

Proposed revised Oregon probate code  
INVENTORY AND APPRAISEMENT  
2nd Draft  
August 25, 1967

Prepared by  
Stanton W. Allison

Section 1. Inventory and appraisement, when and how made.

Within 60 days after the date of his appointment, unless a longer time shall be granted by the court, the personal representative shall file an inventory of all of the property of the decedent which has come into his possession or knowledge. The inventory shall show the estimates of the personal representative of the respective true cash values of the properties described in the inventory as of the date of the decedent's death.

Section 2. Property discovered after inventory filed.

Whenever any property not included in the inventory comes to the possession or knowledge of the personal representative, he shall either file a supplemental inventory within 30 days of receiving possession or knowledge, or include the property in his next accounting.

Section 3. Appraisement; employment and appointment of appraisers. The personal representative may employ a qualified and disinterested appraiser to assist him in the appraisal of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The court also in its discretion may direct that all or any part of the property be appraised by one or more appraisers appointed by the court.

Section 4. Appraisal to be at true cash value at date of death. Property for which appraisement is required shall be

appraised at its true cash value as of the date of the decedent's death. Each appraisement shall be in writing and shall be signed by the appraiser or appraisers making it.

Section 5. Fees of appraisers. Each appraiser shall be entitled to be paid from the estate a reasonable fee and necessary expenses.

Section 6. Naming of personal representative does not discharge claim against him. The naming or appointment of any one as personal representative shall not operate to discharge the person from any claim which the decedent had against him, and the claim shall be included in the inventory. If he agrees to act as personal representative he shall be liable for such claim as for so much money in his hands at the time the claim became due and payable; otherwise he is liable for such claim as any other debtor of the deceased.

Section 7. Discharge or bequest in will of claim of testator. The discharge or devise in a will of a claim of the testator against a personal representative or against any other person shall be of no effect as against creditors of the decedent. The claim shall be included in the inventory and for purposes of administration shall be regarded and treated as a specific legacy in that amount.

References: Advisory Committee Minutes:  
10/14, 15/66 pp. 7 to 16; and Appendix B and C  
(Drafts by Carson and Butler)  
8/18, 19/67 (Draft by Butler, 4/8/67)

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Section 8. Repeal of existing statutes.

ORS 116.405, 116.410, 116.415, 116.420, 116.425, 116.430,  
116.435, 116.440, 116.445, 116.450, 116.455, 116.460 and  
116.465 are repealed.

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### COMMENTS

The proposed section under the above title would supersede and replace ORS 116.405 and 116.465 inclusive. The background for these sections is taken principally from Sections 361 to 365 of the 1963 Iowa Probate Code. For other comparable sections see Chapter 11.44, 1965 Washington Code, Chapter 858 of the State of Wisconsin 1967 Probate Code, and Sections 3-406, 3-407, and 3-408 of the 1967 draft of the Uniform Probate Code.

Section 1. Inventory and Appraisement, when and how made.  
This section includes much of the language of ORS 116.405, with the following differences. The initial period is changed from one month to 60 days which your committee felt was a more realistic period. The requirement of the oath was eliminated as is done in all the other provisions of the proposed code. It also has the basic change that the inventory shall include the personal representative's estimate of the true cash value of the items he lists in his inventory. This would permit the personal representative to include his own appraisal of such items as bank accounts, cash items, securities whose quotations are listed on the major stock exchanges and shown in the daily paper, and other items where an appraisal is not necessary to arrive at the actual true cash value.

Section 2. Property discovered after inventory filed.  
This section would replace ORS 116.415. However, it allows  
30 days for the preparation and filing of a supplemental

inventory and further gives the personal representative the option of including the after-discovered property in his next accounting.

Section 3. Appraisement; employment and appointment of appraisers. The proposed section embodies a fundamental change in the appraisement procedure. The suggested language would place the power to employ the services of "qualified and disinterested appraisers" in the hands of the personal representative, in much the same manner as the other professional helper, namely, the attorney for the estate, is retained by the interested party. The section, rather than setting out fixed fees now contained in ORS 116.425, provides in Section 5 that the appraiser shall be paid "a reasonable fee and necessary expenses." Your committees have not only had many criticisms from their clients and the general public of the appraiser fee in certain instances, but have also had serious criticism from realtor and professional appraiser bodies. They feel, and in the opinion of your committees justly so, that relationship of the appraiser to the personal representative should be somewhat similar to the present attorney relationship.

