

Engrossed

Senate Bill 506

(Printing engrossed ordered by Committee on Rules and Resolutions
April 23, 1969)

(Including amendments by Senate April 23)

By COMMITTEE ON JUDICIARY (at the request of the
Law Improvement Committee)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Enacts new Oregon probate code. Revises laws relating to probate courts and procedure, intestate succession, wills, initiation of estate proceedings, appointment and qualification of personal representatives (executors and administrators), administration and distribution of decedents' estates, guardianships and conservatorships. Generally eliminates distinctions in treatment of real and personal property. Replaces dower and curtesy with enlarged intestate share and election against will of surviving spouse. Lowers age for making will from 21 to 18. Expands requirements for notice to interested persons of initiation of estate proceeding, but reduces number of published notices. Shortens time period for contesting will and filing claims for preferential payment from 6 to 4 months. Broadens and makes more flexible the support allowance for surviving spouse and dependent children. Simplifies handling of small, solvent estates by permitting them, after paying claims, expenses and taxes, to be set apart as family support, with summary closure of estate proceeding. Gives personal representative more power to act without court proceeding and approval, but allows him or any interested person to obtain court instruction or approval. Makes inventory and appraisal requirements more flexible. Simplifies escheat proceedings. Imparts finality and conclusiveness to court's decree of final distribution. Modifies procedures for handling estates of absentees, including substitution of finding of death based on actual search instead of 7-year presumption. Makes changes in inheritance tax procedures to simplify and conform them to modifications of probate laws. Eliminates separate procedures for conserving property of missing persons, and makes estates of such persons subject to guardianship proceedings. Makes many other substantive changes and refinements in probate laws, rearranges and clarifies those laws and conforms other laws that are geared to probate courts and procedures.

Effective July 1, 1970.

NOTE: Matter in *italics* in an amended section is new; matter ~~[lined out and bracketed]~~ is existing law to be omitted; complete new sections begin with **Section**.

PROBATE CODE

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1

A BILL FOR AN ACT

2 Relating to procedures concerning certain persons and their property,
3 including but not limited to provisions constituting a new probate code;
4 creating new provisions; amending ORS 3.101, 3.130, 5.080, 5.100, 7.230,
5 12.190, 13.080, 23.260, 41.520, 46.092, 91.020, 91.030, 93.190, 93.240, 93.420,
6 94.330, 97.130, 105.050, 105.340, 107.100, 107.110, 107.280, 109.326,
7 109.330, 109.370, 112.010, 112.020, 112.030, 112.040, 112.060, 112.070, 112.080,
8 113.090, 116.115, 116.835, 117.680, 118.010, 118.230, 118.280, 118.300, 118.350,
9 118.640, 118.660, 118.700, 118.990, 120.130, 120.210, 120.220, 120.230, 121.020,
10 121.090, 126.006, 126.106, 126.111, 126.126, 126.131, 126.146, 126.151, 126.166,
11 126.186, 126.230, 126.245, 126.265, 126.295, 126.338, 126.406, 126.411, 126.416,
12 126.426, 126.431, 126.436, 126.441, 126.456, 126.461, 126.471, 126.476, 126.490,
13 126.495, 126.540, 126.555, 126.675, 178.080, 179.650, 179.670, 179.740, 419.488,
14 427.085, 697.165, 697.695 and 708.520; repealing ORS 3.140, 3.180, 3.340,
15 5.040, 5.050, 5.070, 21.313, 93.170, 105.065, 111.010, 111.020, 111.030, 111.040,
16 111.050, 111.060, 111.070, 111.110, 111.120, 111.130, 111.140, 111.150, 111.160,
17 111.170, 111.210, 111.212, 111.231, 112.050, 113.010, 113.020, 113.030, 113.040,
18 113.050, 113.060, 113.070, 113.080, 113.110, 113.120, 113.130, 113.140, 113.150,
19 113.160, 113.210, 113.220, 113.230, 113.240, 113.250, 113.260, 113.270, 113.280,
20 113.290, 113.410, 113.420, 113.430, 113.440, 113.450, 113.510, 113.520, 113.530,
21 113.540, 113.610, 113.620, 113.630, 113.640, 113.650, 113.660, 113.670, 113.680,
22 113.690, 114.010, 114.020, 114.030, 114.040, 114.050, 114.060, 114.070, 114.110,
23 114.120, 114.130, 114.140, 114.150, 114.210, 114.220, 114.230, 114.240, 114.250,
24 114.260, 114.270, 114.310, 114.320, 114.330, 114.340, 114.410, 114.420, 114.430,
25 114.440, 115.010, 115.020, 115.110, 115.120, 115.130, 115.140, 115.150, 115.160,
26 115.170, 115.180, 115.190, 115.200, 115.210, 115.220, 115.310, 115.320, 115.330,
27 115.340, 115.350, 115.410, 115.420, 115.430, 115.440, 115.450, 115.460, 115.470,
28 115.480, 115.490, 115.500, 115.510, 115.520, 115.990, 116.005, 116.010, 116.015,
29 116.020, 116.025, 116.105, 116.110, 116.120, 116.125, 116.130, 116.135, 116.140,
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32 116.340, 116.405, 116.410, 116.415, 116.420, 116.425, 116.430, 116.435, 116.440,
33 116.445, 116.450, 116.455, 116.460, 116.465, 116.505, 116.510, 116.515, 116.520,
34 116.525, 116.530, 116.535, 116.540, 116.545, 116.550, 116.555, 116.560, 116.565,

1 116.570, 116.575, 116.580, 116.585, 116.590, 116.595, 116.705, 116.710, 116.715,
2 116.720, 116.725, 116.730, 116.735, 116.740, 116.745, 116.750, 116.755, 116.760,
3 116.765, 116.770, 116.775, 116.780, 116.785, 116.790, 116.795, 116.800, 116.805,
4 116.811, 116.815, 116.820, 116.825, 116.830, 116.840, 116.850, 116.860, 116.870,
5 116.880, 116.890, 116.900, 116.990, 117.010, 117.020, 117.030, 117.110, 117.120,
6 117.130, 117.140, 117.150, 117.160, 117.170, 117.180, 117.310, 117.315, 117.320,
7 117.330, 117.340, 117.350, 117.361, 117.370, 117.380, 117.390, 117.510, 117.520,
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9 117.640, 117.650, 117.660, 117.670, 117.690, 117.710, 118.420, 118.500,
10 118.610, 118.620, 118.630, 118.650, 118.670, 118.680, 118.690, 120.010, 120.020,
11 120.030, 120.040, 120.050, 120.060, 120.070, 120.080, 120.090, 120.100, 120.110,
12 120.120, 120.140, 120.150, 120.310, 120.320, 120.330, 120.340, 120.350, 120.360,
13 120.370, 120.380, 120.390, 120.400, 121.030, 121.040, 121.050, 121.060, 121.070,
14 121.080, 121.100, 121.210, 121.220, 121.230, 121.240, 121.250, 121.260, 121.270,
15 121.280, 121.290, 121.300, 121.310, 121.320, 121.330, 121.340, 121.350, 121.360,
16 121.370, 126.011, 126.176, 126.300, 126.446, 126.611, 127.010, 127.020, 127.030,
17 127.040, 127.050, 127.060, 127.070, 127.080, 127.090, 127.100, 127.110, 127.120,
18 127.130, 127.140, 127.150, 127.160, 127.170, 127.180, 127.190, 127.310, 127.320,
19 127.330, 127.340, 127.350 and 722.385; and prescribing an effective date,

20 *Be It Enacted by the People of the State of Oregon:*

21 **ARTICLE I. GENERAL PROVISIONS**

22 **Part 1. Definitions**

23 **Section 1. Definitions.** As used in sections 1 to 212 of this Act, unless
24 the context requires otherwise:

25 (1) "Abate" means to reduce a devise on account of the insufficiency
26 of the estate to pay all claims, expenses and devises in full.

27 (2) "Action" includes suits and legal proceedings.

28 (3) "Administration" means any proceeding relating to the estate of
29 a decedent, whether the decedent died testate, intestate or partially
30 intestate.

31 (4) "Advancement" means a gift by a decedent to an heir to enable
32 the donee to anticipate his inheritance to the extent of the gift.

33 (5) "All purposes of intestate succession" means succession by, through
34 or from a person, both lineal and collateral.

- 1 (6) "Assets" includes real, personal and intangible property.
- 2 (7) "Claim" includes liabilities of a decedent, whether arising in con-
3 tract, in tort or otherwise.
- 4 (8) "Court" or "probate court" means the court in which jurisdiction
5 of probate matters, causes and proceedings is vested as provided in sec-
6 tion 4 of this Act.
- 7 (9) "Decedent" means a person who has died leaving property that is
8 subject to administration.
- 9 (10) "Devise," when used as a noun, means property disposed of by a
10 will, and includes "legacy" and "bequest."
- 11 (11) "Devise," when used as a verb, means to dispose of property by
12 a will, and includes "bequeath."
- 13 (12) "Devisee" includes "legatee" and "beneficiary."
- 14 (13) "Distributee" means a person entitled to any property of a de-
15 cedent under his will or under intestate succession.
- 16 (14) "Domicile" means the place of abode of a person, where he in-
17 tends to remain and to which, if absent, he intends to return.
- 18 (15) "Estate" means the real and personal property of a decedent, as
19 from time to time changed in form by sale, reinvestment or otherwise, and
20 augmented by any accretions or additions thereto and substitutions there-
21 for or diminished by any decreases and distributions therefrom.
- 22 (16) "Funeral" includes burial or other disposition of the remains of a
23 decedent, including the plot or tomb and other necessary incidents to the
24 disposition of the remains.
- 25 (17) "General devise" means a devise chargeable generally on the
26 estate of a testator and not distinguishable from other parts thereof or
27 not so given as to amount to a specific devise.
- 28 (18) "Heir" means any person, including the surviving spouse, who is
29 entitled under intestate succession to the property of a decedent who died
30 wholly or partially intestate.
- 31 (19) "Interested person" includes heirs, devisees, children, spouses,
32 creditors and any others having a property right or claim against the estate
33 of a decedent that may be affected by the proceeding. It also includes
34 fiduciaries representing interested persons.

1 (20) "Intestate" means one who dies without leaving a valid will, or
2 the circumstance of dying without leaving a valid will, effectively disposing
3 of all his estate.

4 (21) "Intestate succession" means succession to property of a decedent
5 who dies intestate or partially intestate.

6 (22) "Issue" includes adopted children and their issue and, when used
7 to refer to persons who take by intestate succession, includes all lineal de-
8 scendants, except those who are the lineal descendants of living lineal
9 descendants.

10 (23) "Net estate" means the real and personal property of a decedent,
11 except property used for the support of his surviving spouse and children
12 and for the payment of expenses of administration, funeral expenses,
13 claims and taxes.

14 (24) "Net intestate estate" means any part of the net estate of a de-
15 cedent not effectively disposed of by his will.

16 (25) "Personal property" includes all property other than real prop-
17 erty.

18 (26) "Personal representative" includes executor, administrator, admin-
19 istrator with will annexed and administrator de bonis non, but does not
20 include special administrator.

21 (27) "Property" includes both real and personal property.

22 (28) "Real property" includes all legal and equitable interests in land,
23 in fee and for life.

24 (29) "Settlement" includes, as to the estate of a decedent, the full
25 process of administration, distribution and closing.

26 (30) "Specific devise" means a devise of a specific thing or specified
27 part of the estate of a testator that is so described as to be capable of
28 identification. It is a gift of a part of the estate identified and differentiated
29 from all other parts.

30 (31) "Will" includes codicil; it also includes a testamentary instrument
31 that merely appoints an executor or that merely revokes or revives an-
32 other will.

33 **Part 2. Probate Courts and Commissioners**

34 **Section 2. Transfer of probate jurisdiction. (1) All probate jurisdiction,**

1 authority, powers, functions and duties of the county courts and the judges
2 thereof and the district courts and the judges thereof are transferred to
3 the circuit courts and the judges thereof in all counties except Gilliam,
4 Grant, Harney, Malheur, Sherman and Wheeler Counties.

5 (2) All probate jurisdiction, authority, powers, functions and duties of
6 the circuit courts and the judges thereof are transferred to the county
7 courts and the judges thereof in Gilliam, Grant, Harney, Malheur, Sherman
8 and Wheeler Counties.

9 **Section 3. Transfer of pending proceedings; contested matters; appeals.**

10 (1) Except as otherwise provided in this section, all matters, causes and
11 proceedings relating to probate jurisdiction, authority, powers, functions
12 and duties pending on the effective date of this Act in a court from which
13 the jurisdiction, authority, powers, functions and duties are transferred
14 by section 2 of this Act are transferred to the court to which the juris-
15 diction, authority, powers, functions and duties are so transferred.

16 (2) Contested matters pending in the circuit court for Gilliam, Grant,
17 Harney, Malheur, Sherman or Wheeler County under ORS 5.050, and
18 pending appeals therefrom, on the effective date of this Act shall be
19 conducted and completed pursuant to the provisions of law in effect
20 immediately before that date.

21 (3) Appeals pending in a circuit court under ORS 5.120, 109.370, 116.535,
22 118.500, subsection (3) of 118.700, subsection (1) of 179.650 or ORS 427.085
23 on the effective date of this Act shall be conducted and completed pur-
24 suant to the provisions of law in effect immediately before that date.

25 **Section 4. Probate jurisdiction vested.** Jurisdiction of all probate mat-
26 ters, causes and proceedings is vested in the county courts of Gilliam,
27 Grant, Harney, Malheur, Sherman and Wheeler Counties and in the
28 circuit court for each other county and as provided in section 8 of this Act.

29 **Section 5. Probate jurisdiction described.** The jurisdiction of the pro-
30 bate court includes, but is not limited to:

31 (1) Appointment and qualification of personal representatives.

32 (2) Probate and contest of wills.

33 (3) Determination of heirship.

1 (4) Determination of title to and rights in property claimed by or
2 against personal representatives, guardians and conservators.

3 (5) Administration, settlement and distribution of estates of decedents.

4 (6) Construction of wills, whether incident to the administration or
5 distribution of an estate or as a separate proceeding.

6 (7) Guardianships and conservatorships, including the appointment and
7 qualification of guardians and conservators and the administration, settle-
8 ment and closing of guardianships and conservatorships.

9 (8) Supervision and disciplining of personal representatives, guardians
10 and conservators.

11 **Section 6. Powers of probate court.** (1) The general legal and equitable
12 powers of a circuit court are applicable to effectuate the jurisdiction of
13 a probate court, punish contempts and carry out its determinations, orders,
14 judgments and decrees as a court of record with general jurisdiction in
15 law and equity, and the same validity, finality and presumption of regu-
16 larity shall be accorded to its determinations, orders, judgments and de-
17 crees, including determinations of its own jurisdiction, as to those of a
18 court of record with general jurisdiction in law and equity.

19 (2) A probate court has full, legal and equitable powers to make de-
20 claratory judgments, as provided in ORS 28.010 to 28.160, in all matters
21 involved in the administration of an estate, including those pertaining to
22 the title of real property, the determination of heirship and the distribu-
23 tion of the estate.

24 **Section 7. Appeals from probate court; reexamination of issues.** (1) Ex-
25 cept as otherwise provided in this section, no issue determined in a probate
26 court shall be tried again on appeal or otherwise reexamined in a manner
27 other than those appropriate to issues determined by a court of record
28 with general jurisdiction in law and equity.

29 (2) Appeals from a circuit court sitting in probate shall be taken to
30 the Supreme Court in the manner provided by law for appeals from the
31 circuit court.

32 (3) Appeals from a county court sitting in probate shall be taken to
33 the circuit court and Supreme Court in the manner provided by ORS
34 5.120.

1 **Section 8. Transfer of estate proceeding from county court to circuit**
2 **court.** (1) An estate proceeding, including all probate matters, causes and
3 proceedings pertaining thereto, may be transferred at any time from a
4 county court sitting in probate to the circuit court for the county by order
5 of the county court.

6 (2) An estate proceeding, including all probate matters, causes and
7 proceedings pertaining thereto, commenced in a county court sitting in
8 probate and in which the county judge is a party or directly interested
9 shall be transferred from the county court to the circuit court for the
10 county by order of the county court.

