled therefrom, and which is not claimed by such person, or by the heirs or personal representative of such person within one year after such death, escape or parole, escheats to the state for the benefit of the Common School Fund, and without other or further proceeding shall be paid or turned over by the officials of the above institutions to the State Land Board, who shall issue therefor receipts in duplicate. One of the receipts shall be filed in the office of the Secretary of State. However, if such escheated money, certificates of deposit, securities or other personal property exceeds the sum of $50, a notice of such escheated property shall be published under direction of the State Land Board in a newspaper of general circulation within the county in which such institution paying or turning over the same is situated,

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2nd Draft
February 27, 1968

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Stanton W. Allison

Section 1. ORS 120.130 is amended to read:

120.130. Recovery of escheated property. (1) Within 10 years after [judgment in any proceeding in the circuit court escheating real property to the state, or after the order of the court having probate jurisdiction directing the conveyance of escheated real property to the state, and in all other cases within 10 years after payment of the proceeds of escheated personal property to the State Land Board,] entry of a decree of distribution designating title to the estate available for distribution in the Division of State Lands, a claim may be made for the property escheated, or the proceeds thereof, by or on behalf of a person not [a party or privy to such proceeding, nor] having actual knowledge of the making of such [judgment or order or of such payment to the State Land Board.] decree.

(2) The claim shall be made by a petition filed [in the court in which the escheat proceedings were held] with the Director of the Division of State Lands. The claim shall be considered a contested case as provided in ORS 183.310 and there shall be the right of judicial review as provided in ORS 183.480. The petition shall be verified in the same manner as a complaint and shall state:

(a) The age and place of residence of the claimant by whom or on whose behalf the petition is filed;

(b) That the claimant lawfully is entitled to such property or proceeds, briefly describing the same;

(c) That at the time the property escheated to the state the claimant had no knowledge or notice thereof;

(d) That the claimant claims the property or proceeds as an heir [or next of kin,] or as [executor, administrator, guardian or conservator of either,] personal representative, setting forth the relationship of the decedent, who at the time of his death was the owner of same;

(e) That 10 years have not elapsed since the [making of the judgment or order] entry of the decree escheating the property to the state [,or since the payment of the proceeds of the escheated estate by the administrator thereof to the State Land Board pursuant to the order of the court having probate jurisdiction]; and

(f) If the petition is not filed by the claimant himself, the status of the petitioner [, whether executor, administrator, conservator or guardian].

[(3) The State Land Board shall be made a defendant in the proceeding, and a copy of the petition must be served upon the clerk of the board at least 20 days before the hearing of the petition. The court must try the issue, as issues are tried in civil actions, with the aid of a jury, if requested by either party.]

[(4)] (3) If it is determined that the claimant is entitled to [such] the property or the proceeds thereof, [the

court must order the same to be delivered] the Director of the Division of State Lands shall deliver the property to the petitioner, subject to and charged with the inheritance tax thereon, if any, and the costs and expenses of the state in connection therewith. [The order for delivery shall be an order upon the State Land Board to draw its warrant on the State Treasurer for the payment of the same, but without interest or cost to the state, a certified copy of which order shall be sufficient voucher for drawing such warrants.]

[(5)] (4) If the person whose property or funds escheated or reverted to the state was at any time an inmate of a state institution in Oregon for the [insane or feeble-minded] mentally ill, the reasonable unpaid cost, as determined by the State Board of Control, of the care and maintenance of the person while a ward of such institution, regardless of when the cost was incurred, may be deducted from, or, if necessary, be offset in full against, the amount of the escheated property [or funds, and, for the purpose of collecting the charge, the State Board of Control shall have the right to intervene and file an account in any proceeding, whether in the circuit court or before the State Land Board for the recovery of such property or funds].

Section 2. ORS 120.210 is amended to read:

ORS 120.210. Escheat of money or property deposited with institution on death, escape or parole of inmate; notice and publication. All money, certificates of deposit, securities, assets or other personal property which have been or shall be

taken charge of by the officials of the state institutions listed in ORS 179.320, belonging to patients or inmates committed to any of such institutions and who die inmates thereof or escape or who are paroled therefrom, and which is not claimed by such person, or by the heirs or personal representative of such person within one year after such death, escape or parole, escheats to the state [for the benefit of the Common School Fund], and without other or further proceeding shall be paid or turned over by the officials of the above institutions to the [State Land Board, who] Division of State Lands which shall isssue therefor receipts in duplicate. One of the receipts shall be filed in the office of the Secretary of State. However, if such escheated money, certificates of deposit, securities or other personal property exceeds the sum of $50, a notice of such escheated property shall be published under direction of the [State Land Board] Division of State Lands in a newspaper of general circulation within the county in which such institution paying or turning over the same is situated, and also in a newspaper in the county from which the inmate was committed, once each week for not less than three consecutive weeks. The expense of such publication shall be paid out of the proceeds of the escheated property.