So far as appraising real estate is concerned, we quote the following from the report of Mr. Robert Lundy, then Deputy Legislative Counsel of Oregon.

Lundy commented that he had received correspondence from real estate appraisers who indicated the scale was in conflict with their code of ethics. He had, he said, received a letter from Oregon Chapter 14, American Institute of Real Estate Appraisers, in which they set forth the following four specific recommendations:

"1. That some form of qualification as evidenced by membership in a properly recognized professional organization or by examination or by demonstration, be a requirement of eligibility to appraise an estate or a portion of an estate and that appointment be made only for such portion of an estate for which proper qualification is so evidenced.

"2. That appraisal fees be agreed upon in advance (prior to assignment) and that they be based on the investigation and analysis necessary for a proper appraisal rather than on the amount of value found. A procedure somewhat similar to that which is in current use by the State Highway Commission is suggested.

"3. That any appraiser for an estate or a portion of an estate should sign and attest to his opinion of value only on types of assets for which his qualifications are in evidence.

"4. That the over-all value of an estate be submitted to the court by the attorney conducting probate thereof, and that such be a composite of values found on various types of assets; each by persons qualified to appraise the specific types involved."

In general, we believe that the suggested provisions meet many of the criticisms and suggestions referred to. The proposed section requires a qualified and disinterested appraiser. Different appraisers may be employed to appraise different kinds of assets. The employment would be on a reasonable fee and expenses basis which would take into account the difficulty and expertise required in individual appraisals.

Also note that power is retained in the probate court to direct that all or any part of the property be appraised by one

or more appraisers appointed by the court. It may well be that the personal representative in certain cases has failed or neglected to arrange for the appraisal, or that he would prefer to have the court take direction and appointment of the appraisal and the appraisers.

Section 4. Appraisal to be at true cash value at date of death. Section 4 replaces ORS 116.435 and substitutes the requirement that each article shall be appraised "at its true cash value as of the date of the decedent's death." This language has been adopted in preference to the term "full and true value" which now appears in the inheritance tax code (ORS 118.640).

Section 5. Fees of appraisers. This has been covered already in the preceding comment.

Section 6. Naming of personal representative does not discharge claim against him. This section replaces and incorporates most of the language of ORS 116.440. The language of the present ORS statute, however, has been changed to expressly include not only executors but personal representatives of intestate estates. The necessity of this statute and the reason for the special language incorporated from our present ORS section is explained in Section 626 to Jaureguy & Love, Oregon Probate Law and Practice, as follows: (Notes to citations omitted).

At common law, if testator appointed as executor of his estate a person who was his debtor and the latter accepted the appointment, the debt

was thereby discharged unless there were not sufficient other assets to satisfy creditors. This rule of law has been expressly changed by statute which provides that such a claim is not discharged and must be included in the inventory. Furthermore, if the person so named accepts the appointment and administers the estate, the amount of the indebtedness is treated as "so much money in his hands" for which he must account. The same rule apparently applies in the case of an administrator.

This particular wording of our statute becomes important in case of the insolvency of the executor or administrator. In some states a similar statute provides that the debt of the personal representative "shall be assets", instead of "so much money", in his hands. Under such a statute "a debt due from an executor is placed on the same footing with debts due the estate from other sources, and he and his sureties are only required to account for the actual value thereof." In those states, accordingly, in case of the personal representative's insolvency, his sureties need only pay a portion of the indebtedness. But under our statute providing that the debt of the personal representative is deemed "so much money" it is held that the estate is entitled to recover the full amount of the representative's debt.

**Section 7. Discharge or bequest in will of claim of testator.**

Section 7 is identical with ORS 116.445 except for minor editorial changes.

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1st Draft  
April 8, 1967

Section 1. Inventory and appraisement, when and how made. Within 60 days after the date of his appointment, the personal representative of the estate of a decedent shall make and file with the clerk of court in the probate proceedings an inventory of all of the property of the decedent which has come into his possession or knowledge. The inventory shall show the estimates of the personal representative of the respective true cash value of the properties described in the inventory.

Section 2. Extension of time. Whenever because of the complicated nature of the estate or because of other circumstances it is impracticable to file a complete and accurate inventory of the assets belonging to the estate within 60 days of appointment of a personal representative, the court may, upon application of the personal representative, extend the time for such period as the court determines necessary.

