

Proposed revised Oregon probate code
UNIFORM SIMULTANEOUS DEATH ACT
(with Comments) 2nd Draft
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Prepared by
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UNIFORM SIMULTANEOUS DEATH ACT

The Uniform Simultaneous Death Act was proposed by the National Conference of Commissioners on Uniform State Laws in 1940. It was enacted in Oregon in 1947 (c. 555, secs. 1-9; ORS 112.010 to 112.080). In 1953 the Commissioners proposed amendments to the Act. As of December 31, 1965, 46 states, the District of Columbia and the Panama Canal Zone had enacted the original Uniform Simultaneous Death Act with 9 of the states and the District of Columbia having enacted the Act as amended in 1953.

The following proposed amendments would adopt the amendments to the Uniform Act proposed by the Commissioners on Uniform State Laws in 1953.

Section 1. ORS 112.010. Disposition of property upon simultaneous death, generally. Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this chapter.

Comment: The 1953 amendments made no changes in this section.

Section 2. ORS 112.020 is amended to read:

112.020. Beneficiaries designated to take successively.

[Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's

disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.]

If property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, and both persons die, and there is no sufficient evidence that the two have died otherwise than simultaneously, the beneficiary shall be deemed not to have survived. If there is no sufficient evidence that all of two or more beneficiaries have died otherwise than simultaneously and property has been disposed of in such a way that at the time of their death each of such beneficiaries would have been entitled to the property if he had survived the others, the property shall be divided into as many equal portions as there were such beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each of such beneficiaries had survived.

Comment: Section 2 was amended in 1953 by the Commissioners to provide that if the holder of a life estate and a remainderman of the same estate die where there is no sufficient evidence that the two died otherwise than simultaneously, the remainderman will be deemed not to have survived and his estate will take nothing. This amendment was made as a result of the court's decision in Miami Beach First Nat'l Bank v.

Miami Beach First Nat'l Bank, 52 So. 2d 893 (Fla. 1951). In that case T granted a life estate to A with the remainder in a class of persons of which B was a member. A and B were killed in a common accident. B's estate claimed B's share of T's estate under section 2 and the other remaindermen contended that the section did not apply. The court held that section 2 applied and that B's estate received B's share of T's estate. The Uniform Commissioners believed this to be a misinterpretation of section 2 and designed the first sentence of the amendment to nullify the result. The second sentence of the proposed amendment would continue the rule of the current section with slightly modified wording. It is meant to apply when all the beneficiaries die in a common accident by providing that the estates of each would receive the share that each beneficiary would have received had he survived.

Section 3. ORS 112.030. is amended to read:

112.030. Joint tenants or tenants by entirety. (1)

Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(2) The term "joint tenants" includes owners of property held under circumstances which entitled one or more to the whole of the property on the death of the other or others.

Comment: Subsection (1) of section 3 remains unchanged. The 1953 amendments by the Commissioners added subsection (2) to solve the problem created in states not having joint tenancy. Oregon abolished joint tenancies in ORS 93.180.

Section 4. Community property. Where a husband and wife have died, leaving community property, and there is no sufficient evidence that they have died otherwise than simultaneously, one-half of all the community property shall pass as if the husband survived and the other one-half thereof shall pass as if the wife had survived.

Comment: This section was proposed in 1953 to cover the situation where community property is involved. This provision is needed in Oregon because of the many people living in Oregon who own community property in another state or who have sold community property and purchased property in Oregon with the proceeds.

Section 5. ORS 112.040 is amended to read:

112.040. Insured and beneficiary. Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary, except if the policy or any interest therein is community property of the insured and his spouse, and there is no alternative beneficiary except the estate or personal representatives of the insured, the proceeds of such interest shall be distributed as community property under section 4.

Comment: The addition of the new provision proposed in 1953 is included for the reasons stated in the comment on the preceding section.

Section 6. ORS 112.060 is amended to read:

112.060. Chapter does not apply if decedent provides otherwise. This chapter shall not apply in the case of wills,

living trusts, deeds, or contracts of insurance, or any other situation [wherein] where provision [has been] is made for distribution of property different from the provisions of this chapter, or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided.

Comment: The phrase "or other situation" was adopted from the Texas version of the Act. The clause "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided" was contained in Alabama's 1951 enactment. The Commissioners were of the opinion that the courts would construe the original Act the same as the amended one, if a liberal construction was adopted, but that the amendment would clarify and be helpful. "Draftsmen of instruments listed in the Act quite often make provision for a presumption of survivorship. They may provide that a person shall not be deemed to have survived unless he shall survive by at least 30 days. They may, in connection with the so-called Marital Deduction in the Federal Estate Tax Law, provide that the beneficiary shall be deemed to have survived if there is no sufficient evidence that the testator and the beneficiary spouse died other than simultaneously."

Section 7. ORS 112.070. Construction and interpretation.

This chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact the Uniform Simultaneous Death Act.

Comment: No changes were made in this section by the 1953 amendments.

Section 8. ORS 112.080. Citation of chapter. This chapter may be cited as the "Uniform Simultaneous Death Act."

Comment: No changes were made in this section by the 1953 amendments

Section 9. Repeal of existing statute. ORS 112.050 is repealed.

Prepared by
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Relating to the disposition of property where there is no sufficient evidence that persons have died otherwise than simultaneously.

Section 1. ORS 112.010. Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this chapter.

Comment: The 1953 amendments made no changes in this section.

Section 2. ORS 112.020. [Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.]

If property is so disposed of that the right of a

beneficiary to succeed to any interest therein is conditional upon his surviving another person, and both persons die, and there is no sufficient evidence that the two have died otherwise than simultaneously, the beneficiary shall be deemed not to have survived. If there is no sufficient evidence that all of two or more beneficiaries have died otherwise than simultaneously and property has been disposed of in such a way that at the time of their death each of such beneficiaries would have been entitled to the property if he had survived the others, the property shall be divided into as many equal portions as there were such beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each of such beneficiaries had survived.

Comment: Section 2 was amended in 1953 to provide that if the holder of a life estate and a remainderman of the same estate die where there is no sufficient evidence that the two died otherwise than simultaneously, the remainderman will be deemed not to have survived and his estate will take nothing. This amendment was made as a result of the court's decision in Miami Beach First Nat'l Bank v. Miami Beach First Nat'l Bank, 52 So. 2d 893 (Fla. 1951). In that case T granted a life estate to A with the remainder in a class of persons of which B was a member. A and B were killed in a common accident. B's estate claimed B's share of T's estate under sec. 2 and the other remaindermen contented that the section did not apply. The court held that sec. 2 applied and that B's estate received B's share of T's estate. The Uniform Commissioners believed this to be a misinterpretation of sec. 2 and designed the first sentence of the amendment to nullify the result. The second sentence of the proposed amendment would continue the rule of the current section with slightly modified wording.

It is meant to apply when all the beneficiaries die in a common accident by providing that the estates of each would receive the share that each beneficiary would have received had he survived.

Section 3. ORS 112.030. (1) Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(2) The term "joint tenants" includes owners of property held under circumstances which entitled one or more to the whole of the property on the death of the other or others.

Comment: Subsection (1) of section 3 remains unchanged. The 1953 amendments added subsection (2) to solve the problem created in states not having joint tenancy. Oregon abolished joint tenancies in ORS 93.180.

Section 4. Where a husband and wife have died, leaving community property, and there is no sufficient evidence that they have died otherwise than simultaneously, one-half of all the community property shall pass as if the husband survived and the other one-half thereof shall pass as if the wife had survived.

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Comment: This section was proposed in 1953 to cover the situation where community property is involved. Unless Oregon adopts community property, there is no need for this new section.

Section 5. ORS 112.040. Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary, except if the policy or any interest therein is community property of the insured and his spouse, and there is no alternative beneficiary except the estate or personal representatives of the insured, the proceeds of such interest shall be distributed as community property under section 4.

Comment: This section remains the same as it was when adopted with the exception of the addition of the new provision to cover community property. As with section 4 the new provision is not necessary in Oregon in the absence of the adoption of community property.

Section 6. ORS 112.050. This chapter shall not apply to the distribution of the property of a person who has died before July 5, 1947.

Comment: No provision for this section was made in the 1953 amendments. Two questions concerning it might be raised:

- 1) should this section be retained or can it be repealed,
- 2) should a new provision be added to prevent the 1953 amendments from being retroactively applied?

Section 7. ORS 112.060. This chapter shall not apply

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in the case of wills, living trusts, deeds, or contracts of insurance, or any other situation where [in] provision [has been] is made for distribution of the property different from the provisions of this chapter, or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided.

Comment: The phrase "or other situation" was adopted from the Texas version of the Act. The clause "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided" was contained in Alabama's 1951 enactment. The committee was of the opinion that the courts would construe the original Act the same as the amended one, if a liberal construction was adopted, but that the amendment would clarify and be helpful. "Draftsmen of instruments listed in the Act quite often make provision for a presumption of survivorship. They may provide that a person shall not be deemed to have survived unless he shall survive by at least 30 days. They may, in connection with the so-called Marital Deduction in the Federal Estate Tax Law, provide that the beneficiary shall be deemed to have survived if there is no sufficient evidence that the testator and the beneficiary spouse died other than simultaneously."

Section 8. ORS 112.070. This chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact the Uniform Simultaneous Death Act.

Comment: No changes were made in this section by the 1953 amendments.

Section 9. ORS 112.080. This chapter may be cited as the "Uniform Simultaneous Death Act."

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References: Advisory Committee Minutes
4/21,22/67; and Appendix