Section 3. ORS 120.220 is amended to read:

ORS 120.220. Collection and disposition by Division of

State Lands. The money, certificates of deposit, securities or other personal property mentioned in ORS 120.210 shall be collected or liquidated by the [State Land Board] Division of State Lands, and the board may sell, indorse and collect all such money, certificates of deposit, securities or other personal property and place the proceeds thereof in the State Treasury [to the credit of the Common School Fund].

Section 4. ORS 120.230. Owners' and representatives' rights to reclaim property; limitation. The money or the proceeds of such certificates of deposit, securities or other personal property which has escheated to the state under the provisions of ORS 120.210, may be reclaimed by the original owner or his or her heirs, or personal representatives, at any time within 10 years after such escheat, in the same manner as property belonging to estates of deceased persons which have escheated to the state.

Section 5. ORS 178.080 is amended to read:

178.080. Collection of fines, penalties, forfeitures and escheates. (1) The State Treasurer, in his discretion, may appoint a collector to collect the amounts of fines, penalties, and forfeitures [and escheats] due or owing the State of Oregon, and, in connection therewith, to make examinations of the dockets of all courts other than of the Supreme Court. The

collector may examine all public records for gift tax and inheritance tax determinations and evasions.

(2) The cost of all examinations, investigations and searches, and of all traveling and other expenses in connection therewith, are to be apportioned among the departments principally concerned therewith, pursuant to agreements made between the State Treasurer and the departments; but the entire cost so apportioned, exclusive of expenses involved in litigated cases, shall not average more than $300 per month for the state fiscal year.

(3) The State Treasurer may institute legal proceedings in the name of the State of Oregon, upon his relation or otherwise without joinder of any other party, to effect collection of any fine, penalty, <u>or</u> forfeiture [or escheat] due the state and may charge the net cost of the proceedings to the department in whose behalf suit or action was instituted.

(4) All judicial, municipal and county officers shall cooperate with the State Treasurer with respect to the collections, searches and investigations and shall furnish the State Treasurer with any information contained in any of the records under their respective custodies relating thereto.

(5) The State Police Department shall cooperate in the investigation of fines, penalties and forfeitures.

[(6) All county clerks, upon request, shall furnish the State Treasurer with the titles of estates of deceased persons which have remained open for more than three years and in

which no heirs, or only parties whose right to inherit the proceeds thereof is being contested, have appeared to claim the estates.]

Section 6. Reports by County Clerks to Division of State Lands. County Clerks, upon request, shall furnish the Director of the Division of State Lands the titles of estates of deceased persons which have remained open for more than three years and in which no heirs, or other parties whose right to inherit the proceeds thereof is being contested, have appeared to claim the estate.

Section 7. Repeal of existing statutes. ORS 120.010, 120.020, 120.030, 120.040, 120.050, 120.060, 120.070, 120.080, 120.090, 120.100, 120.110, 120.120, 120.140 and 120.150.

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2nd Draft
March 4, 1968

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COMMENTS

The involved and difficult chapter 120 of the present code provides three forms of procedure for the state to assert its right to escheated property. ORS 120.030 and related sections provide for administration by the probate court. ORS 120.050 provides that the state may maintain "any action, suit or proceeding necessary to recover the possession of any such property". ORS 120.060 provides for bringing an information on behalf of the state.

With reference to the proceeding by information, Oregon Probate Law and Procedure, Jaureguy and Love, states, in Section 204:

> "In view of this section, it seems that the special provision for an information of escheat is entirely unnecessary. While procedure by information is the traditional common law form of complaint by the state, in either civil or criminal proceedings, it seems that by providing that the state may maintain any proceeding to protect its rights that a private person could it was unnecessary duplication to provide that the state could proceed by the traditional method of information."

The authors state in Section 203: "The recent trend has been toward the trial of escheat proceedings in the probate court rather than by information....Under the present statute governing procedure, the great majority of escheats are conducted in connection with administration proceedings."

Your committees are convinced that the confusion incident

to the three procedures now authorized should be eliminated by limiting the state to an administration proceeding.