11 (3) Upon transfer of an estate proceeding from a county court to the
12 circuit court under this section, the county clerk shall certify and cause
13 to be filed in the records of the circuit court all original papers and pro-
14 ceedings pertaining to the estate proceeding, and thereafter jurisdiction
15 of all probate matters, causes and proceedings pertaining to the estate pro-
16 ceeding is vested in the circuit court as if that jurisdiction had been
17 originally and exclusively vested in the circuit court.

18 **Section 9. District court judge acting as probate court judge.** (1) In
19 Benton, Clatsop, Coos, Curry, Deschutes, Hood River, Lincoln, Wasco and
20 Washington Counties, a judge of the district court for the county may
21 exercise the powers and duties of judge of the circuit court for the county
22 in any matter, cause or proceeding in probate pending in the county. In
23 any other county, a judge of the district court for the county may exercise
24 any power or duty of judge of the circuit court in any matter, cause or
25 proceeding in probate pending in the circuit court of the judicial district
26 in which the district court is located, which is assigned to him by a judge
27 of the circuit court of the judicial district.

28 (2) Whenever by reason of absence, illness or injury there is not within
29 a county a judge of the probate court able to preside over and conduct
30 the business of the probate court, any judge of a district court located in
31 the judicial district may exercise the powers and duties of judge of the
32 probate court for the county in any matter, cause or proceeding in probate
33 pending in the county.

34 (3) If the district judge is not a party to, or directly interested in, the

1 matter, cause or proceeding, and if the question or matter passed upon by
2 him has not been presented to, or passed upon by, any probate court
3 judge, any decree, judgment or order given and made by a district court
4 judge pursuant to his powers and duties under this section, when filed
5 and entered in the matter, cause or proceeding, has the same effect as
6 though given and made by a probate court judge.

7 **Section 10. Appointment of probate commissioner.** The court may ap-
8 point the clerk of the probate court or some other suitable person at the
9 county seat to act as probate commissioner within the county. If the clerk
10 of the probate court is appointed probate commissioner, his deputy has
11 the power to perform any act as probate commissioner that the clerk has,
12 and the clerk is responsible for conduct of the deputy so acting.

13 **Section 11. Powers of probate commissioner.** (1) A probate commis-
14 sioner may act upon uncontested petitions for appointment of special ad-
15 ministrators, for probate of wills and for appointment of personal repre-
16 sentatives, guardians and conservators, to the extent authorized by rule
17 of the court. Pursuant thereto he may make and enter orders on behalf of
18 the court admitting wills to probate and appointing and setting the amount
19 of the bonds of special administrators, personal representatives, guardians
20 and conservators, subject to his orders being set aside or modified by the
21 judge of the court within 30 days after the date an order is entered.

22 (2) Any matter presented to the probate commissioner may be referred
23 by him to the judge.

24 (3) Unless set aside or modified by the judge, the orders of the probate
25 commissioner have the same effect as if made by the judge.

26 **Part 3. Probate Procedure Generally**

27 **Section 12. Pleadings and mode of procedure.** No particular pleadings
28 or forms thereof are required in the exercise of jurisdiction of probate
29 courts. The mode of procedure in the exercise of jurisdiction is in the
30 nature of a suit in equity except as otherwise provided by statute. The
31 proceedings shall be in writing and upon the petition of a party in interest
32 or the order of the court. All petitions, reports and accounts shall be veri-
33 fied by at least one of the persons making them or by his attorney, or

1 in case of a corporation by its agent. The court exercises its powers by
2 means of:

- 3 (1) A petition of a party in interest.
- 4 (2) A notice to a party.
- 5 (3) A subpoena to a witness.
- 6 (4) Orders and decrees.
- 7 (5) An execution or warrant to enforce its orders and decrees.

8 **Section 13. Notice; method and time of giving.** (1) Except as otherwise
9 specifically provided in sections 1 to 212 of this Act, whenever notice is
10 required to be given of a hearing on any petition or other matter upon
11 which an order is sought, the petitioner or other person filing the matter
12 shall cause notice of the date, time and place of the hearing to be given
13 to each person interested in the subject of the hearing or to his attorney,
14 if he has appeared by attorney or requested that notice be sent to his
15 attorney, in any one or more of the following ways and within the follow-
16 ing times:

17 (a) By mailing a copy thereof addressed to him or his attorney at least
18 14 days before the date set for the hearing.

19 (b) By delivering a copy thereof to him personally or to his attorney
20 at least five days before the date set for the hearing.

21 (c) If the address of any person is not known or cannot be ascertained
22 with reasonable diligence, by publishing a copy thereof once in each of
23 three consecutive weeks in a newspaper of general circulation in the county
24 where the hearing is to be held, the last publication of which shall be at
25 least 10 days before the date set for the hearing.

26 (2) Upon good cause shown the court may change the requirements
27 as to the method or time of giving notice for any hearing.

28 (3) Proof of the giving of notice must be made at or before the hear-
29 ing and filed in the proceeding. Proof shall be by an admission of serv-
30 ice, a return receipt from the postal authorities or an affidavit or certifi-
31 cate of the person giving notice or the publisher, or one of his employes,
32 of the newspaper publishing the notice.

33 **Section 14. Waiver of notice.** A guardian, a guardian ad litem, a con-
34 servator or a person who is neither incompetent nor a minor may waive

1 notice by a writing signed by him or his attorney and filed in the pro-
2 ceeding, or by his appearance at the hearing.

3 **Section 15. Filing objections to petition.** Any interested person, on or
4 before the date set for a hearing, may file written objections to a petition
5 previously filed.

6 **Section 16. Proof of documents; certification.** (1) Proof of documents
7 pursuant to sections 1 to 212 of this Act may be made as follows:

8 (a) Of a will, by a certified copy thereof.

9 (b) That a will has been probated or established in a foreign juris-
10 diction, by a certified copy of the order admitting the will to probate
11 or evidencing its establishment.

12 (c) Of letters testamentary or of administration, by a certified copy
13 thereof. The certification may include a statement that the letters have not
14 been revoked.

15 (2) A document or order filed or entered in a foreign jurisdiction may
16 be proved by a copy thereof, certified by a clerk of the court in which the
17 document or order was filed or entered or by any other official having legal
18 custody of the original document or order.

19 **Section 17. Translation of documents.** If a document or part thereof
20 is not in the English language, a translation certified by the translator to
21 be accurate may be attached thereto and shall be regarded as sufficient
22 evidence of the contents of the document, unless objection is made thereto.
23 In the absence of objection, if any person relies in good faith on the accu-
24 racy of the translation he shall not be prejudiced thereafter because of its
25 inaccuracy.

26 **Section 18. Stenographic record.** The judge of the court may, on his
27 own motion or on the request of an interested person, direct the reporter
28 of his court to attend any hearing and make a stenographic record of the
29 same.

30 **ARTICLE II. INTESTATE SUCCESSION AND WILLS**

31 **Part 1. Intestate Succession**

32 **Section 19. Net intestate estate.** Any part of the net estate of a decedent
33 not effectively disposed of by his will shall pass as provided in sections
34 20 to 23 of this Act.

1 **Section 20. Share of surviving spouse if decedent leaves issue.** If the
2 decedent leaves a surviving spouse and issue, the surviving spouse shall
3 have a one-half interest in the net intestate estate.

4 **Section 21. Share of surviving spouse if decedent leaves no issue.** If the
5 decedent leaves a surviving spouse and no issue, the surviving spouse
6 shall have all of the net intestate estate.

7 **Section 22. Share of others than surviving spouse.** The part of the net
8 intestate estate not passing to the surviving spouse shall pass:

9 (1) To the issue of the decedent. If the issue are all of the same de-
10 gree of kinship to the decedent, they shall take equally, but if of unequal
11 degree, then those of more remote degrees take by representation.

12 (2) If there is no surviving issue, to the surviving parents of the de-
13 cedent.

14 (3) If there is no surviving issue or parent, to the brothers and sisters
15 of the decedent and the issue of any deceased brother or sister of the
16 decedent by representation. If there is no surviving brother or sister, the
17 issue of brothers and sisters take equally if they are all of the same de-
18 gree of kinship to the decedent, but if of unequal degree, then those of
19 more remote degrees take by representation.

20 (4) If there is no surviving issue, parent or issue of a parent, to the
21 grandparents of the decedent and the issue of any deceased grandparent
22 of the decedent by representation. If there is no surviving grandparent,
23 the issue of grandparents take equally if they are all of the same degree of
24 kinship to the decedent, but if of unequal degree, then those of more re-
25 mote degrees take by representation.

26 (5) If, at the time of taking, surviving parents or grandparents of the
27 decedent are married to each other, they shall take real property as ten-
28 ants by the entirety and personal property as joint owners with the right
29 of survivorship.

30 **Section 23. Escheat.** If no person takes under sections 20 to 22 of this
31 Act, the net intestate estate shall escheat to the State of Oregon.

32 **Section 24. Representation defined.** "Representation" means the method
33 of determining the passing of the net intestate estate when the distribu-
34 tees are of unequal degrees of kinship to the decedent. It is accomplished

1 as follows: The estate shall be divided into as many shares as there
2 are surviving heirs of the nearest degree of kinship and deceased persons
3 of the same degree who left issue who survive the decedent, each surviving
4 heir of the nearest degree receiving one share and the share of each de-
5 ceased person of the same degree being divided among his issue in the
6 same manner.

7 **Section 25. Time of determining relationships; afterborn heirs.** The re-
8 lationships existing at the time of the death of the decedent govern the
9 passing of his net intestate estate, but persons conceived before his death
10 and born alive thereafter inherit as though they were alive at the time of
11 his death.

12 **Section 26. Heir to survive decedent by five days.** Any person who fails
13 to survive the decedent by five days is considered to have predeceased
14 the decedent for all purposes of intestate succession, and the heirs of the
15 decedent are determined accordingly.

16 **Section 27. Persons of the half-blood.** Persons of the half-blood inherit
17 the same share that they would inherit if they were of the whole blood.

18 **Section 28. Succession where parents not married.** (1) For all purposes
19 of intestate succession, full effect shall be given to all relationships as
20 described in ORS 109.060, except as otherwise provided by law in case
21 of adoption.

22 (2) For all purposes of intestate succession and for those purposes
23 only, before the relationship of father and child and other relationships
24 dependent upon the establishment of paternity shall be given effect under
25 subsection (1) of this section:

26 (a) The paternity of the child shall have been established under ORS
27 109.070 during the lifetime of the child or;

28 (b) The father shall have acknowledged himself to be the father in
29 writing signed by him during the lifetime of the child.

30 **Section 29. Persons related to decedent through two lines.** A person
31 who is related to the decedent through two lines of relationship is entitled
32 to only a single share based on the relationship which would entitle him
33 to the larger share.

1 **Part 2. Advancements**

2 **Section 30. When gift is an advancement.** If a person dies intestate as
3 to all his estate, property which he gave in his lifetime to an heir shall be
4 treated as an advancement against the heir's share of the estate if de-
5 clared in writing by the decedent or acknowledged in writing by the heir
6 to be an advancement. For that purpose the property advanced shall be
7 valued as of the time the heir came into possession or enjoyment of the
8 property or as of the time of death of the decedent, whichever occurs
9 first.

10 **Section 31. Effect of advancement on distribution.** (1) If the value of
11 the advancement exceeds the heir's share of the estate, he shall be excluded
12 from any further share of the estate, but he shall not be required to re-
13 fund any part of the advancement. If the value of the advancement is
14 less than his share, the heir shall be entitled upon distribution of the
15 estate to such additional amount as will give him his share of the estate.

16 (2) The property advanced is not a part of the estate, but for the pur-
17 pose of determining the shares of the heirs the advancement shall be added
18 to the estate, the sum then divided among the heirs and the advancement
19 then deducted from the share of the heir to whom the advancement was
20 made.

21 **Section 32. Death of advancee before decedent.** If the recipient of the
22 property advanced fails to survive the decedent, the amount of the ad-
23 vancement shall be taken into account in computing the share of the issue
24 of the recipient, whether or not the issue take by representation.

25 **Part 3. Status of Adopted Persons**

26 **Section 33. Adopted persons.** (1) An adopted person, his issue and
27 kindred shall take by intestate succession from his adoptive parents,
28 their issue and kindred, and his adoptive parents, their issue and kindred
29 shall take by intestate succession from the adopted person, his issue and
30 kindred, as though the adopted person were the natural child of his
31 adoptive parents.

32 (2) An adopted person shall cease to be treated as the child of his
33 natural parents for all purposes of intestate succession by the adopted

1 person, his issue and kindred and his natural parents, their issue and
2 kindred, except:

3 (a) If a natural parent of a person marries or remarries and the per-
4 son is adopted by his stepparent, the adopted person shall continue also to
5 be treated, for all purposes of intestate succession, as the child of the
6 natural parent who is the spouse of the adoptive parent.

7 (b) If a natural parent of a person dies, the other natural parent re-
8 marries and the person is adopted by his stepparent, the adopted person
9 shall continue also to be treated, for all purposes of intestate succession
10 by any person through the deceased natural parent, as the child of the
11 deceased natural parent.

12 (3) Sections 1 to 212 of this Act apply to adopted persons who were
13 adopted in this state or elsewhere.

14 **Section 34. Effect of more than one adoption.** For all purposes of in-
15 testate succession, a person who has been adopted more than once shall be
16 treated as the child of the parents who have most recently adopted him
17 and, except as otherwise provided in this section, shall cease to be treated
18 as the child of his previous adoptive parents. He shall continue also to be
19 treated as the child of his natural parent or previous adoptive parent
20 only to the extent provided in subsection (2) of section 33 of this Act,
21 and for the purpose of applying that subsection with reference to a
22 previous adoptive parent, "natural parent" in that subsection means the
23 previous adoptive parent.

24 **Section 35. References in wills, deeds and other instruments to accord**
25 **with law of intestate succession.** Unless a contrary intent is established
26 by the instrument, all references in a will, deed, trust instrument or other
27 instrument to an individual or member of a class described generically
28 in relation to a particular person as children, issue, grandchildren, de-
29 scendants, heirs, heirs of the body, next of kin, distributees, grandparents,
30 brothers, nephews or other relatives shall include any person who would
31 be treated as so related for all purposes of intestate succession, except
32 that an adopted person so included must have been adopted as a minor or
33 after having been a member of the household of the adoptive parent
34 while a minor.

1 **Part 4. Wills**

2 **Section 36. Who may make a will.** Any person who is 18 years of age
3 or older or who has been lawfully married, and who is of sound mind, may
4 make a will.

5 **Section 37. Execution of a will.** A will shall be in writing and shall be
6 executed with the following formalities:

7 (1) The testator, in the presence of each of the witnesses, shall:

8 (a) Sign the will; or

9 (b) Direct one of the witnesses or some other person to sign thereon
10 the name of the testator; or

11 (c) Acknowledge the signature previously made on the will by him or
12 at his direction.

13 (2) Any person who signs the name of the testator as provided in
14 paragraph (b) of subsection (1) of this section shall sign his own name
15 on the will and write on the will that he signed the name of the testator
16 at the direction of the testator.

17 (3) At least two witnesses shall each:

18 (a) See the testator sign the will; or

19 (b) Hear the testator acknowledge the signature on the will; and

20 (c) Attest the will by signing his name to it in the presence of the
21 testator and at his request.

22 **Section 38. Witness as beneficiary.** An interested witness is one to
23 whom is devised a personal and beneficial interest in the estate. A will
24 attested by an interested witness is not thereby invalidated. If an inter-
25 ested witness attests a will and the will is not attested also by two dis-
26 interested witnesses, the interested witness may take under the will only
27 so much of the provision made for him therein as in the aggregate equals
28 in value, on the date of death of the testator, the part of the estate of the
29 testator that would have passed to him had the testator died intestate.

30 **Section 39. Validity of execution of a will.** A will is lawfully executed
31 if it is in writing, signed by or at the direction of the testator and otherwise
32 executed in accordance with the law of:

33 (1) This state at the time of execution or at the time of death of the
34 testator; or

1 (2) The domicile of the testator at the time of execution or at the time
2 of his death; or

3 (3) The place of execution at the time of execution.