Section 3. Property discovered after inventory filed. Whenever any property not mentioned in the inventory comes to the possession or knowledge of the personal representative, he shall either make and file a supplemental inventory within 30 days of receiving possession or knowledge, or include the property in his next accounting.

Section 4. No appraisal required except for tax purposes. The personal representative is not required to have property in an estate appraised unless the court requires appraisal for inheritance tax purposes. The court may direct that specific property or any part of the property may be appraised by one or more appraisers appointed by the court. Different appraisers may be appointed to appraise different parts of the property.

Section 5. Appraisal to be at true cash value at date of death. Property for which appraisal is required shall be appraised at its true cash value as of the date of death of the decedent. Each appraisal shall be in writing and shall be subscribed by the appraiser or appraisers.

Section 6. Fees of appraisers. Each appraiser shall be paid the reasonable fees and necessary expenses allowed by the court.

Section 7. Naming of personal representative does not discharge claim against him. The naming of any one as personal representative shall not operate to discharge that person from any claim which the decedent had against him, and the claim shall be included in the inventory whether or not he agrees to act in the capacity of personal representative.

Section 8. Discharge or bequest in will of claim of testator. The discharge or bequest in a will of any claim of the testator against a person named as personal representative or against any other person shall, as against

the creditors of the decedent, be ineffective. The claim shall be included in the inventory, and for the purposes of administration shall be regarded and treated as a specific legacy in that amount.

References: Advisory Committee Minutes:  
10/14,15/66 pp. 7 to 16; and Appendix B and C  
(Drafts by Carson and Butler)

ORS 116.405 to 116.465

Section 9. Personal representative continue business.

When the will provides the authority or direction to continue the business of the decedent, the personal representative may, without court order, continue the business. However, the court may, on its own motion or that of any other interested party, and upon good cause being shown, order the discontinuance of the business. The order of the court may also provide:

(1) For the conduct of the business solely by the personal representative, or jointly with one or more persons; or

(2) For the formation of a partnership for the conduct of the business; or

(3) For the formation of, or for the personal representative to join in the formation of a corporation for the conduct of the business; and

(4) The extent of the liability of the estate, or any part thereof, or of the personal representative, for

obligations incurred in the continuation of the business;  
and

(5) Whether or not liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate set aside for use in the business or to the estate as a whole; and

(6) The period of time for which the business may be conducted; and

(7) Any other conditions, restrictions, regulations and requirements the court requires.

References: Advisory Committee Minutes:  
6/17,18/66 Appendix  
7/15,16/66 pp. 2 to 4

ORS 116.170  
116.175  
116.180

Comment: Under subsections (2) and (3) would the personal representative be able to purchase shares in an existing business? The language "for the formation" is ambiguous.

Section 10. Compromise of debt; compounding debt; redemption. If it appears in the best interests of the estate the court may authorize the personal representative to:

(1) Compromise a claim of the estate against a debtor or other obligor; or,

(2) Extend or renew or otherwise modify the terms of an obligation owing to the estate; or,

(3) Accept a conveyance or transfer of property which was subject to a mortgage, pledge, lien or other security agreement held by decedent; or,

- (4) Compound a debt of the debtor provided:
- (a) The debtor appears to be insolvent; and
  - (b) The personal representative receives a fair and just proportion of the assets of the debtor.

If the personal representative agrees to a compound and his consent was induced or procured by false or fraudulent representations or conduct of the debtor the payment of the debtor shall only operate to discharge the amount of the payment on the debt that existed before the debt was compounded.

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

ORS 116.130

Comment: This section is an integration of ORS 116.130 into Iowa section 114.

Subsections (1) and (4) are in conflict. Should subsection (4) be deleted, or subsection (1) be deleted? Is there any reason to limit a compromise to situations where it appears the debtor is insolvent? It would seem that there would be many situations, e.g. expense of litigation and attorney fees, where it would be desirable to compromise even though the debtor was financially responsible and solvent and liability was clear.

Is the last paragraph of the section necessary, and if so, wouldn't "fraud" suffice for "induced by false or fraudulent representations or conduct"?

The common law, and apparently the Oregon law, is that a personal representative may liquidate an otherwise unliquidated claim for damages and compromise the claim without court approval. Should this be included in this section? There would seem more chance of fraud in such a compromise than in a liquidated claim, so perhaps the common law should be changed.