Subsection (6) of Section 5 of the proposed chapter of Intestate Succession provides: "If no person takes under the preceding subsections, the net intestate estate shall escheat to the State of Oregon." By the chapter on Jurisdiction of the Probate Court probate jurisdiction is vested in the Circuit Court, which is given full power to make declaratory judgments pertaining to the title of real estate, determination of heirship, and distribution of the estate.

Section 7 of the chapter on Duties and Powers of the Personal Representative provides: "If it appears from the petition for appointment of the personal representative that there is no known person to take by descent the net intestate estate, the personal representative shall mail to the Director of State Lands copy of the petition and the information required by subsection (1)." Thus the information given to the Director of the Division of State Lands is the same as that given to heirs in an intestate estate or to devisees in a testate estate. Upon the filing of the final account and petition for distribution the same notice is given the Director of the Division of State Lands as is given the heirs or devisees.

The proposed code conforms to present Oregon law in vesting both real and personal property, in the absence of

known heirs, in the state of Oregon.

The action of the committees has been to recommend repeal of all of chapter 122 except those portions which provide for the recovery of escheated property, and some technical amendments to the sections covering property of persons confined in state institutions. However, one important change in the procedure for recovery of escheated property should be noted. The proposed amendment provides that instead of processing the claim in the court "in which the escheat proceedings were held," (ORS 120.130(2) the claim should be processed pursuant to the Administrative Procedures Act in the same manner as other claims against state agencies.

Your committees felt there was every advantage in having the escheat administered under the proposed code as an estate proceeding. In an escheat situation the State of Oregon is legally in the status of an heir at law. The proposed code provides the same notice and the same procedures as where there are known heirs. Rights of creditors are protected. The required time for filing claims gives an opportunity to unknown heirs to come forward. The broad power given by the proposed code to the personal representative to sell real and personal property of the estate for distribution purposes provides a simple procedure for liquidating estate assets and turning them into cash which can be turned over to the Division of State Lands. Under the proposed code

the Circuit Court in probate is given full power to make proper determination of heirship and enter final decrees escheating the real and personal property of the estate to the State of Oregon.

and also in a newspaper in the county from which the inmate was committed, once each week for not less than three consecutive weeks. The expense of such publication shall be paid out of the proceeds of the escheated property.

Section 7. ORS 120.220 Collection and disposition by State Land Board. The money, certificates of deposit, securities or other personal property mentioned in ORS 120.210 shall be collected or liquidated by the State Land Board, and the board may sell, indorse and collect all such money certificates of deposit, securities or other personal property and place the proceeds thereof in the State Treasury to the credit of the Common School Fund.

Section 8. ORS 120.230 is amended to read:

120.230 Owners' and representatives' rights to reclaim property; limitation. The money or the proceeds of such certificates of deposit, securities or other personal property which has escheated to the state under the provisions of [ORS 120.210,] _____ may be reclaimed by the original owner or his or her heirs, or personal representatives, at any time within 10 years after such escheat, in the same manner as property belonging to estates of deceased persons which have escheated to the state.

Section 8. ORS 178.080 is amended to read:

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(2) The cost of all examinations, investigations and searches, and of all traveling and other expenses in connection therewith, are to be apportioned among the departments principally concerned therewith, pursuant to agreements made between the State Treasurer and the departments; but the entire cost so apportioned, exclusive of expenses involved in litigated cases, shall not average more than $300 per month for the state fiscal year.

(3) The State Treasurer may institute legal proceedings in the name of the State of Oregon, upon his relation or otherwise without joinder of any other party, to effect collection of any fine, penalty, forfeiture [or escheat] due the state and may charge the net cost of the proceedings to the department in whose behalf suit or action was instituted.

(4) All judicial, municipal and county officers shall cooperate with the State Treasurer with respect to the collections, searches and investigations and shall furnish the State Treasurer with any information contained in any of the records under their respective custodies relating thereto.

(5) The State Police Department shall cooperate in the investigation of fines, penalties and forfeitures.

(6) All county clerks, upon request, shall furnish the [State Treasurer] Clerk of the State Land Board with the titles of estates of deceased persons which have remained open for more than three years and in which no heirs, or only parties whose right to inherit the proceeds thereof is being contested, have appeared to claim the estates.

Section 9. Repeal of existing statutes. ORS 120.010, 120.020, 120.030, 120.040, 120.050, 120.060, 120.070, 120.090, 120.100, 120.110, 120.120, and 120.140.

References: Advisory Committee Minutes:
6/19,20/65 p. 6
8/13,14/65 p. 9
12/17,18/65 p.2
2/18,19/67 pp. 1 to 10.

ORS chapter 120