4 **Section 40. Testamentary additions to trusts.** (1) A devise may be made
5 by a will to the trustee or trustees of a trust, regardless of the existence,
6 size or character of the corpus of the trust, if:

7 (a) The trust is established or will be established by the testator, or
8 by the testator and some other person or persons, or by some other person
9 or persons; and

10 (b) The trust is identified in the testator's will; and

11 (c) The terms of the trust are set forth in a written instrument, other
12 than a will, executed before or concurrently with the execution of the
13 testator's will, or in the valid last will of a person who has predeceased
14 the testator.

15 (2) The trust may be a funded or unfunded life insurance trust,
16 although the trustor has reserved any or all of the rights of ownership of
17 the insurance contracts.

18 (3) The devise shall not be invalid because the trust:

19 (a) Is amendable or revocable, or both; or

20 (b) Was amended after the execution of the testator's will or after
21 the death of the testator.

22 (4) Unless the testator's will provides otherwise, the property so de-
23 vised:

24 (a) Shall not be considered to be held under a testamentary trust of
25 the testator, but shall become a part of the trust to which it is given; and

26 (b) Shall be administered and disposed of in accordance with the pro-
27 visions of the instrument or will setting forth the terms of the trust, in-
28 cluding any amendments thereto made before the death of the testator,
29 regardless of whether made before or after the execution of the testator's
30 will, and, if the testator's will so provides, including any amendments to
31 the trust made after the death of the testator.

32 (5) A revocation or termination of the trust before the death of the
33 testator shall cause the devise to lapse.

34 (6) This section shall not be construed as providing an exclusive

1 method for making devises to the trustee or trustees of a trust established
2 otherwise than by the will of the testator making the devise.

3 (7) This section shall be so construed as to effectuate its general pur-
4 pose to make uniform the law of those states which enact the same or
5 similar provisions.

6 **Section 41. Manner of revocation or alteration exclusive.** A will may be
7 revoked or altered only as provided in sections 42 to 45 of this Act.

8 **Section 42. Express revocation or alteration.** (1) A will may be revoked
9 or altered by another will.

10 (2) A will may be revoked by being burned, torn, canceled, obliterated
11 or destroyed, with the intent and purpose of the testator of revoking the
12 will, by the testator, or by another person at the direction of the testator
13 and in the presence of the testator. The injury or destruction by a person
14 other than the testator at the direction and in the presence of the testator
15 shall be proved by a least two witnesses.

16 **Section 43. Revival of revoked or invalid will.** If a will or a part thereof
17 has been revoked or is invalid, it can be revived only by a re-execution
18 of the will or by the execution of another will in which the revoked or
19 invalid will or part thereof is incorporated by reference.

20 **Section 44. Revocation by marriage.** A will is revoked by the sub-
21 sequent marriage of the testator if the testator is survived by his spouse,
22 unless:

23 (1) The will evidences an intent that it not be revoked by the sub-
24 sequent marriage or was drafted under circumstances establishing that it
25 was in contemplation of the marriage; or

26 (2) The testator and his spouse entered into a written contract before
27 the marriage that either makes provision for the spouse or provides that the
28 spouse is to have no rights in the estate of the testator.

29 **Section 45. Revocation by divorce or annulment.** Unless a will evidences
30 a different intent of the testator, the divorce or annulment of the marriage
31 of the testator after the execution of the will revokes all provisions in
32 the will in favor of the former spouse of the testator and any provision
33 therein naming the former spouse as executor, and the effect of the will
34 is the same as though the former spouse did not survive the testator.

1 **Section 46. Contract of sale of property devised not a revocation.** An
2 executory contract of sale made by a testator to convey property devised
3 in a will previously made, is not a revocation of the previous devise, either
4 in law or equity; but the property shall pass by the devise, subject to the
5 same remedies on the agreement, for specific performance or otherwise,
6 against devisees as might be had against the heirs of the testator if the
7 property had descended to them.

8 **Section 47. Encumbrance or disposition of property after making will.**
9 An encumbrance or disposition of property by a testator after he makes
10 his will does not affect the operation of the will upon a remaining interest
11 therein that is subject to the disposal of the testator at the time of his
12 death.

13 **Section 48. Devise of life estate.** A devise of property to any person for
14 the term of the life of the person, and after his death to his children or
15 heirs, vests an estate or interest for life only in the devisee and remainder
16 in the children or heirs.

17 **Section 49. Devise passes all interest of testator.** A devise of property
18 passes all of the interest of the testator therein at the time of his death,
19 unless the will evidences the intent of the testator to devise a lesser interest.

20 **Section 50. Property acquired after making will.** Any property acquired
21 by the testator after the making of his will passes thereby, and in like
22 manner as if title thereto were vested in him at the time of making the
23 will, unless the intent expressed in the will is clear and explicit to the
24 contrary.

25 **Section 51. Effect of direction to pay debts, charges, taxes or adminis-**
26 **tration expenses.** A mere testamentary direction to pay debts, charges,
27 taxes or expenses of administration shall not be considered a direction for
28 exoneration from encumbrances or against apportionment of estate taxes.

29 **Section 52. Non-ademption of specific devises in certain cases.** (1) In
30 the situations and under the circumstances provided in and governed by
31 this section, specific devises will not fail or be extinguished by the destruc-
32 tion, damage, sale, condemnation or change in form of the property
33 specifically devised. This section is inapplicable if the intent that the
34 devise fail under the particular circumstances appears in the will or if

1 the testator during his lifetime gives property to the specific devisee with
2 the intent of satisfying the specific devise.

3 (2) Whenever the subject of a specific devise is property only part
4 of which is destroyed, damaged, sold or condemned, the specific devise
5 of any remaining interest in the property owned by the testator at the
6 time of his death is not affected by this section; but this section applies to
7 the part which would have been adeemed under the common law by the
8 destruction, damage, sale or condemnation.

9 (3) If insured property that is the subject of a specific devise is
10 destroyed or damaged, the specific devisee has the right to receive, reduced
11 by any amount expended or incurred by the testator in restoration or repair
12 of the property:

13 (a) Any insurance proceeds paid to the personal representative after
14 the death of the testator, with the incidents of the specific devise; and

15 (b) A general pecuniary legacy equivalent to any insurance proceeds
16 paid to the testator within six months before his death.

17 (4) If property that is the subject of a specific devise is sold by the
18 testator, the specific devisee has the right to receive:

19 (a) Any balance of the purchase price unpaid at the time of the
20 death of the testator, including any security interest in the property and
21 interest accruing before the death, if part of the estate, with the incidents
22 of the specific devise; and

23 (b) A general pecuniary legacy equivalent to the amount of the pur-
24 chase price paid to the testator within six months before his death. Ac-
25 ceptance of a promissory note of the purchaser or a third party is not
26 considered payment, but payment on the note is payment on the purchase
27 price. Sale by an agent of the testator or by a trustee under a revocable
28 living trust created by the testator, the principal of which is to be paid
29 to the personal representative or estate of the testator on his death, is a
30 sale by the testator for purposes of this section.

31 (5) If property that is the subject of a specific devise is taken by
32 condemnation before the death of the testator, the specific devisee has
33 the right to receive:

1 (a) Any amount of the condemnation award unpaid at the time of
2 the death, with the incidents of the specific devise; and

3 (b) A general pecuniary legacy equivalent to the amount of an award
4 paid to the testator within six months before his death. In the event of an
5 appeal in a condemnation proceeding, the award, for purposes of this
6 section, is limited to the amount established on the appeal.

7 (6) If property that is the subject of a specific devise is sold by a
8 guardian or conservator of the testator, or insurance proceeds or a con-
9 demnation award are paid to a guardian or conservator of the testator,
10 the specific devisee has the right to receive a general pecuniary legacy
11 equivalent to the proceeds of the sale, the insurance proceeds or the con-
12 demnation award, reduced by any amount expended or incurred in res-
13 toration or repair of the property. This subsection does not apply if the
14 testator, after the sale, receipt of insurance proceeds or award, is adju-
15 dicated competent and survives such adjudication by six months.

16 (7) If securities are specifically devised, and after the execution of the
17 will other securities in the same or another entity are distributed to the
18 testator by reason of his ownership of the specifically devised securities
19 and as a result of a partial liquidation, stock dividend, stock split, merger,
20 consolidation, reorganization, recapitalization, redemption, exchange or
21 any other similar transaction, and if the other securities are part of the
22 estate of the testator at his death, the specific devise is considered to in-
23 clude the additional or substituted securities. As used in this subsection,
24 "securities" means the same as defined in subsection (11) of ORS 59.015.

25 (8) The amount a specific devisee receives as provided in this section
26 is reduced by any expenses of the sale or of collection of proceeds of in-
27 surance, sale or condemnation award and by any amount by which the
28 income tax of the decedent or his estate is increased by reason of items
29 provided for in this section. Expenses include legal fees paid or incurred.

30 **Section 53. When estate passes to issue of devisee; anti-lapse.** When
31 property is devised to any person who is related by blood or adoption to
32 the testator and who dies before the testator leaving lineal descendants,
33 the descendants take by representation the property the devisee would

1 have taken if he had survived the testator, unless otherwise provided in
2 the will of the testator.

3 **Section 54. Children born or adopted after execution of will; pretermi-**
4 **ted children.** (1) As used in this section, "pretermitted child" means a
5 child of a testator who is born or adopted after the execution of the will
6 of the testator, who is neither provided for in the will nor in any way
7 mentioned in the will and who survives the testator.

8 (2) If a testator has one or more children living when he executes
9 his will and no provision is made in the will for any such living child, a
10 pretermitted child shall not take a share of the estate of the testator
11 disposed of by the will.

12 (3) If a testator has one or more children living when he executes his
13 will and provision is made in the will for one or more of such living
14 children, a pretermitted child is entitled to share in the estate of the
15 testator disposed of by the will as follows:

16 (a) The pretermitted child may share only in the portion of the estate
17 devised to the living children by the will.

18 (b) The share of each pretermitted child shall be the total value of the
19 portion of the estate devised to the living children by the will divided by
20 the number of pretermitted children plus the number of living children for
21 whom provision, other than nominal provision, is made in the will.

22 (c) To the extent feasible, the interest of a pretermitted child in the
23 estate shall be of the same character, whether equitable or legal, as the
24 interest the testator gave to the living children by the will.

25 (4) If a testator has no child living when he executes his will, a preter-
26 mitted child shall take a share of the estate as though the testator had died
27 intestate.

28 (5) A pretermitted child may recover the share of the estate to which
29 he is entitled, as provided in this section, either from the other children
30 under subsection (3) of this section or from the testamentary beneficiaries
31 under subsection (4) of this section, ratably, out of the portions of the estate
32 passing to those persons under the will. In abating the interests of those
33 beneficiaries, the character of the testamentary plan adopted by the testator
34 shall be preserved so far as possible.

1 **Section 55. Persons not entitled to estate of testator.** Except as other-
2 wise expressly provided by law, a person, including a child of the testator
3 and a descendant of that child, shall not take or be entitled to take any
4 portion of the estate of a testator disposed of by his will other than as
5 provided in the will.

6 **Section 56. Delivery of will by custodian; liability.** (1) A person having
7 custody of a will, other than an executor named therein, shall deliver the
8 will, within 30 days after the date of receiving information that the testator
9 is dead, to a court having jurisdiction of the estate of the testator or to an
10 executor named in the will.

11 (2) If it appears to a court having jurisdiction of the estate of a dece-
12 dent that a person has custody of a will made by the decedent, the court
13 may issue an order requiring that person to deliver the will to the court.

14 (3) A person having custody of a will who fails to deliver the will as
15 provided in this section is liable to any person injured by that failure for
16 damages sustained thereby.

17 **Section 57. Disposition of wills deposited with county clerk.** So far as
18 he is able, the county clerk of each county shall deliver to the testator, or
19 to the person to whom the will is to be delivered after the death of the
20 testator, each will deposited in his office for safekeeping pursuant to ORS
21 114.410. Any will he has been unable to so deliver before January 1, 2010,
22 may be destroyed by the county clerk.

23 **Part 5. Effect of Homicide on Intestate Succession, Wills, Joint Assets,**
24 **Life Insurance and Beneficiary Designations**

25 **Section 58. Definitions.** As used in sections 58 to 68 of this Act:

26 (1) "Decedent" means a person whose life is taken by a slayer.

27 (2) "Slayer" means a person who, with felonious intent, takes or pro-
28 cures the taking of the life of another.

29 **Section 59. Slayer considered to predecease decedent.** Property that
30 would have passed from the decedent or his estate to the slayer by intestate
31 succession, by will or by trust shall pass and be vested as if the slayer had
32 predeceased the decedent.

33 **Section 60. Property owned by slayer and decedent.** If the slayer and
34 the decedent owned property as tenants by the entirety or with a right of

1 survivorship, upon the death of the decedent an undivided one-half interest
2 shall remain in the slayer for his lifetime and, subject thereto, the property
3 shall pass to and be vested in the heirs or devisees of the decedent other
4 than the slayer.

5 **Section 61. Property owned by slayer, decedent and others.** If the
6 slayer, the decedent and another or others owned property with a right of
7 survivorship, upon the death of the decedent the interest of the slayer shall
8 remain as an undivided interest in the slayer for his lifetime and, subject
9 thereto, the property shall pass to and be vested in the other surviving
10 owner or owners.

11 **Section 62. Reversions, vested remainders, contingent remainders and**
12 **future interests.** (1) Property in which the slayer owns a reversion or
13 vested remainder subject to an estate for the lifetime of decedent shall
14 pass to the heirs or devisees of the decedent for a period of time equal to
15 the normal life expectancy of a person of the sex and age of the decedent
16 at the time of his death. If the particular estate is owned by a third person
17 for the lifetime of the decedent, it shall continue in such person for a period
18 of time equal to the normal life expectancy of a person of the sex and age
19 of the decedent at the time of his death.

20 (2) As to a contingent remainder or executory or other future interest
21 owned by the slayer subject to become vested in him or increased in any
22 way for him upon the condition of the death of the decedent:

23 (a) If the interest would not have become vested or increased if he had
24 predeceased the decedent, the slayer shall be considered to have so pre-
25 deceased the decedent; and

26 (b) In any case, the interest shall not be so vested or increased during
27 a period of time equal to the normal life expectancy of a person of the sex
28 and age of the decedent at the time of his death.

29 **Section 63. Property appointed; powers of revocation or appointment.**

30 (1) Property appointed by the will of the decedent to or for the benefit of
31 the slayer shall be distributed as if the slayer had predeceased the decedent.

32 (2) Property owned either presently or in remainder by the slayer,
33 subject to be divested by the exercise by the decedent of a power of revo-

1 cation or a general power of appointment, shall pass to and be vested in
2 the heirs or devisees of the decedent other than the slayer. Property so
3 owned by the slayer, subject to be divested by the exercise by the decedent
4 of a power of appointment to a particular person or persons or to a class of
5 persons, shall pass to such person or persons or in equal shares to the
6 members of such class of persons to the exclusion of the slayer.

7 **Section 64. Proceeds of insurance on life and other benefit plans of**
8 **decedent.** Proceeds payable to or for the benefit of the slayer as beneficiary
9 or assignee of the decedent of the following interests shall be paid to the
10 secondary beneficiary, or if there is no secondary beneficiary, to the per-
11 sonal representative of the decedent's estate:

12 (1) A policy or certificate of insurance on the life of the decedent.

13 (2) A certificate of membership in any benevolent association or organi-
14 zation on the life of the decedent.

15 (3) Rights of the decedent as survivor of a joint life policy.

16 (4) Proceeds under any pension, profit-sharing or other plan.

17 **Section 65. Proceeds of insurance on life of slayer.** If the decedent is
18 beneficiary or assignee of any policy or certificate of insurance on the life
19 of the slayer, the proceeds shall be paid to the personal representative of
20 the decedent's estate unless:

21 (1) The policy or certificate names some person other than the slayer or
22 his personal representative as the secondary beneficiary.

23 (2) The slayer, by naming a new beneficiary or assignee, performs an
24 act which would have deprived the decedent of his interest if the decedent
25 had been living.

