

Proposed revised Oregon probate code  
SALE, MORTGAGE AND LEASE OF PROPERTY  
1st Draft  
April 8, 1967

Section 1. Power of personal representative to sell, mortgage and lease. A personal representative to whom letters have been issued and whose letters are in effect has complete power to sell, mortgage or lease any property in the estate without notice, hearing or court order. The rights and title of any purchaser, mortgagee or lessee from the personal representative are in no way affected by any provision in a will of the decedent or any procedural irregularity or jurisdictional defect in the administration of the estate of a decedent. A transfer agent or a corporation transferring its own securities incurs no liability to any person by making a transfer of securities in an estate as requested or directed by a personal representative.

Section 2. Free of claims and creditors. If property of an estate is sold, mortgaged or leased by a personal representative a transfer is effective subject to the rights of creditors having a secured interest in the property sold. The property sold, mortgaged or leased shall be free and clear of any right in creditors which is based on the filing and allowances of a claim in the estate. The filing and allowance of a claim in an estate does not make one a secured creditor.

Section 3. Contract of decedent to sell or lease land.

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(1) When any person legally bound to make a sale, mortgage or lease dies before making the same and the personal representative fails or refuses to perform in accordance with the contract of the decedent, any person claiming to be entitled to the sale, mortgage or lease may petition the probate court for specific performance of the contract. Upon satisfactory proof the court may order the personal representative to make a sale, mortgage or lease or may by its own order make a conveyance or lease to the person entitled thereto upon the performance of the contract.

(2) Except as provided in subsection 1 of this section, any sale, mortgage or lease of property by a personal representative shall be without express or implied warranties.

Section 4. Special provisions in will; duty of personal representative; penalties for breach of duty. (1)  
Except as otherwise provided in this section, a sale, mortgage or lease of property by the personal representative is in breach of duty. A sale, mortgage or lease is in breach of duty:

- (a) If made contrary to the provisions of the will; or
- (b) If made for a period of more than one year from

the date of issuance of letters of administration if the will contains a specific devise or bequest of the property sold, mortgaged or leased.

(2) The personal representative may make a sale, mortgage or lease, even though prohibited by the will, if:

(a) He is unable to pay claims and expenses of administration from other assets; and,

(b) The court authorizes the action.

(3) A personal representative may be enjoined from an act that threatens a breach of duty.

(4) If the personal representative breaches his duty as provided in this section he is liable to the persons affected because of the breach of duty:

(a) For their actual damages; or

(b) If there are no actual damages, the personal representative is liable for nominal damages; and

(c) For punitive damages if the action was taken with malice, ill will or evil motive.

(5) The personal representative does not breach his duty if he acts with the written consent of the persons affected by the action.

Section 5. Repeal of existing sections. ORS 116.705, 116.710, 116.715, 116.720, 116.730, 116.735, 116.740, 116.745, 116.750, 116.755, 116.760, 116.765, 116.770,

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116.775, 116.780, 116.785, 116.790, 116.795, 116.800,  
116.805, 116.811, 116.815, 116.820, 116.825, 116.830,  
116.835, 116.840, 116.850, 116.860, 116.870, 116.880,  
116.890, 116.900 and 116.910 are repealed.

References: Advisory Committee Minutes:  
12/16,17/66 pp. 4 to 11  
1/20,21/67 pp. 5 to 7

ORS 116.705 to 116.990