

Proposed revised Oregon probate code  
RENUNCIATION OF INTESTATE SUCCESSION  
OR DEVISE  
Amended 2nd Draft  
January 4, 1968

Prepared by  
Stanton Allison

Section 1. Renunciation of Intestate Succession or Devise. A person may renounce intestate succession or a devise of property by filing a signed declaration of such renunciation with the probate court and serving a copy on the personal representative within four months after the appointment of the personal representative. No interest in the property so renounced is deemed to have vested in the heir or devisee and the renunciation is not deemed a transfer by gift of the property renounced, but the property passes as if the heir or devisee had failed to survive the decedent. Creditors of the renouncing heir or devisee, including judgment creditors, attachment and execution creditors and tax lien claimants, have no interest in the property renounced.

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RENUNCIATION OF INTESTATE  
SUCCESSION OR DEVISE  
Amended 2nd Draft  
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#### COMMENTS

The proposed section would constitute a new statutory provision not represented by the present ORS Probate Code. It is recommended primarily to resolve the question, at least in Oregon, as to whether or not the renunciation would constitute a gift for gift tax purposes. It would settle the question as to the right of a devisee or legatee to renounce a provision made for his benefit. For comparable legislation see Section 853.21 Assembly Bill 280, Wisconsin Probate Code, 1967 Uniform Probate Code Section 2-801, and Section 58, 1946 Model Probate Code. See also Section 552, Volume II, Jaureguy and Love Oregon Probate Law and Practice.

The language of the proposed section is taken primarily from the 1967 Uniform Probate Code. However, the period for renunciation is changed from six months after death to four months after the appointment of the personal representative. This latter time period would conform to the period of the non-claim statute and the proposed period for election against the will and for contest of will. The section spells out affirmative action required by the person renouncing by filing a written renunciation and service on the personal representative. It provides that a renunciation is not deemed a transfer by the party renouncing or a gift by the heir or devisee who renounces the inheritance or the devise.

Proposed revised Oregon probate code  
WILLS  
2nd Draft  
July 26, 1967

Prepared by  
Stanton W. Allison

Section 18. Renunciation of intestate succession or devise.

A person may renounce intestate succession or a devise of property, wholly or partially, if he has not accepted possession as heir or devisee, by filing a signed declaration of such renunciation with the probate court and serving a copy on the personal representative within four months after the appointment of the personal representative. No interest in the property so renounced is deemed to have vested in the heir or devisee but the property passes as if he had failed to survive the decedent. Creditors of the renounced heir or devisee have no interest in the property renounced, whether their claims are based on contract, tort, tax obligations or otherwise.

References: Advisory Committee Minutes:  
6/17,18/67, Appendix A, pp. 14 and 15  
7/14,15/67, p.11  
Riddlesbarger draft of Chapter on Wills  
Wisconsin Section 853.21 (Assembly Bill 280)  
Uniform Probate Code, Sec. 2-801 (1967)  
Jaureguy and Love, Sec. 552  
Model Probate Code, Sec. 58.

Proposed revised Oregon probate code  
RENUNCIATION OF INTESTATE SUCCESSION OR DEVISE  
2nd Draft  
September 8, 1967

Prepared by  
Stanton W. Allison

#### COMMENTS

The proposed section would constitute a new statutory provision not represented by the present ORS Probate Code. It is recommended primarily to resolve the question, at least in Oregon, as to whether or not the renunciation would constitute a gift for gift tax purposes. It would settle the question as to the right of a devisee or legatee to renounce a provision made for his benefit. For comparable legislation see Section 853.21 Assembly Bill 280, Wisconsin Probate Code, 1967 Uniform Probate Code Section 2-801, and Section 58, 1946 Model Probate Code. See also Section 552 to Jaureguy and Love Oregon Probate Law and Practice.

The language of the proposed section is taken primarily from the 1967 Uniform Probate Code. However, the period for renunciation is changed from six months after death to four months after the appointment of the personal representative. This latter time period would conform to the period of the non-claim statute and the proposed period for election against the will and for contest of will. The proposed section spells out affirmative action required by the person renouncing by filing a written renunciation and service on the personal representative.

(Draftsman's Note: Your draftsman had serious doubts as to the advisability of including in the language of a proposed section on renunciation

the specific right to make a partial renunciation. I quote the following from Section 1566 Am. Jur. Wills: "Although the right to renounce a testamentary gift in toto is fully recognized, many cases enunciate the limitation that a donee may not accept the benefits of a gift and at the same time reject its burdens. Every bequest is but a bounty and a bounty must be taken as it is given."

I also quote the language from an annotation in 91 ALR beginning at page 608:

"In general, it may be said that the question whether a beneficiary may reject one or more of the devises or bequests under a will and accept others depends upon the apparent intent of the testator to make the gifts separately and independently or as a single, aggregate gift. Where two or more separate and independent gifts are made by a will to a beneficiary, he is, as a general rule, entitled to accept one or more and disclaim others, unless a contrary intention on the part of the testator appears from other provisions of the will. Supporting this proposition, either by their holdings or the language of the court, are the following authorities: (citing authorities).

"If, however, the bequests or devises in the will are not separate and distinct, but constitute a single or aggregate gift, so that to permit the beneficiary to accept part only would defeat the apparent intention of the testator, the beneficiary must take all or reject all. This proposition is supported by the holding, or at least by the language, of the courts in various cases."

I recall some of the doubts expressed in our consideration of this question whether it was advisable to permit an heir or devisee to accept benefits under the will or inheritance and reject other portions that he might

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deem burdensome. As indicated in the note quoted above, there has apparently been a tremendous amount of litigation arising from this question of partial renunciation. I believe consideration should be given to eliminating the language "wholly or partially" from the above suggestion, and leaving the statutory question open on this point. The language in the Wisconsin statute "or any part of such property unless the will expressly prohibits partial renunciation" does not seem very helpful in solving this difficult problem. I also feel that consideration should be given the thought that perhaps the question of the gift tax might be more clearly resolved if the statute did not expressly authorize a partial renunciation.)