26 **Section 66. Payment by insurance company, bank, trustee or obligor;**
27 **no additional liability.** Any insurance company making payment according
28 to the terms of its policy, or any bank, trustee or other person performing
29 an obligation to the slayer shall not be subjected to additional liability
30 because of sections 58 to 68 of this Act if the payment or performance is
31 made without written notice by a claimant of a claim arising under those
32 sections. Upon receipt of written notice the person to whom it is directed
33 may withhold any disposition of the property pending determination of his
34 duties.

1 **Section 67. Rights of persons without notice dealing with slayer.** Sec-
2 tions 58 to 68 of this Act do not affect the rights of any person who for
3 value and without notice purchases or agrees to purchase property that the
4 slayer would have acquired except for those sections, but all proceeds
5 received by the slayer from the sale shall be held by him in trust for the
6 persons entitled to the property as provided in those sections. The slayer
7 shall be liable for any portion of the proceeds of the sale that he may have
8 expended and for the difference, if any, between the amount received
9 from the sale and the actual value of the property.

10 **Section 68. Record of conviction as evidence.** The record of the convic-
11 tion of a slayer for having participated in the death of a decedent is ad-
12 missible in evidence in any action arising under sections 58 to 68 of this Act.

13 **Part 6. Uniform Simultaneous Death Act**

14 Section 69. ORS 112.010 is amended to read:

15 112.010. **Disposition of property upon simultaneous death, generally.**
16 Where the title to property or the devolution thereof depends upon pri-
17 ority of death and there is no sufficient evidence that the persons have
18 died otherwise than simultaneously, the property of each person shall be
19 disposed of as if he had survived, except as provided otherwise in ~~this~~
20 ~~chapter~~ sections 69 to 76 of this 1969 Act.

21 Section 70. ORS 112.020 is amended to read:

22 112.020. **Beneficiaries designated to take successively,** ~~[Where two or~~
23 ~~more beneficiaries are designated to take successively by reason of survivorship~~
24 ~~under another person's disposition of property and there is no sufficient evi-~~
25 ~~dence that these beneficiaries have died otherwise than simultaneously, the~~
26 ~~property thus disposed of shall be divided into as many equal portions as there~~
27 ~~are successive beneficiaries and these portions shall be distributed respectively~~
28 ~~to those who would have taken in the event that each designated beneficiary~~
29 ~~had survived.] If property is so disposed of that the right of a beneficiary~~
30 ~~to succeed to any interest therein is conditional upon his surviving another~~
31 ~~person, and both persons die, and there is no sufficient evidence that the~~
32 ~~two have died otherwise than simultaneously, the beneficiary shall be~~
33 ~~deemed not to have survived. If there is no sufficient evidence that all of~~

1 *two or more beneficiaries have died otherwise than simultaneously and*
2 *property has been disposed of in such a way that at the time of their*
3 *death each of such beneficiaries would have been entitled to the property*
4 *if he had survived the others, the property shall be divided into as many*
5 *equal portions as there were such beneficiaries and these portions shall be*
6 *distributed respectively to those who would have taken in the event that*
7 *each of such beneficiaries had survived.*

8 Section 71. ORS 112.030 is amended to read:

9 **112.030. Joint tenants or tenants by entirety.** (1) Where there is no
10 sufficient evidence that two joint tenants or tenants by the entirety have
11 died otherwise than simultaneously the property so held shall be dis-
12 tributed one-half as if one had survived and one-half as if the other had
13 survived. If there are more than two joint tenants and all of them have
14 so died the property thus distributed shall be in the proportion that one
15 bears to the whole number of joint tenants.

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

19 **Section 72. Community property.** Where a husband and wife had died,
20 leaving community property, and there is no sufficient evidence that they
21 have died otherwise than simultaneously, one-half of all the community
22 property shall pass as if the husband survived and the other one-half
23 thereof shall pass as if the wife had survived.

24 Section 73. ORS 112.040 is amended to read:

25 **112.040. Insured and beneficiary.** Where the insured and the beneficiary
26 in a policy of life or accident insurance have died and there is no sufficient
27 evidence that they have died otherwise than simultaneously the proceeds
28 of the policy shall be distributed as if the insured had survived the bene-
29 ficiary, *except if the policy or any interest therein is community property*
30 *of the insured and his spouse, and there is no alternative beneficiary ex-*
31 *cept the estate or personal representatives of the insured, the proceeds*
32 *of such interest shall be distributed as community property under section*
33 *72 of this 1969 Act.*

1 Section 74. ORS 112.060 is amended to read:

2 112.060. **Law does not apply if decedent provides otherwise.** ~~{This chap-~~
3 ~~ter}~~ Sections 69 to 76 of this 1969 Act shall not apply in the case of wills,
4 living trusts, deeds , ~~{or}~~ contracts of insurance ~~{wherein}~~ or any other
5 situation where provision ~~{has been}~~ is made for distribution of property
6 different from the provisions of ~~{this chapter}~~ sections 69 to 76 of this 1969
7 Act, or where provision is made for a presumption as to survivorship which
8 results in a distribution of property different from that so provided.

9 Section 75. ORS 112.070 is amended to read:

10 112.070. **Construction and interpretation.** ~~{This chapter}~~ Sections 69 to
11 76 of this 1969 Act shall be so construed and interpreted as to effectuate
12 ~~{its}~~ their general purpose to make uniform the law in those states which
13 enact the Uniform Simultaneous Death Act.

14 Section 76. ORS 112.080 is amended to read:

15 112.080. **Citation of law.** ~~{This chapter}~~ Sections 69 to 76 of this 1969 Act
16 may be cited as the "Uniform Simultaneous Death Act."

17 **Part 7. Renunciation of Intestate Succession or Devise**

18 **Section 77. Renunciation of intestate succession or devise.** A person
19 may renounce intestate succession or a devise of property, wholly or par-
20 tially, by filing a signed declaration of such renunciation with the court
21 and serving a copy on the personal representative within four months
22 after the date of appointment of the personal representative. No interest
23 in the property so renounced is considered to have vested in the heir or
24 devisee and the renunciation is not considered a transfer by gift of the
25 property renounced, but the property so renounced passes as if the heir
26 or devisee had failed to survive the decedent. Creditors of the renouncing
27 heir or devisee, including judgment creditors, attachment and execution
28 creditors and tax lien claimants, have no interest in the property renounced.

29 **Part 8. Dower and Curtesy Abolished**

30 **Section 78. Dower and curtesy abolished.** Dower and curtesy, including
31 inchoate dower and curtesy, are abolished, but any right to or estate of
32 dower or curtesy of the surviving spouse of any person who died before the
33 effective date of this Act shall continue and be governed by the law in
34 effect immediately before that date.

1 Section 79. ORS 113.090 is amended to read:

2 113.090. **Statute of limitation for recovery of dower or curtesy.** No action
3 or suit shall be brought after 10 years from the death of a decedent to
4 recover or reduce to possession curtesy or dower by the surviving spouse
5 of ~~such~~ the decedent.

6 **ARTICLE III. INITIATION OF ESTATE PROCEEDINGS**

7 **Section 80. Special administrators.** (1) If, prior to appointment and
8 qualification of a personal representative, property of a decedent is in
9 danger of loss, injury or deterioration, or disposition of the remains of a
10 decedent is required, the court may appoint a special administrator to
11 take charge of the property or the remains. The petition for appointment
12 shall state the reasons for special administration and specify the property,
13 so far as known, requiring administration, and the danger to which it is
14 subject.

15 (2) The special administrator shall qualify by filing a bond in the
16 amount set by the court, conditioned upon the special administrator faith-
17 fully performing the duties of his trust.

18 (3) The special administrator may:

19 (a) Incur expenses for the funeral, burial or other disposition of the
20 remains of decedent in a manner suitable to his condition in life;

21 (b) Incur expenses for the protection of the property of the estate; and

22 (c) Sell perishable property of the estate, whether or not listed in the
23 petition, if necessary to prevent loss to the estate.

24 (4) The special administrator shall not approve or reject claims of
25 creditors or pay claims or expenses of administration or take possession
26 of assets of the estate other than those in danger of loss, injury or deterior-
27 ation pending the appointment of a personal representative.

28 (5) Upon the appointment and qualification of a personal representative
29 the powers of the special administrator shall cease and he shall make and
30 file his account and deliver to the personal representative the assets of
31 the estate in his possession. If the personal representative objects to the
32 account of the special administrator, the court shall hear the objections,
33 and, whether or not objections are made, shall examine the account.

34 (6) To the extent approved by the court, the compensation of the

1 special administrator and expenses properly incurred by him, including
2 a reasonable fee of his attorney, shall be paid as expenses of his adminis-
3 tration.

4 **Section 81. Venue.** (1) The venue for a proceeding seeking the appoint-
5 ment of a personal representative and for a proceeding to probate a will is:

6 (a) In the county where the decedent had his domicile or where he
7 had his place of abode at the time of his death;

8 (b) In any county where property of the decedent was located at the
9 time of his death or is located at the time the proceeding is commenced; or

10 (c) In the county in which the decedent died.

11 (2) Filing a proceeding in a county other than specified in subsection
12 (1) of this section does not constitute a jurisdictional defect.

13 **Section 82. Proceedings commenced in more than one county.** (1) If
14 proceedings seeking the appointment of a personal representative of the
15 same estate or proceedings to probate a will of the same decedent are
16 commenced in more than one county, they shall be stayed except in the
17 county where first commenced until final determination there of venue.
18 A proceeding is considered commenced by the filing of a petition. In
19 determining venue, if the court finds that transfer to another county
20 where a proceeding has been commenced is for the best interest of the
21 estate, it may in its discretion order such transfer.

22 (2) If the proper venue is determined to be in another county, the
23 clerk of the court shall transmit to the clerk of the court for the other
24 county a transcript of the proceeding with all the original papers filed
25 therein, and the court for the other county thereupon has exclusive juris-
26 diction of the proceeding to the same extent and with like effect as though
27 the proceeding were in the court on original jurisdiction.

28 **Section 83. Petition for appointment of personal representative and pro-**
29 **bate of will.** Any interested person may petition for the appointment of
30 a personal representative and for the probate of a will. The petition shall
31 include the following information, so far as known:

32 (1) The name, age, domicile, post-office address, date and place of
33 death, and social security account number or taxpayer identification
34 number of the decedent.

1 (2) Whether the decedent died testate or intestate.

2 (3) The facts relied upon to establish venue.

3 (4) The name and post-office address of the person nominated as per-
4 sonal representative and the facts that show he is qualified to act.

5 (5) The names, relationship to the decedent and post-office addresses
6 of persons who are or would be his heirs upon his death intestate, and the
7 ages of any who are minors.

8 (6) If the decedent died testate, the names and post-office addresses of
9 the devisees, and the ages of any who are minors.

10 (7) A statement of the extent and nature of assets of the estate, to
11 enable the court to set the amount of bond of the personal representative.

12 **Section 84. Information of escheat to Division of State Lands.** If it
13 appears from a petition for the appointment of a personal representative
14 that there is no known person to take by descent the net intestate estate,
15 the petitioner shall deliver or mail to the Director of the Division of State
16 Lands a copy of the petition, and shall file in the estate proceeding proof
17 by an affidavit of the delivery or mailing.

18 **Section 85. Testimony of attesting witnesses to will.** (1) Upon an ex
19 parte hearing of a petition for the probate of a will, an affidavit of an at-
20 testing witness may be used instead of the personal presence of the
21 witness in court. The witness may give evidence of the execution of the
22 will by attaching his affidavit to the will or to a photographic or other
23 facsimile copy of the will, and may identify the signature of the testator
24 and witnesses to the will by use of the will or the copy. The affidavit shall
25 be received in evidence by the court and have the same weight as to
26 matters contained in the affidavit as if the testimony were given by the
27 witness in open court. The affidavit of the attesting witness may be made
28 at the time of execution of the will or at any time thereafter.

29 (2) However, upon motion of any person interested in the estate filed
30 within 30 days after the order admitting the will to probate is made, the
31 court may require that the witness making the affidavit be brought
32 before the court. If the witness is outside the reach of a subpoena, the
33 court may order that the deposition of the witness be taken in the manner
34 provided by ORS chapter 45.

1 (3) If the evidence of none of the attesting witnesses is available, the
2 court may allow proof of the will by testimony or other evidence that the
3 signature of the testator or at least one of the witnesses is genuine.

4 (4) In the event of contest of the will or of probate thereof in solemn
5 form, proof of any facts shall be made in the same manner as in a suit
6 in equity.

7 **Section 86. Establishing foreign wills.** (1) The written will of a testator
8 who died domiciled outside this state, which upon probate may operate
9 upon property in this state, may be admitted to probate upon petition
10 therefor, by filing a certified copy of the will and a certified copy of the
11 order admitting the will to probate or evidencing its establishment in the
12 jurisdiction where the testator died domiciled.

13 (2) A will offered for probate under this section may be contested
14 for a cause which would be grounds for rejection of a will of a testator
15 who died domiciled in this state.

16 **Section 87. Contest of will.** When a will has been admitted to probate,
17 any interested person may, at any time within four months after the date
18 of the entry in the court journal of the order of court admitting the will
19 to probate, contest the probate of the will or the validity of the will.

20 **Section 88. Preference in appointing personal representative.** Upon the
21 filing of the petition, if there is no will or there is a will and it has been
22 proved, the court shall appoint a qualified person it finds suitable as
23 personal representative, giving preference in the following order:

24 (1) To the executor named in the will.

25 (2) To the surviving spouse of the decedent or his nominee.

26 (3) To the nearest of kin of the decedent or his nominee.

27 (4) To the Director of the Division of State Lands if it appears that
28 the decedent died wholly intestate and without heirs.

29 (5) To any other person.

30 **Section 89. Persons not qualified to act as personal representatives.** A
31 person is not qualified to act as personal representative who is:

32 (1) An incompetent.

33 (2) A minor.

34 (3) A person who has been convicted of a felony.

1 (4) A person suspended for misconduct or disbarred from the practice
2 of law, during the period of suspension or disbarment.

3 (5) A person who has resigned from the Oregon State Bar when
4 charges of professional misconduct are under investigation or when dis-
5 ciplinary proceedings are pending against him, until he is reinstated.

6 (6) A nonresident of this state, except that a nonresident may qualify
7 if he appoints an active member of the Oregon State Bar as a resident
8 agent to accept service of summons and process in all actions affecting the
9 estate and files the appointment in the estate proceeding.

10 (7) A judge of the district court, circuit court, Oregon Tax Court or
11 Supreme Court of this state.

12 **Section 90. Necessity and amount of bond; bond notwithstanding will.**

13 (1) Unless a testator provides in his will that no bond shall be required
14 of the executor of his estate, or unless the personal representative is the
15 sole heir or devisee or is the Director of the Division of State Lands, the
16 personal representative shall not act nor shall letters be issued to him
17 until he files with the clerk of the court a bond. The bond shall be
18 executed by a surety company authorized to transact surety business in
19 this state, or by one or more sufficient personal sureties approved by the
20 court. A personal surety must be a resident of this state. The court
21 may, in its discretion, require a bond notwithstanding any provision in
22 a will that no bond is required. The bond shall be for the security and
23 benefit of all interested persons and shall be conditioned upon the personal
24 representative faithfully performing the duties of his trust.

25 (2) The amount of the bond set by the court shall be adequate to
26 protect interested persons, but in no event shall it be less than \$1,000.

27 In setting the amount of the bond the court shall consider:

28 (a) The nature, liquidity and apparent value of the assets of the estate.

29 (b) The anticipated income during administration.

30 (c) The probable indebtedness and taxes.

31 (3) Nothing in this section affects the provisions of ORS 709.230 and
32 709.240, relating to a trust company acting as personal representative.

33 **Section 91. Increasing, reducing or requiring new bond.** The court may
34 increase or reduce the amount of the bond of a personal representative,

1 or require a new bond, if it appears to the court that the bond was in-
2 adequate or excessive or a new bond is necessary. The surety on the bond
3 may be discharged from liability by an order made pursuant to ORS
4 33.510 and 33.520.

