

Proposed revised Oregon probate code
PARTIAL DISTRIBUTION
2nd Draft
January 3, 1968

Prepared by
Stanton Allison

DISTRIBUTION BEFORE FINAL SETTLEMENT

Section 1. Petition and order for partial distribution.

Upon petition by the personal representative or other interested person, and after such notice and hearing as the court may prescribe, the court may order the personal representative to distribute, prior to final settlement, property of the estate to the person or persons who would be entitled to the property under the will or under intestate succession on final distribution, if the court finds:

(1) All inheritance taxes payable to the State of Oregon have been paid or the State Treasurer has consented in writing to the distribution.

(2) After such partial distribution sufficient assets will remain to pay expenses of administration, unpaid claims, and all known unpaid creditors of the decedent or of the estate.

(3) The distribution may be made without loss to creditors or injury to the estate or to any person interested therein.

Section 2. Undertaking of distributee. The court may require a bond or other security for the protection of creditors and other interested persons who might suffer loss because of such distribution.

Section 3. Discharge of personal representative. The distribution of the assets in accordance with the order of the court shall be a full discharge of the personal representative with respect to all property embraced in such order.

Section 4. Petition and order for refund by distributee. If, after partial distribution, it appears that all or any part of the property distributed is required for the payment of claims and administration expenses, including determined and undetermined state and federal tax liability, the personal representative shall petition the court to order the return of such property. Notice of the hearing on the petition shall be given as provided in ORS _____. Upon the hearing the court may order the distributee to return the property distributed or any part thereof, or its value as of the time of distribution, and may specify the time within which such payment or return must be made. If the payment is not made or the property returned within the time ordered, the person so failing to pay the value or return the property may be adjudged in contempt of court and judgment may be entered against him and his sureties, if any.

Section 5. Repeal of existing statutes. ORS 117.350, 117.361, 117.370, 117.380 and 117.390 are repealed.

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COMMENTS

The proposed sections on the subject of partial distribution would replace and supersede ORS 117.350 to 117.390 inclusive. The content of the proposed sections is in general the same as that of the replaced sections. However, in individual comments which follow, the differences will be noted.

Section 1. Petition and order for partial distribution.
The language of this section is based on Sections 353 and 354 of the 1963 Iowa Probate Code. The three subsections include the material of ORS 117.350 and 117.361. However, the court is given the right to prescribe the terms of the hearing and notice instead of the notice requirements in ORS 117.361. Furthermore, the personal representative or the interested parties do not have to wait until the semiannual account is filed and six months have elapsed since the publication of notice to creditors.

Section 2. Undertaking of distributee. The effect of this section is the same as subsection (3) of ORS 117.361.

Section 3. Discharge of personal representative. This section is subsection (5) of ORS 117.361 with editorial changes.

Section 4. Petition and order for refund by distributee.
This section is a rewrite with editorial changes of ORS 117.380 to 117.390.

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COMPARATIVE SECTION TABLE

Draft Sections

ORS Sections

1	117.350, 117.361 (1) (2)
2	117.361 (3), 117.370
3	117.361 (4)
4	117.380, 117.390

Prepared by
Campbell Richardson

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1st Draft
May 3, 1967

DISTRIBUTION BEFORE FINAL SETTLEMENT

Section 1. Upon application by the personal representative or any interested person, and after such notice to the personal representative and to such other persons, if any, as the court may prescribe, the court may enter an order authorizing the personal representative to surrender any of the property of the estate to the person or persons who, under the will or under the rules of intestate succession, would ultimately be entitled to such property if the court finds:

a. All inheritance taxes payable to the State of Oregon have been paid or the State Treasurer has consented in writing to the distribution.

b. After such distribution the personal representative will retain assets sufficient to pay all expenses of administration which have not been paid, all unpaid claims filed with the personal representative, and all known unpaid creditors of the decedent or of the estate.

c. The distribution may be made without loss to creditors or injury to the estate or to any person interested therein.

Section 2. The court may require a bond or other

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security conditioned as it may determine in connection with the delivery of such property.

Section 3. The surrender of possession and delivery of the assets in accordance with the order of the court shall be a full discharge of the personal representative with respect to all property embraced in such order.

Section 4. If, after any surrender of possession in accordance with the order of the court it becomes necessary to require the payment of all or any part of the property distributed to satisfy in whole or in part any claim against the estate, including determined and undetermined state and federal tax liability, the personal representative shall apply by petition to the court for a decree to that effect. Notice of the application shall be given to the distributee and to his sureties, if any, at least 10 days before the application is made. Upon hearing of the application, the court may decree a return of the property or its value as of the time of distribution, and may specify the time within which such payment or return must be made. If the payment is not made or the property is not returned within the time specified, the decree may be enforced against such party and the sureties in the undertaking by execution in the same manner as a decree in the circuit court.

References: Advisory Committee Minutes
4/18,19/66

ORS 117.350, 117.361, 117.370,
117.380 and 117.390