5 **Section 92. Letters testamentary or of administration.** (1) Letters testa-
6 mentary or letters of administration shall be issued to the personal repre-
7 sentative appointed by the court upon his filing with the clerk of the court
8 the bond, if any, required by the court.

9 (2) Letters testamentary may be in the following form:

10 _____

11 **LETTERS TESTAMENTARY**

12 No. _____

13 **THIS CERTIFIES** that the will of _____, deceased,
14 has been proved and _____ has (have) been appointed
15 and is (are) at the date hereof the duly appointed, qualified and acting
16 _____ of the will and
17 (Executor(s) or Administrator(s) with the Will Annexed)
18 estate of the decedent.

19 **IN WITNESS WHEREOF**, I, as Clerk of the Circuit Court of the
20 State of Oregon for the County of _____, in which proceedings
21 for administration upon the estate are pending, do hereto subscribe my
22 name and affix the seal of the court this _____ day of _____,
23 19_____.

24 _____ Clerk of the Court

25 By _____

26 Deputy

27 (Seal)

28 _____

29 (3) Letters of administration may be in the following form:

30 _____

31 **LETTERS OF ADMINISTRATION**

32 No. _____

33 **THIS CERTIFIES** that _____
34 has (have) been appointed and is (are) at the date hereof the duly ap

1 pointed, qualified and acting administrator(s) of the estate of _____
2 _____, deceased, and that no will of the decedent has
3 been proved in this court.

4 IN WITNESS WHEREOF, I, as Clerk of the Circuit Court of the
5 State of Oregon for the County of _____, in which pro-
6 ceedings for administration upon the estate are pending, do hereto sub-
7 scribe my name and affix the seal of the court this _____ day of
8 _____, 19____.

9 _____ Clerk of the Court

10 By _____

11 Deputy

12 (Seal)

13 _____

14 **Section 93. Designation of attorney to be filed.** If the personal repre-
15 sentative has employed an attorney to represent him in the administration
16 of the estate, he shall file in the estate proceeding the name and post-office
17 address of the attorney unless that information appears in the petition or
18 the order appointing the personal representative.

19 **Section 94. Information to devisees and heirs.** (1) Upon his appoint-
20 ment a personal representative shall deliver or mail to the devisees and
21 heirs named in the petition for appointment of a personal representative,
22 at the addresses therein shown, information that shall include:

23 (a) The title of the court in which the estate proceeding is pending
24 and the clerk's file number;

25 (b) The name of the decedent and the place and date of his death;

26 (c) Whether or not a will of the decedent has been admitted to probate;

27 (d) The name and address of the personal representative and his attor-
28 ney; and

29 (e) The date of the appointment of the personal representative.

30 (2) The failure of the personal representative to give information
31 under this section is a breach of his duty to the persons concerned, but
32 does not affect the validity of his appointment, duties or powers or the
33 exercise of his duties or powers.

34 (3) Within 30 days after the date of his appointment a personal repre-

1 tentative shall cause to be filed in the estate proceeding proof by an
2 affidavit of the delivery or mailing required by this section. The affidavit
3 shall include a copy of the information delivered or mailed and the
4 names of the persons to whom it was delivered or mailed.

5 **Section 95. Publication of notice to interested persons.** (1) Upon his
6 appointment a personal representative shall cause a notice to interested
7 persons to be published once in each of three consecutive weeks in:

8 (a) A newspaper published in the county in which the estate pro-
9 ceeding is pending; or

10 (b) If no newspaper is published in the county in which the estate
11 proceeding is pending, a newspaper designated by the court.

12 (2) The notice shall include:

13 (a) The title of the court in which the estate proceeding is pending;

14 (b) The name of the decedent;

15 (c) The name of the personal representative and the address at which
16 claims are to be presented;

17 (d) A statement requiring all persons having claims against the estate
18 to present them, within four months after the date of the first publication
19 of the notice, to the personal representative at the address designated in
20 the notice for the presentation of claims; and

21 (e) The date of the first publication of the notice.

22 (3) The failure of the personal representative to cause a notice to be
23 published under this section is a breach of his duty to the persons con-
24 cerned, but does not affect the validity of his appointment, duties or powers
25 or the exercise of his duties or powers.

26 (4) A personal representative shall file in the estate proceeding proof
27 by an affidavit of the publication of notice required by this section. The
28 affidavit shall include a copy of the published notice.

29 **Section 96. Inventory; filing; contents.** Within 60 days after the date
30 of his appointment, unless a longer time is granted by the court, a personal
31 representative shall file in the estate proceeding an inventory of all the
32 property of the estate that has come into his possession or knowledge. The
33 inventory shall show the estimates by the personal representative of the

1 respective true cash values as of the date of the death of the decedent of
2 the properties described in the inventory.

3 **Section 97. Property discovered after inventory filed.** Whenever any
4 property of the estate not included in the inventory comes into the posses-
5 sion or knowledge of the personal representative, he shall either file in the
6 estate proceeding a supplemental inventory within 30 days after the date
7 of receiving possession or knowledge, or include the property in his next
8 accounting.

9 **Section 98. Appraisement; employment and appointment of appraisers.**

10 (1) The personal representative may employ a qualified and disinterested
11 appraiser to assist him in the appraisal of any property of the estate the
12 value of which may be subject to reasonable doubt. Different persons may
13 be employed to appraise different kinds of property.

14 (2) The court in its discretion may direct that all or any part of the
15 property of the estate be appraised by one or more appraisers appointed by
16 the court.

17 (3) Property for which appraisement is required shall be appraised at its
18 true cash value as of the date of the death of the decedent. Each appraise-
19 ment shall be in writing and shall be signed by the appraiser making it.

20 (4) Each appraiser is entitled to be paid a reasonable fee from the
21 estate for his services and to be reimbursed from the estate for his necessary
22 expenses.

23 **Section 99. Removal of personal representative.** (1) When a personal
24 representative ceases to be qualified as provided in section 89 of this Act,
25 or becomes incapable of discharging his duties, the court shall remove him.

26 (2) When a personal representative has been unfaithful to or neglectful
27 of his trust, the court may remove him.

28 (3) When grounds for removal of a personal representative appear to
29 exist, the court, on its own motion or on the petition of any interested
30 person, shall order the personal representative to appear and show cause
31 why he should not be removed. A copy of the order to show cause and of
32 the petition, if any, shall be served upon the personal representative and
33 upon his surety as provided in section 13 of this Act.

34 **Section 100. Powers of surviving personal representative.** (1) Every

1 power exercisable by co-personal representatives may be exercised by the
2 survivors or survivor of them when the appointment of one is terminated,
3 unless the will provides otherwise.

4 (2) Where one of two or more persons named as co-executors is not
5 appointed, those appointed may exercise all the powers incident to the
6 office, unless the will provides otherwise.

7 **Section 101. Appointment of successor personal representative. (1)**
8 When a personal representative dies, is removed by the court, or resigns
9 and his resignation is accepted by the court, the court may appoint, and, if
10 he was the sole or the last surviving personal representative and adminis-
11 tration is not completed, the court shall appoint another personal repre-
12 sentative in his place.

13 (2) If, after a will has been proven and letters testamentary or of ad-
14 ministration with the will annexed have been issued, the will is set aside,
15 declared void or inoperative, the letters testamentary or of administration
16 with the will annexed shall be revoked and letters of administration issued.

17 (3) If, after administration has been granted, a will of the decedent is
18 found and proven, the letters of administration shall be revoked and
19 letters testamentary or of administration with the will annexed shall be
20 issued.

21 (4) When a successor personal representative is appointed, he has all the
22 rights and powers of his predecessor or of the executor named in the will,
23 except that he shall not exercise powers given in the will which by its
24 terms are personal to the personal representative named therein.

25 **Section 102. Notice to interested persons by successor personal repre-**
26 **sentative. (1)** If the personal representative dies, is removed by the court
27 or resigns after the notice to interested persons required by section 95 of
28 this Act has been published but before the time for presenting claims
29 required by the notice has expired, the successor personal representative
30 shall cause notice to interested persons to be published as if he were the
31 original personal representative. The republished notice shall state that the
32 original personal representative died, was removed by the court or resigned,
33 the date of death, removal or resignation and the date of appointment of
34 the new personal representative.

1 (2) The period of time between the death, removal or resignation and
2 the date of the first republication of the notice under subsection (1) of this
3 section shall be added to the period required for presentation of claims
4 by the original notice.

5 (3) No notice by the successor personal representative shall be required
6 under subsection (1) of this section if the period for filing claims expired
7 prior to the death, removal or resignation of the original personal repre-
8 sentative.

9 **ARTICLE IV. ADMINISTRATION OF ESTATES GENERALLY**

10 **Part 1. Support of Spouse and Children**

11 **Section 103. Occupancy of family abode by spouse and children.** The
12 spouse and dependent children of a decedent, or any of them, may continue
13 to occupy the principal place of abode of the decedent until one year after
14 his death or, if his estate therein is an estate of leasehold or an estate for
15 the lifetime of another, until one year after his death or the earlier
16 termination of his estate. During that occupancy:

17 (1) The occupants shall not commit or permit waste to the abode,
18 or cause or permit mechanics' or materialmen's or other liens to attach
19 thereto.

20 (2) The occupants shall keep the abode insured, to the extent of the
21 fair market value of the improvements, against fire and other hazards
22 within the extended coverage provided by fire insurance policies. In the
23 event of loss or damage from those hazards, to the extent of the proceeds
24 of the insurance, they shall restore the abode to its former condition.

25 (3) The occupants shall pay taxes and improvement liens on the
26 abode as payment thereof becomes due.

27 (4) The abode is exempt from execution to the extent that it was
28 exempt when the decedent was living.

29 **Section 104. Support of spouse and children.** The court by order shall
30 make necessary and reasonable provision from the estate of a decedent
31 for the support of the spouse and dependent children of the decedent, or
32 any of them, upon:

33 (1) Petition therefor by or on behalf of the spouse or any dependent
34 child;

1 (2) Service of the petition and notice of hearing thereon to the per-
2 sonal representative, unless the petitioner is the personal representative;

3 (3) Notice to persons whose distributive shares of the estate may be
4 diminished by the granting of the petition, unless the court by order
5 directs otherwise; and

6 (4) Hearing.

7 **Section 105. Petition for support and answer.** (1) The petition for sup-
8 port under section 104 of this Act shall include a description of property,
9 other than property of the estate, available for the support of the spouse
10 and children, and an estimate of the expenses anticipated for their sup-
11 port. If the petitioner is the personal representative, the petition shall also
12 include, so far as known, a statement of the nature and estimated value
13 of the property of the estate and of the nature and estimated amount of
14 claims, taxes and expenses of administration.

15 (2) If the personal representative is not the petitioner, he shall answer
16 the petition for support. The answer shall include, so far as known, a
17 statement of the nature and estimated value of the property of the estate
18 and of the nature and estimated amount of claims, taxes and expenses
19 of administration.

20 **Section 106. Temporary support.** Pending hearing upon the petition
21 under section 104 of this Act, temporary support may be allowed by
22 order of the court in an amount and of a nature the court considers reason-
23 ably necessary for the welfare of the surviving spouse and dependent
24 children of the decedent or any of them.

25 **Section 107. Modification or termination of support.** Provision for sup-
26 port under section 104 of this Act ordered by the court may be modified
27 or terminated by the court by further order.

28 **Section 108. Nature of support.** (1) Provision for support under section
29 104 of this Act ordered by the court may consist of any one or more of
30 the following:

31 (a) Transfer of title to personal property.

32 (b) Transfer of title to real property.

33 (c) Periodic payment of moneys during administration of the estate,

1 but the payments may not continue for more than two years after the
2 date of death of the decedent.

3 (2) The court, in determining provision for support, shall take into
4 consideration the solvency of the estate, property available for support
5 other than property of the estate, and property of the estate inherited
6 by or devised to the spouse and children.

7 **Section 109. Limitations on support.** If it appears to the court that after
8 provision for support under section 104 of this Act is made the estate will
9 be insolvent, the provision for support ordered by the court shall not
10 exceed one-half of the estimated value of the property of the estate, and
11 any periodic payment of moneys so ordered shall not continue for more
12 than one year after the date of death of the decedent.

13 **Section 110. Priority of support; treated as administration expense.**
14 Subject to the limitations imposed by section 109 of this Act, provision for
15 support under section 104 of this Act ordered by the court has priority
16 over claims and expenses of administration. The provision shall not be
17 charged against the distributive share of the person receiving support.
18 The provision shall be treated as an expense of administration, but shall
19 not be a deduction for inheritance tax purposes.

20 **Section 111. Setting apart whole estate for support; termination of**
21 **administration.** If it appears, after the expiration of four months after the
22 date of the first publication of notice to interested persons, that reasonable
23 provision for support of the spouse and dependent children of the de-
24 cedent, or any of them, warrants that the whole of the estate, after payment
25 of claims, taxes and expenses of administration, be set apart for such
26 support, the court may so order. There shall be no further proceeding in
27 the administration of the estate, and the estate shall summarily be closed.

28 **Part 2. Elective Share of Surviving Spouse**

29 **Section 112. Right to elective share; effect of election.** (1) If a decedent
30 is domiciled in this state at the time of his death and dies testate, the sur-
31 viving spouse of the decedent has a right to elect to take the share provided
32 by this section. The elective share consists of one-fourth of the value of
33 the net estate of the decedent, but the elective share shall be reduced by

1 the value of the following property given to the surviving spouse under the
2 will of the decedent:

3 (a) Property given outright;

4 (b) The present value of legal life estates; and

5 (c) The present value of the right of the surviving spouse to income
6 or an annuity, or a right of withdrawal, from any property transferred
7 in trust by the will that is capable of valuation with reasonable certainty
8 without regard to the powers forfeited under subsection (2) of this section.

9 (2) Except as to property applied under subsection (1) of this section to
10 reduce the elective share, an election to take under this section forfeits
11 any other right to take under the will and under the law of intestate suc-
12 cession. If the will would otherwise create a power of appointment in the
13 surviving spouse, the spouse by electing to take under this section retains
14 the power only if it is not a general power of appointment as defined in
15 subsection (5) of ORS 118.010 and the testator has not provided otherwise,
16 but the spouse forfeits any general power of appointment. A power to pay
17 more than the income or annuity or withdrawals, the value of which
18 reduced the elective share under paragraph (c) of subsection (1) of this
19 section, or to apply additional principal or income in behalf of the electing
20 spouse, may not be exercised in favor of the electing spouse.

21 (3) The right to elect may be barred under section 113 of this Act, the
22 share limited by section 114 of this Act or the right denied or the share
23 reduced under section 115 of this Act.

24 **Section 113. Election barred by agreement.** The right of the surviving
25 spouse to elect under section 112 of this Act may be barred by the terms of
26 a written agreement signed by both spouses. The agreement may be entered
27 into before or after marriage.

28 **Section 114. Elective share limited by total property received.** (1) The
29 surviving spouse may not receive by election under section 112 of this Act
30 any amount which, together with any of the following property received
31 by him, exceeds one-half of the total of the following property, such
32 property to be reduced by the amount of the federal estate tax payable
33 by reason of the property:

34 (a) The property passing under the will;

- 1 (b) Joint annuities furnished by the decedent;
- 2 (c) Proceeds of insurance on the life of the decedent, whether or not he
3 had any of the incidents of ownership at his death;
- 4 (d) Transfers by the decedent within three years before the date of his
5 death, to the extent the decedent did not receive full consideration in
6 money or money's worth;
- 7 (e) Transfers by the decedent during his lifetime as to which he
8 retained power, alone or in conjunction with any other person, to alter,
9 amend, revoke or terminate or to designate a beneficiary;
- 10 (f) Payments from the employer of the decedent or from a plan
11 created by the employer or under a contract between the decedent and his
12 employer, excluding workmen's compensation and social security payments;
- 13 (g) Property appointed by the decedent by will or by deed executed
14 within three years before the date of his death, whether the power is
15 general or special, but only if the property is effectively appointed in favor
16 of the surviving spouse; and
- 17 (h) Property in the joint names of the decedent and one or more other
18 persons, except such proportion as is attributable to consideration furnished
19 by persons other than the decedent.
- 20 (2) For the purpose of subsection (1) of this section, the surviving
21 spouse is considered to receive:
- 22 (a) Any property as to which the spouse is given all the income and a
23 general power to appoint the principal.
- 24 (b) Life insurance proceeds settled by the decedent on option, if the
25 spouse is entitled to the interest and has a general power to appoint the
26 proceeds or to withdraw proceeds, or if the spouse is entitled to an annuity
27 for life or instalments of the entire principal and interest for any period
28 equal to or less than the normal life expectancy of the spouse.
- 29 (3) As used in subsection (1) of this section, "property in the joint
30 names" means all property held or owned under any form of ownership
31 with right of survivorship, including cotenancy with remainder to the
32 survivor; stocks, bonds or bank accounts in the name of two or more persons
33 payable to the survivor; United States Government bonds in co-ownership
34 form or payable on death to a designated person; and shares in credit unions

1 or savings and loan associations payable on death to a designated person or
2 in joint form.

3 **Section 115. Denial of election or share reduction when decedent and**
4 **surviving spouse living apart.** If the decedent and the surviving spouse
5 were living apart at the time of the death of the decedent, whether or not
6 there was a decree for legal separation, the court in its discretion may deny
7 any right to elect against the will, may reduce the elective share of the
8 spouse to such amount as the court determines reasonable and proper or
9 may grant the full elective share in accordance with the circumstances
10 of the particular case. The court, in deciding what elective share, if any,
11 should be granted, shall consider the length of the marriage, whether the
12 marriage was a first or subsequent marriage for either or both of the
13 spouses, the contribution of the surviving spouse to the property of the
14 decedent in the form of services or transfers of property, the length and
15 cause of the separation and any other relevant circumstances.

16 **Section 116. What constitutes election.** The surviving spouse is con-
17 sidered to have elected to take under the will unless, within 90 days after
18 the date of the admission of the will to probate or 30 days after the date of
19 the filing of the inventory, whichever is later, he serves on the personal
20 representative or his attorney and files in the estate proceeding a statement
21 that he elects to take under section 112 of this Act instead of under the will.
22 The surviving spouse may bar any right to take under section 112 of this
23 Act by filing in the estate proceeding a writing, signed by the spouse, elect-
24 ing to take under the will.

25 **Section 117. Election by guardian of surviving spouse.** An election
26 under section 112 of this Act may be filed on behalf of an incompetent sur-
27 viving spouse by a guardian of the spouse. A guardian may elect against
28 the will only if additional assets are needed for the reasonable support
29 of the surviving spouse, taking into account the probable needs of the
30 spouse, the provisions of the will, any nonprobate property arrangements
31 made by the decedent for the support of the spouse and any other assets,
32 whether or not owned by the spouse, available for such support. The
33 election is subject to the approval of the court, with or without notice to
34 other interested persons.

1 **Section 118. Payment of elective share.** Estate property shall be ap-
2 plied in satisfaction of the elective share in the following order, unless
3 the will provides otherwise:

4 (1) Any intestate property;

5 (2) After the intestate property is exhausted, each devisee shall con-
6 tribute ratably to the elective share out of the portion of the estate passing
7 to him under the will, except that in abating the interests of the devisees
8 the character of the testamentary plan adopted by the testator shall be
9 preserved so far as possible.

10 **Part 3. Title and Possession of Property**

11 **Section 119. No distinction between real and personal property.** Sec-
12 tions 1 to 212 of this Act apply without distinction between real and per-
13 sonal property.

14 **Section 120. Devolution of and title to property.** (1) Upon the death
15 of a decedent, title to his property vests:

16 (a) In the absence of testamentary disposition, in his heirs, subject to
17 support of spouse and children, rights of creditors, administration and sale
18 by the personal representative; or

19 (b) In the persons to whom it is devised by his will, subject to support
20 of spouse and children, rights of creditors, right of the surviving spouse
21 to elect against the will, administration and sale by the personal repre-
22 sentative.

23 (2) The power of a person to leave property by will, and the rights
24 of creditors, devisees and heirs to his property, are subject to the restric-
25 tions and limitations expressed or implicit in sections 1 to 212 of this Act
26 to facilitate the prompt settlement of estates.

27 **Section 121. Possession and control of decedent's estate.** A personal
28 representative has a right to and shall take possession and control of the
29 estate of the decedent, but he is not required to take possession of or be
30 accountable for property in the possession of an heir or devisee unless in
31 his opinion possession by the personal representative is reasonably re-
32 quired for purposes of administration.

33 **Part 4. Duties and Powers of Personal Representatives**

34 **Section 122. Commencement of duties and powers of personal repre-**

1 **sentative; prior acts.** The duties and powers of a personal representative
2 commence upon the issuance of his letters. The powers of a personal
3 representative relate back in time to give his acts occurring prior to ap-
4 pointment the same effect as those occurring thereafter. A personal repre-
5 sentative may ratify and accept acts on behalf of the estate done by others
6 where those acts would have been proper for a personal representative.

7 **Section 123. General duties of personal representative.** A personal rep-
8 resentative is a fiduciary who is under a general duty to and shall collect
9 the income from property of the estate in his possession and preserve,
10 settle and distribute the estate in accordance with the terms of the will
11 and sections 1 to 212 of this Act, as expeditiously and with as little sacri-
12 fice of value as is reasonable under the circumstances.

13 **Section 124. Personal representative to proceed without court order;**
14 **application for authority, approval or instructions.** A personal represent-
15 ative shall proceed with the administration, settlement and distribution
16 of the estate without adjudication, order or direction of the court, except
17 as otherwise provided in sections 1 to 212 of this Act. However, a personal
18 representative or any interested person may apply to the court for au-
19 thority, approval or instructions on any matter concerning the admin-
20 istration, settlement or distribution of the estate, and the court, without
21 hearing or upon such hearing as it may prescribe, shall instruct the per-
22 sonal representative or rule on the matter as may be appropriate.

23 **Section 125. Naming or appointment of personal representative does**
24 **not discharge claim against him.** The naming or appointment of any person
25 as personal representative does not discharge any claim which the decedent
26 had against that person. The claim shall be included in the inventory. If
27 the person agrees to act as personal representative, he is liable for the
28 claim as for so much money in his hands at the time the claim becomes
29 due and payable; otherwise he is liable for the claim as any other debtor
30 of the decedent.

31 **Section 126. Discharge or devise in will of claim of testator.** The dis-
32 charge or devise in a will of a claim of the testator against a personal repre-
33 sentative or against any other person is of no effect as against creditors of
34 the decedent. The claim shall be included in the inventory and for purposes

1 of administration shall be regarded and treated as a specific devise of the
2 amount of the claim.

3 **Section 127. Transactions authorized for personal representative.** Ex-
4 cept as restricted or otherwise provided by the will or by court order, a
5 personal representative, acting reasonably for the benefit of interested
6 persons, is authorized to:

7 (1) Direct and authorize disposition of the remains of the decedent
8 pursuant to ORS 97.130 and incur expenses for the funeral, burial or other
9 disposition of the remains in a manner suitable to the condition in life of
10 decedent. Only those funeral expenses necessary for a plain and decent
11 funeral and disposition of the remains of the decedent may be paid from
12 the estate if the assets are insufficient to pay the claims of the State Public
13 Welfare Commission and the Oregon State Board of Control.

14 (2) Retain assets owned by the decedent pending distribution or
15 liquidation.

16 (3) Receive assets from fiduciaries or other sources.

17 (4) Complete, compromise or refuse performance of contracts of the
18 decedent that continue as obligations of the estate, as he may determine
19 under the circumstances. In performing enforceable contracts by the
20 decedent to convey or lease real property, the personal representative,
21 among other courses of action, may:

22 (a) Execute and deliver a deed upon satisfaction of any sum remaining
23 unpaid or upon receipt of the note of the purchaser adequately secured; or

24 (b) Deliver a deed in escrow with directions that the proceeds, when
25 paid in accordance with the escrow agreement, be paid to the successors
26 of the decedent, as designated in the escrow agreement.

27 (5) Satisfy written pledges of the decedent for contributions, whether
28 or not the pledges constituted binding obligations of the decedent or were
29 properly presented as claims.

30 (6) Deposit funds not needed to meet currently payable debts and
31 expenses, and not immediately distributable, in bank or savings and loan
32 association accounts, or invest the funds in short-term United States Gov-
33 ernment obligations.

- 1 (7) Abandon burdensome property when it is valueless, or is so encum-
2 bered or is in a condition that it is of no benefit to the estate.
- 3 (8) Vote stocks or other securities in person or by general or limited
4 proxy.
- 5 (9) Pay calls, assessments and other sums chargeable or accruing
6 against or on account of securities.
- 7 (10) Sell or exercise stock subscription or conversion rights.
- 8 (11) Consent, directly or through a committee or other agent, to the
9 reorganization, consolidation, merger, dissolution or liquidation of a cor-
10 poration or other business enterprise.
- 11 (12) Hold a security in the name of a nominee or in other form without
12 disclosure of the interest of the estate, but the personal representative is
13 liable for any act of the nominee in connection with the security so held.
- 14 (13) Insure the assets of the estate against damage and loss, and insure
15 himself against liability to third persons.
- 16 (14) Advance or borrow money with or without security.
- 17 (15) Compromise, extend, renew or otherwise modify an obligation
18 owing to the estate. If the personal representative holds a mortgage,
19 pledge, lien or other security interest, he may accept a conveyance or
20 transfer of the encumbered asset in lieu of foreclosure in full or partial
21 satisfaction of the indebtedness.
- 22 (16) Accept other real property in part payment of the purchase price
23 of real property sold by him.
- 24 (17) Pay taxes, assessments and expenses incident to the administration
25 of the estate.
- 26 (18) Employ qualified persons, including attorneys, accountants and
27 investment advisers, to advise and assist the personal representative and
28 to perform acts of administration, whether or not discretionary, on behalf
29 of the personal representative.
- 30 (19) Prosecute or defend actions, claims or proceedings in any jurisdic-
31 tion for the protection of the estate and of the personal representative in
32 the performance of his duties.
- 33 (20) Continue any business or venture in which the decedent was

1 engaged at the time of his death to preserve the value of the business or
2 venture.

3 (21) Incorporate or otherwise change the business form of any business
4 or venture in which the decedent was engaged at the time of his death.

5 (22) Discontinue and wind up any business or venture in which the
6 decedent was engaged at the time of his death.

7 (23) Provide for exoneration of the personal representative from per-
8 sonal liability in any contract entered into on behalf of the estate.

9 (24) Satisfy and settle claims and distribute the estate as provided in
10 sections 1 to 212 of this Act.

11 (25) Perform all other acts required or permitted by law or by the will
12 of the decedent.

13 **Section 128. Right to perfect lien or security interest.** A personal rep-
14 resentative has the same rights to perfect a lien or security interest as the
15 decedent would have had if he were living.

16 **Section 129. Power to sell, mortgage, lease and deal with property.** (1)
17 A personal representative has power to sell, mortgage, lease or otherwise
18 deal with property of the estate without notice, hearing or court order.

19 (2) Exercise of the power of sale by the personal representative is
20 improper, except after notice, hearing and order of the court, if:

21 (a) The sale is in contravention of the provisions of the will; or

22 (b) The property is specifically devised and the will does not authorize
23 its sale; or

24 (c) A bond of the personal representative has been required and filed,
25 the sale price of the property to be sold exceeds \$5,000 and the bond of the
26 personal representative has not been increased by the amount of cash to be
27 realized on the sale, unless the court has directed otherwise.

28 **Section 130. Court order for sale, mortgage or lease.** Upon proof satis-
29 factory to the court by an interested person that a sale, mortgage or lease
30 of property of the estate is required for paying support of spouse and
31 children, elective share of surviving spouse, claims or expenses of adminis-
32 tration, or for distribution, and that the personal representative has failed
33 or declined to act, the court may order the personal representative to make
34 the sale, mortgage or lease.

1 **Section 131. Title conveyed free of claims of creditors.** Property sold,
2 mortgaged or leased by a personal representative is subject to liens and
3 encumbrances against the decedent or his estate, but is not subject to rights
4 of creditors of the decedent or liens or encumbrances against his heirs
5 or devisees. The filing and allowance of a claim in an estate proceeding
6 does not make the claimant a secured creditor.

7 **Section 132. Sale or encumbrance to personal representative voidable;**
8 **exceptions.** (1) Any sale or encumbrance to the personal representative,
9 his spouse, agent or attorney, or any corporation or trust in which he has
10 more than a one-third beneficial interest, is voidable unless:

11 (a) The transaction was consented to by all interested persons affected
12 thereby; or

13 (b) The will expressly authorizes the transaction by the personal rep-
14 resentative with himself; or

15 (c) The transaction was made in compliance with another statute or
16 with a contract or other instrument executed by the decedent.

17 (2) The title of a purchaser for value without notice of the circum-
18 stances of the transaction with the personal representative is not affected
19 unless the purchaser should have known of the defect in the title of his
20 seller.

21 **Section 133.** ORS 116.835 is amended to read:

22 **116.835. Validation of certain sales.** The following are the subject of
23 validating Acts ~~[applicable to this chapter]:~~

24 (1) Certain sales of decedent's real property made prior to 1903 where
25 confirmation of sale was premature, *validated by page 133, section 2, Gen-
26 eral Laws of Oregon 1903.*

27 (2) Certain sales of decedent's property made prior to 1907 under
28 power in will, *validated by chapter 175, General Laws of Oregon 1907.*

29 (3) Certain sales of decedent's real property made prior to 1917 where
30 publication of the notice of sale was improper, *validated by section 2,
31 chapter 114, General Laws of Oregon 1917.*

32 (4) Certain sales by executors or administrators made prior to 1943,
33 *validated by chapter 26, Oregon Laws 1943.*

34 **Section 134. Nonliability of transfer agents.** A transfer agent or a

1 corporation transferring its own securities incurs no liability to any per-
2 son by making a transfer of securities of an estate as requested or di-
3 rected by a personal representative.

4 **Section 135. Persons dealing with personal representative; protection.**

5 A person dealing with or assisting a personal representative without actual
6 knowledge that the personal representative is improperly exercising his
7 power is protected as if the personal representative properly exercised
8 the power. The person is not bound to inquire whether the personal repre-
9 sentative is properly exercising his power, and is not bound to inquire
10 concerning the provisions of any will or any order of court that may affect
11 the propriety of the acts of the personal representative. No provision in
12 any will or order of court purporting to limit the power of a personal rep-
13 resentative is effective except as to persons with actual knowledge thereof.
14 A person is not bound to see to the proper application of estate assets
15 paid or delivered to a personal representative. The protection expressed
16 in this section extends to a person dealing with or assisting a personal
17 representative appointed under section 88 of this Act without actual knowl-
18 edge that the personal representative was not qualified as provided in
19 section 89 of this Act or that the appointment of the personal representa-
20 tive involved procedural irregularity.

21 **Section 136. Improper exercise of power; breach of fiduciary duty.** If
22 the exercise of power by a personal representative in the administration
23 of an estate is improper, he is liable for breach of his fiduciary duty to in-
24 terested persons for resulting damage or loss to the same extent as a trustee
25 of an express trust. Exercise of power in violation of a court order is a
26 breach of duty. Exercise of power contrary to the provisions of the will
27 may be a breach of duty.

28 **Section 137. Personal liability of personal representative.** (1) The per-
29 sonal liability of a personal representative to third parties, as distinguished
30 from his fiduciary accountability to the estate, arising from the administra-
31 tion of the estate is that of an agent for a disclosed principal.

32 (2) A personal representative is not personally liable on contracts
33 properly entered into in his fiduciary capacity in the course of administra-
34 tion of the estate unless he expressly agrees to be personally liable.

1 (3) A personal representative is not personally liable for obligations
2 arising from possession or control of property of the estate or for torts
3 committed in the course of administration of the estate unless he is per-
4 sonally at fault.

5 (4) Claims based upon contracts, obligations and torts of the types
6 described in subsections (2) and (3) of this section may be allowed against
7 the estate whether or not the personal representative is personally liable
8 therefor.

9 **Section 138. Co-personal representatives; when joint action required.**

10 (1) When two or more persons are appointed co-personal representatives,
11 the concurrence of all is required for all acts connected with the adminis-
12 tration and distribution of the estate, except:

13 (a) Any co-personal representative may receive and receipt for property
14 due the estate.

15 (b) When the concurrence of all cannot readily be obtained in the time
16 reasonably available for emergency action.

17 (c) Where any others have delegated their power to act.

18 (d) Where the will provides otherwise.

19 (e) Where the court otherwise directs.

20 (2) Persons dealing with a co-personal representative who are actually
21 unaware that another has been appointed to serve with him are as fully
22 protected as if the person with whom they dealt had been the sole personal
23 representative.

24 **Section 139. Discovery of property, writings and information.** (1) The
25 court may order any person to appear and give testimony as provided in
26 ORS chapter 45 if it appears probable:

27 (a) That he has concealed, secreted or disposed of any property of the
28 estate of a decedent;

29 (b) That he has been intrusted with property of the estate of a decedent
30 and fails to account therefor to the personal representative.

31 (c) That he has concealed, secreted or disposed of any writing, in-
32 strument or document pertaining to the estate;

33 (d) That he has knowledge or information that is necessary to the ad-
34 ministration of the estate; or

1 (e) That, as an officer or agent of a corporation, he has refused to
2 allow examination of the books and records of the corporation that the
3 decedent had the right to examine.

4 (2) If the person cited as provided in subsection (1) of this section
5 fails to appear or to answer questions asked of him as authorized by the
6 order of the court, he is in contempt and may be punished as for other
7 contempts.

8 **Section 140. Power to avoid transfers.** The property liable for the pay-
9 ment of expenses of administration, funeral expenses, claims and taxes
10 shall include property transferred by the decedent with intent to defraud
11 his creditors or transferred by any means which is in law void or voidable
12 as against his creditors. The right to recover that property so far as neces-
13 sary for the payment of those expenses, claims and taxes is in the personal
14 representative, who shall take necessary steps to recover it. That property
15 constitutes general assets for the payment of creditors.

16 **ARTICLE V. CLAIMS; ACTIONS AND SUITS**

17 **Part 1. Claims Against Estates**

18 **Section 141. Presentation of claims; time limitations.** (1) Claims against
19 the estate of a decedent, other than claims of the personal representative
20 as a creditor of the decedent, shall be presented to the personal represent-
21 ative.

22 (2) Claims presented within four months after the date of the first
23 publication of notice to interested persons shall be paid, as provided in
24 section 151 of this Act, before claims presented after the four-month
25 period.

26 (3) Claims not presented before the expiration of 12 months after the
27 date of the first publication of notice to interested persons, or before the
28 date the personal representative files his final account, whichever occurs
29 first, are barred from payment.

30 (4) If a claim is presented after the expiration of the 12-month period,
31 but before the final account is filed, the claim is not barred if the court
32 finds that the late presentment was caused by mistake, inadvertence, sur-
33 prise or excusable neglect.

34 **Section 141a. Claims for personal injury, death or property damage**

1 covered by insurance. A claim for injury to or death of a person or damage
2 to property, to the extent that the liability of the decedent therefore is
3 covered by insurance, is not barred by failure to present it as provided in
4 subsection (3) of section 141 of this Act, but payment of the claim not so
5 presented may be made only from the insurance proceeds. The estate of
6 the decedent may be reopened for the purpose of asserting the claim and
7 payment thereof, if allowed or established, from the insurance proceeds.

8 **Section 142. Form and verification of claims.** Each claim presented
9 shall:

10 (1) Be in writing.

11 (2) Describe the nature and the amount thereof, if ascertainable.

12 (3) State the names and addresses of the claimant and, if any, his
13 attorney.

14 (4) Be accompanied by the affidavit of the claimant or someone on
15 his behalf who has personal knowledge of the fact, stating that the amount
16 claimed is justly due, or if not due, when it will or may become due; that
17 no payments have been made which are not credited; and that there is
18 no just offset thereto, to the knowledge of the affiant, except as stated.

19 **Section 143. Waiver of presentment, defect or insufficiency.** The pre-
20 sentment of a claim and any defect of form or insufficiency of a claim
21 presented may be waived by the personal representative or by the court.

22 **Section 144. Written evidence of claim.** When it appears that there is
23 written evidence of a claim that has been presented to the personal rep-
24 resentative, the claimant, upon demand by the personal representative,
25 shall produce the evidence or account for its nonproduction.

26 **Section 145. Claims on debts due.** If a claim on a debt due is presented
27 and allowed, allowance shall be in the amount of the debt remaining
28 unpaid on the date of allowance.

29 **Section 146. Claims on secured debts due.** (1) A claim on a debt due
30 for which the creditor holds security may be presented as a claim on an
31 unsecured debt due, or the creditor may elect to rely entirely on the
32 security without presentation of the claim.

33 (2) If the claim is presented, it shall describe the security. If the
34 security is an encumbrance that is recorded, it is sufficient to describe

1 the encumbrance by reference to the volume, page, date and place of re-
2 cording.

3 (3) If the claim is presented and allowed, allowance shall be in the
4 amount of the debt remaining unpaid on the date of allowance.

5 (4) If the creditor surrenders the security, payment shall be on the
6 basis of the amount allowed.

7 (5) If the creditor does not surrender the security, payment shall be
8 on the basis of:

9 (a) If the creditor exhausts the security before receiving payment, the
10 amount allowed, less the amount realized on exhausting the security; or

11 (b) If the creditor does not exhaust the security before receiving pay-
12 ment or does not have the right to exhaust the security, the amount
13 allowed, less the value of the security determined by agreement or as the
14 court may order.

15 (6) The creditor shall not exercise remedies reserved under his security
16 until at least 30 days after the date the claim is presented and after notice
17 to the personal representative of his intention to exercise his remedy, but
18 the court, on cause shown, may shorten the period.

19 (7) The personal representative may convey the secured property to
20 the creditor in consideration of the release of the security and satisfaction
21 or partial satisfaction of the claim.

22 **Section 147. Claims on debts not due.** A claim on a debt not due,
23 whether or not the creditor holds security therefor, may be presented as
24 a claim on a debt due. If the claim is allowed, allowance shall be in an
25 amount equal to the value of the debt on the date of allowance. The
26 creditor, after allowance of the claim, may withdraw the claim without
27 prejudice to his other remedies. Payment on the basis of the amount
28 allowed discharges the debt and the security, if any, held by the creditor
29 therefor.

30 **Section 148. Claims on contingent and unliquidated debts.** (1) A claim
31 on a contingent or unliquidated debt shall be presented as any other claim.

32 (2) If the debt becomes absolute or liquidated before distribution of
33 the estate, the claim shall be paid in the same manner as a claim on an
34 absolute or liquidated debt.

1 (3) If the debt does not become absolute or liquidated before distri-
2 bution of the estate, the court shall provide for payment of the claim by
3 any of the following methods:

4 (a) The creditor and personal representative may determine, by agree-
5 ment, arbitration or compromise, the value of the debt, and upon approval
6 thereof by the court, the claim may be allowed and paid in the same
7 manner as a claim on an absolute or liquidated debt.

8 (b) The court may order the personal representative to make distri-
9 bution of the estate, but to retain sufficient funds to pay the claim if and
10 when the debt becomes absolute or liquidated. The estate may not be
11 kept open for this purpose more than two years after distribution of the
12 remainder of the estate. If the debt does not become absolute or liquidated
13 within that time, the funds retained, after payment therefrom of any
14 expenses accruing during that time, shall be distributed to the distributees.

15 (c) The court may order the personal representative to make distri-
16 bution of the estate as though the claim did not exist.

17 (d) If after distribution under paragraph (b) or (c) of this subsection
18 the debt becomes absolute or liquidated, the distributees are liable to the
19 creditor to the extent of the estate received by them. Payment of the debt
20 may be arranged by creating a trust, giving a mortgage, securing a bond
21 from a distributee or by such other method as the court may order.

22 **Section 149. Compromise of claims.** The personal representative may
23 compromise a claim against the estate of a decedent.

24 **Section 150. Claims of personal representative.** A claim of a personal
25 representative shall be filed with the clerk of the court within the time
26 required by law for presentment of claims. Upon application by the per-
27 sonal representative or by any interested person the claim may be con-
28 sidered by the court on the hearing of the final account of the personal
29 representative.

30 **Section 151. Payment of claims.** Upon the expiration of four months
31 after the date of the first publication of notice to interested persons, the
32 personal representative, after making provision for support of spouse and
33 children ordered by the court, for expenses of administration and for claims
34 already presented which have not been allowed or allowance of which

1 has been appealed, shall proceed to pay the claims presented within four
2 months after the date of the first publication of notice to interested per-
3 sons and allowed against the estate, in the order of priority prescribed by
4 section 152 of this Act. After payment of those claims, claims presented
5 after the four-month period shall be paid in the same order.

6 **Section 152. Order of payment of expenses and claims.** (1) If the ap-
7 plicable assets of the estate are insufficient to pay all expenses and claims
8 in full, the personal representative shall make payment in the following
9 order:

10 (a) Support of spouse and children, subject to the limitations imposed
11 by section 109 of this Act.

12 (b) Expenses of administration.

13 (c) Expenses of a plain and decent funeral and disposition of the
14 remains of the decedent.

15 (d) Debts and taxes with preference under federal law.

16 (e) Reasonable and necessary medical and hospital expenses of the last
17 illness of the decedent, including compensation of persons attending him.

18 (f) Taxes with preference under the laws of this state that are due and
19 payable while possession of the estate of the decedent is retained by the
20 personal representative.

21 (g) Debts owed employes of the decedent for labor performed within 90
22 days immediately preceding the date of death of the decedent.

23 (h) The claim of the State Public Welfare Commission for the net
24 amount of public assistance, as defined in ORS 411.010, paid to or for the
25 decedent, and the claim of the Oregon State Board of Control for care and
26 maintenance of any decedent who was at a state institution to the extent
27 provided in ORS 179.610 to 179.770.

28 (i) All other claims against the estate.

29 (2) If the applicable assets of the estate are insufficient to pay in full
30 all expenses or claims of any one class specified in subsection (1) of this
31 section, each expense or claim of that class shall be paid only in proportion
32 to the amount thereof.

33 **Section 153. Allowance and disallowance of claims.** (1) A claim pre-
34 sented to the personal representative shall be considered allowed as pre-

1 sented unless within 60 days after the date of presentment of the claim the
2 personal representative mails or delivers a notice of disallowance of the
3 claim in whole or in part to the claimant and, if any, his attorney. The
4 personal representative shall file in the estate proceeding the claim as
5 presented and a copy of the notice of disallowance.

6 (2) A notice of disallowance of a claim shall inform the claimant that
7 the claim has been disallowed in whole or in part and, to the extent dis-
8 allowed, will be barred unless the claimant proceeds as provided in section
9 154 of this Act.

10 (3) The personal representative may rescind his previous allowance
11 of an unpaid claim, if the claim was allowed because of error, misinforma-
12 tion or excusable neglect. Not less than 30 days before the date of the filing
13 of the final account the personal representative shall give notice of rescis-
14 sion of his previous allowance of a claim to the claimant and, if any, his
15 attorney in the same manner and containing the same information as a
16 notice of disallowance.

17 **Section 154. Procedure by claimant on disallowance of claim.** (1) If the
18 personal representative disallows a claim in whole or in part, the claimant,
19 within 30 days after the date of mailing or delivery of the notice of dis-
20 allowance, may either:

21 (a) File in the estate proceeding a request for summary determination
22 of the claim by the probate court, with proof of service of a copy of the
23 request upon the personal representative or his attorney; or

24 (b) Commence a separate action against the personal representative on
25 the claim in any court of competent jurisdiction. The action shall proceed
26 and be tried as any other action.

27 (2) If the claimant fails to request a summary determination or fails to
28 commence a separate action as provided in subsection (1) of this section,
29 the claim, to the extent disallowed by the personal representative, is barred.

30 **Section 155. Separate action required by personal representative.** If the
31 claimant files a request for summary determination of the claim as pro-
32 vided in section 154 of this Act, the personal representative, within 30 days
33 after the date of service of a copy of the request upon the personal repre-
34 sentative or his attorney, may notify the claimant in writing that if he

1 desires to prove the claim he must commence a separate action against the
2 personal representative on the claim within 60 days after the date of
3 receipt of such notice. If the claimant fails to commence a separate action
4 within 60 days after the date of receipt of the notice, the claim, to the
5 extent disallowed by the personal representative, is barred.

6 **Section 156. Summary determination procedure.** In a proceeding for
7 summary determination by the probate court of a claim disallowed in whole
8 or in part by the personal representative:

9 (1) The personal representative shall move or plead to the claim as
10 though the claim were a complaint filed in an action.

11 (2) The court shall hear the matter without a jury, after notice to the
12 claimant and personal representative. Upon the hearing the court shall
13 determine the claim in a summary manner and shall make an order allow-
14 ing or disallowing the claim in whole or in part.

15 (3) No appeal may be taken from the order of the court made upon the
16 summary determination.

17 **Section 157. Interested persons heard in summary determination or**
18 **separate action.** Any interested person may be heard in a proceeding for
19 summary determination by the probate court of a claim, and may intervene
20 in a separate action against the personal representative on the claim.

21 **Section 158. Creditor may obtain order for payment.** A creditor whose
22 claim has been allowed or established by summary determination or
23 separate action, and who has not received payment within six months after
24 the date of the first publication of notice to interested persons, may apply
25 to the court for an order directing the personal representative to pay the
26 claim to the extent that funds of the estate are available for that payment.

27 **Section 159. Proof for court allowance of disallowed claim.** A claim
28 that has been disallowed by the personal representative may not be allowed
29 by any court except upon some competent, satisfactory evidence other than
30 the testimony of the claimant.

31 **Section 160. Waiver of statute of limitations.** A claim barred by the
32 statute of limitations may not be allowed by the personal representative or
33 by any court except upon the written direction or consent of those inter-
34 ested persons who would be adversely affected by allowance of the claim.

1 **Section 161. Extension of statute of limitations.** If a claim is not barred
2 by the statute of limitations on the date of death of the decedent, the claim
3 is not barred by the statute of limitations thereafter until at least one year
4 after the date of death.

5 **Part 2. Discharge of Encumbrances**

6 **Section 162. Discharge of encumbrances.** (1) As used in this section:

7 (a) "Voluntary encumbrance" means any mortgage, trust deed, security
8 agreement, pledge or public improvement assessment lien, or any lien
9 arising from labor or services performed or materials supplied or
10 furnished, or any combination thereof, upon or in respect of property.

11 (b) "Involuntary encumbrance" means any encumbrance upon prop-
12 erty other than a voluntary encumbrance.

13 (2) If property upon which an encumbrance exists on the date of the
14 death of the testator is specifically devised, the devisee takes it subject
15 to the encumbrance, and the personal representative is not required to
16 make any payment on account of the obligation secured by the encum-
17 brance, whether or not the testator was personally liable on the obligation
18 secured by the encumbrance, except as provided otherwise in the will or
19 in subsection (3) or (4) of this section.

20 (3) Unless the will provides otherwise, the devisee of specifically de-
21 vised property may require that an encumbrance thereon be fully or
22 partially discharged out of other assets of the estate not specifically de-
23 vised, if:

24 (a) The encumbrance is an involuntary encumbrance; or

25 (b) The encumbrance is a voluntary encumbrance and:

26 (A) The will specifically directs full or partial discharge of the en-
27 cumbrance out of other assets; or

28 (B) The personal representative receives rents or profits, or both, from
29 the property and the devisee requests that he apply all or part of the
30 rents or profits, or both, in full or partial discharge of the obligation
31 secured by the encumbrance, in which event the personal representative
32 shall apply the rents or profits, or both, upon principal or interest, or both,
33 owing upon the obligation, as requested; or

34 (C) Any devisee requests, in a writing signed by the devisee and

1 delivered to the personal representative, that the obligation secured by the
2 encumbrance be fully or partially discharged out of property, or the pro-
3 ceeds of the sale thereof, which otherwise would pass to the devisee.

4 (4) If a claim based upon an obligation secured by a voluntary en-
5 cumbrance upon specifically devised property is presented and paid, or if
6 specifically devised real property subject to a voluntary encumbrance is
7 redeemed, and the devisee is not entitled to exoneration pursuant to sub-
8 section (3) of this section, the personal representative has a lien upon the
9 property in the amount paid, and the lien shall be administered upon as
10 an asset of the estate.

11 (5) If property is specifically devised by a will executed before the
12 effective date of this section, and if an encumbrance upon that property
13 exists on the date of the death of the testator, the rights of the devisee of
14 that property in respect of exoneration thereof out of other assets of the
15 estate shall be determined in accordance with the law in effect on the date
16 the will was executed.

17 **Section 163. Power to redeem estate property.** Unless otherwise pro-
18 vided by the will, the personal representative may redeem property of the
19 estate sold on foreclosure of mortgage or upon execution if it appears that
20 the redemption would be for the benefit of the estate and would not be
21 prejudicial to creditors.

22 **Section 164. Encumbered assets; powers of personal representative.**
23 When any assets of the estate are encumbered by an involuntary or volun-
24 tary encumbrance, the personal representative may discharge the encum-
25 brance or any part thereof, renew or extend any obligation secured by the
26 encumbrance or convey or transfer the assets to the creditor in satisfaction
27 of his lien, in whole or in part, whether or not the holder of the encum-
28 brance has filed a claim, if it appears to be for the best interest of the estate.
29 Discharge of an encumbrance shall not increase the share of the distributee
30 entitled to the encumbered assets unless the distributee is entitled to exon-
31 eration under subsection (3) of section 162 of this Act.

32 **Part 3. Actions and Suits**

33 Section 165. ORS 121.020 is amended to read:

34 121.020. **Survival of causes of action.** All causes of action *or suit*, by

1 one person against another, ~~[whether arising on contract or otherwise,]~~ sur-
2 vive to the personal ~~[representatives]~~ *representative* of the former and
3 against the personal ~~[representatives]~~ *representative* of the latter. ~~[The~~
4 ~~executors or administrators may maintain an action thereon against the party~~
5 ~~against whom the cause of action accrued, or after his death against his personal~~
6 ~~representatives.]~~

7 **Section 166. Continuation of action without claim presentation.** An
8 action against a decedent commenced before and pending on the date of his
9 death may be continued as provided in paragraph (b) of subsection (2) of
10 ORS 13.080 without presentation of a claim against the estate of the
11 decedent.

12 Section 167. ORS 121.090 is amended to read:

13 **121.090. Action not to be commenced until claim presented and dis-**
14 **allowed; liability on claim presented after four months from notice.** ~~[An]~~
15 ~~No action against [an executor or administrator] a personal representative~~
16 ~~shall [not] be commenced until the claim of the plaintiff has been [duly]~~
17 ~~presented to the [executor or administrator] personal representative[,] and~~
18 ~~by him [rejected] disallowed.~~ If the claim is presented after the expiration
19 of ~~[the period of six] four months [from and] after the date of the [published~~
20 ~~notice of his appointment] first publication of notice to interested persons,~~
21 ~~the [executor or administrator] personal representative, in an action there-~~
22 ~~for, is liable only to the extent of the assets in his hands at the time the~~
23 ~~summons is served upon him and allocable to the payment of [such] the~~
24 ~~claim [under and] pursuant to [the provisions of ORS 116.510] sections 151~~
25 ~~and 152 of this 1969 Act.~~

26 **ARTICLE VI. ACCOUNTING, DISTRIBUTION AND CLOSING**

27 **Part 1. Allocation of Income**

28 **Section 168. Allocation of income.** Unless the will of the decedent
29 otherwise provides, income from the assets of the estate of a testate dece-
30 dent received after the death of the decedent and before final distribution,
31 including income realized from property that is sold or otherwise expended
32 for the purpose of discharging expenses of administration, claims and
33 inheritance and estate taxes, shall be determined in accordance with the

1 rules applicable to a trustee under ORS 129.010 to 129.140 and distributed
2 as follows:

3 (1) To specific devisees, the income received from the property devised
4 to them respectively, less the taxes, ordinary repairs and other expenses
5 incurred in the management and operation of the property, any interest
6 paid during the period of administration on account of such property and
7 an appropriate portion of taxes imposed on income, excluding taxes on
8 capital gains, that are paid from the estate during the period of administra-
9 tion.

10 (2) To all other devisees, except devisees of pecuniary devises that are
11 not in trust and that do not qualify for the marital deduction provided for
12 in section 2056 of the Internal Revenue Code of 1954 (26 U.S.C. 2056), as
13 amended and in effect on January 1, 1969, the remaining income in propor-
14 tion to their respective interests in the assets of the estate that have not
15 been distributed to them or expended for the payment of inheritance or
16 estate taxes charged against their particular shares of the estate, computed
17 at the time of each such distribution on the basis of inventory values. As
18 used in this subsection, "remaining income" means the total income from
19 all property that is not specifically devised, less the taxes, ordinary repairs
20 and other expenses incurred in the management and operation of all such
21 property from which the estate is entitled to income, any interest paid dur-
22 ing the period of administration on account of such property, any interest
23 paid on general pecuniary devises and the taxes imposed on income, exclud-
24 ing taxes on capital gains, that are paid from the estate during the period
25 of administration and that are not charged against the property specifically
26 devised.

27 (3) Income received during the period of administration under this
28 section and distributed to a trustee shall be treated as income of the trust.

29

Part 2. Partial Distribution

30 **Section 169. Petition and order for partial distribution.** Upon petition
31 by the personal representative or other interested person, and after such
32 notice and hearing as the court may prescribe, the court may order the
33 personal representative to distribute, prior to final settlement and distribu-

1 tion, property of the estate to the person or persons who would be entitled
2 to the property under the will or under intestate succession on final distri-
3 bution, if the court finds that:

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

6 (2) After the distribution sufficient assets will remain to pay support of
7 spouse and children, expenses of administration, unpaid claims and all
8 known unpaid creditors of the decedent or of the estate; and

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

11 **Section 170. Undertaking of distributee.** The court may require a bond
12 or other security of any distributee for the protection of creditors and other
13 interested persons who might suffer loss or injury because of the distribu-
14 tion of property under section 169 of this Act.

15 **Section 171. Discharge of personal representative.** The distribution of
16 property in accordance with the order of the court under section 169 of this
17 Act is a full discharge of the personal representative in respect to all
18 property embraced in the order, except as otherwise provided in sections
19 1 to 212 of this Act.

20 **Section 172. Petition and order for refund by distributee.** If, after the
21 distribution of property under section 169 of this Act, it appears that all or
22 any part of the property distributed is required for the payment of claims
23 and expenses of administration, including determined and undetermined
24 state and federal tax liability, the personal representative shall petition the
25 court to order the return of the property. Notice of the hearing on the
26 petition shall be given as provided in section 13 of this Act. Upon the hear-
27 ing the court may order the distributee to return the property distributed
28 or any part thereof, or to pay its value as of the time of distribution, and
29 may specify the time within which the return or payment must be made.
30 If the property is not returned or the payment is not made within the time
31 ordered, the person failing to return the property or pay the value may be
32 adjudged in contempt of court and judgment may be entered against him
33 and his sureties, if any.

1 **Part 3. Accounting and Distribution**

2 **Section 173. Liability of personal representative.** A personal represent-
3 ative may be liable for and is chargeable in his accounts with:

4 (1) All of the estate of the decedent that comes into his possession at
5 any time, including the income therefrom.

6 (2) All property not a part of the estate if:

7 (a) He has commingled the property with the assets of the estate; or

8 (b) The property was received under a duty imposed on him by law in
9 the capacity of personal representative.

10 (3) Any loss to the estate arising from:

11 (a) Neglect or unreasonable delay in collecting the assets of the estate.

12 (b) Neglect in paying over money or delivering property of the estate.

13 (c) Failure to pay taxes as required by law or to close the estate within
14 a reasonable time.

15 (d) Embezzlement or commingling of the assets of the estate with other
16 property.

17 (e) Unauthorized self-dealing.

18 (f) Wrongful acts or omissions of his co-personal representatives that
19 he could have prevented by the exercise of ordinary care.

20 (g) Any other negligent or wilful act or nonfeasance in his administra-
21 tion of the estate by which loss to the estate arises.

22 **Section 174. Nonliability of personal representative.** A personal rep-
23 resentative is not liable for or chargeable in his accounts with:

24 (1) Debts due the decedent or other assets of the estate that remain
25 uncollected without his fault.

26 (2) Loss by the decrease in value or destruction of property of the
27 estate if the loss is caused without his fault.

28 **Section 175. Accounting by personal representative.** (1) A personal
29 representative shall make and file in the estate proceeding a verified
30 account of his administration:

31 (a) Unless the court orders otherwise, annually within 30 days after
32 the anniversary date of his appointment.

33 (b) Within 30 days after the date of his removal or resignation or the
34 revocation of his letters.

1 (c) When the estate is ready for final settlement and distribution.

2 (d) At such other times as the court may order.

3 (2) Each account shall include the following information:

4 (a) The period of time covered by the account.

5 (b) The total value of the property with which the personal representa-
6 tive is chargeable according to the inventory, or, if there was a prior
7 account, the amount of the balance of the prior account.

8 (c) All money and property received during the period covered by the
9 account.

10 (d) All disbursements made during the period covered by the account.
11 Vouchers for disbursements shall accompany the account, unless otherwise
12 provided by order or rule of the court.

13 (e) The money and property of the estate on hand.

14 (f) Such other information as the personal representative considers
15 necessary to show the condition of the affairs of the estate or as the court
16 may require.

17 (3) When the estate is ready for final settlement and distribution, the
18 account shall also include:

19 (a) A statement that all Oregon income, inheritance and personal
20 property taxes, if any, have been paid, or if not so paid, that payment of
21 those taxes has been secured by bond, deposit or otherwise.

22 (b) A petition for a decree authorizing the personal representative to
23 distribute the estate to the persons and in the portions specified therein.

24 (4) If the distributees consent thereto in writing and all creditors of
25 the estate have been paid in full, the personal representative, in lieu of the
26 final account otherwise required by this section, may file as his final
27 account a verified statement that includes the following:

28 (a) The period of time covered by the account.

29 (b) A statement that all creditors have been paid in full.

30 (c) The statement and petition referred to in subsection (3) of this
31 section.

32 **Section 176. Notice for filing objections to final account and petition**
33 **for distribution.** (1) Upon filing the final account and petition for decree
34 of distribution, the personal representative shall fix a time for filing

1 objections thereto in a notice thereof. Not less than 20 days before the time
2 fixed in the notice, the personal representative shall cause a copy of the
3 notice to be mailed to:

4 (a) Each heir at his last-known address, if the decedent died intestate.

5 (b) Each devisee at his last-known address, if the decedent died testate.

6 (c) Each creditor who has not received payment in full and whose
7 claim has not otherwise been barred.

8 (d) Any other person known to the personal representative to have or
9 to claim an interest in the estate being distributed.

10 (2) The notice need not be mailed to the personal representative.

11 (3) Proof of the mailing to those persons entitled to notice shall be made
12 by affidavit and filed in the estate proceeding at or before approval of the
13 final account.

14 (4) If the State Public Welfare Commission or its authorized agent has
15 presented a claim under ORS chapters 411 to 417, or the Oregon State
16 Board of Control or its authorized agent has presented a claim under
17 subsection (3) of ORS 179.620, and the claim has not been settled or paid
18 in full, the personal representative shall cause to be mailed to the commis-
19 sion or board a copy of the final account at the same time, and shall make
20 proof of the mailing in the same manner, as the notice provided for in this
21 section.

22 **Section 177. Objections to final account and petition.** Any person en-
23 titled to notice under section 176 of this Act may, within the time fixed
24 for the filing, file in the estate proceeding his objections to the final account
25 and petition for distribution, specifying the particulars of the objections.
26 Upon the filing of objections the court shall fix the time for hearing
27 thereon.

28 **Section 178. Decree of final distribution.** (1) If no objections to the final
29 account and petition for distribution are filed, or if objections are filed,
30 upon the hearing, the court shall give its decree of final distribution. In its
31 decree the court shall designate the persons in whom title to the estate
32 available for distribution is vested and the portion of the estate or property
33 to which each is entitled under the will, by agreement approved by the

1 court or pursuant to intestate succession. The decree shall also contain any
2 findings of the court in respect to:

3 (a) Advancements.

4 (b) Election against will by the surviving spouse.

5 (c) Renunciation.

6 (d) Lapse.

7 (e) Adjudicated controversies.

8 (f) Partial distribution, which shall be confirmed or modified.

9 (g) Retainer.

10 (h) Claims for which a special fund is set aside, and the amount set
11 aside.

12 (i) Contingent claims that have been allowed and are still unpaid.

13 (j) Approval of the final account in whole or in part.

14 (2) The personal representative is not entitled to approval of his final
15 account until Oregon income, inheritance and personal property taxes, if
16 any, have been paid and appropriate receipts, releases and clearances
17 therefor have been filed, or until payment of those taxes has been secured
18 by bond, deposit or otherwise.

19 (3) If, by agreement approved by the court, property is distributed to
20 persons in whom title is vested by the decree of final distribution otherwise
21 than as provided by the will or pursuant to intestate succession, the decree
22 operates as a transfer of the property between those persons.

23 (4) The decree of final distribution is a conclusive determination of the
24 persons who are the successors in interest to the estate and of the extent
25 and character of their interest therein, subject only to the right of appeal
26 and the power of the court to vacate the decree.

27 **Section 179. Effect of approval of final account.** To the extent that the
28 final account is approved, the personal representative and his surety,
29 subject to the right of appeal, to the power of the court to vacate its final
30 orders and to the provisions of section 188 of this Act, are relieved from
31 liability for the administration of his trust. The court may disapprove the
32 account in whole or in part, surcharge the personal representative for any
33 loss caused by any breach of duty and deny in whole or in part his right
34 to receive compensation.

1 **Section 180. Distribution; order in which assets appropriated; abate-**
2 **ment.** (1) If the will expresses an order of abatement, or the testamentary
3 plan or the express or implied purpose of the devise would be defeated by
4 the order of abatement stated in subsection (2) of this section, the shares
5 of the distributees abate as may be found necessary to give effect to the
6 intention of the testator.

7 (2) Except as provided in section 54 of this Act as to the shares of
8 pretermitted children, and in section 112 of this Act as to the share of the
9 surviving spouse who elects to take against the will, shares of distributees
10 abate without any preference or priority as between real and personal
11 property in the following order:

12 (a) Property not disposed of by the will.

13 (b) Residuary devises.

14 (c) General devises.

15 (d) Specific devises.

16 (3) A general devise charged on any specific property or fund is con-
17 sidered, for purposes of abatement, property specifically devised to the
18 extent of the value of the thing on which it is charged. Upon the failure
19 or insufficiency of the thing on which it is charged, it is considered a
20 general devise to the extent of the failure or insufficiency.

21 (4) Abatement within each classification is in proportion to the amounts
22 of property each of the distributees would have received had full distribu-
23 tion of the property been made in accordance with the terms of the will.

24 (5) Persons to whom the will gives tangible personal property not used
25 in trade, agriculture or other business are not required to contribute from
26 that property unless the particular devise forms a substantial amount of the
27 total estate and the court specifically orders contribution because of the
28 devise.

29 (6) When the subject matter of a preferred devise is sold or used inci-
30 dent to administration, abatement shall be achieved by appropriate adjust-
31 ments in, or contribution from, other interests in the remaining assets.

32 **Section 181. Interest on pecuniary devises.** General pecuniary devises
33 not entitled to a share of income under subsection (2) of section 168 of this
34 Act bear interest payable from the residuary estate at the rate of five

1 percent per annum for a period beginning one year after the first appoint-
 2 ment of a personal representative until payment, unless a contrary intent
 3 is evidenced in the will or unless otherwise ordered by the court.

4 **Section 182. Right of retainer.** The amount of the indebtedness of a
 5 distributee to the estate if due, or its present worth if not due, shall be
 6 offset against the interest of the distributee in the estate; but the distributee
 7 has the benefit of any defense that would be available to him in a direct
 8 proceeding for recovery of the debt. The right of offset and retainer is prior
 9 and superior to the rights of judgment creditors, heirs or assignees of the
 10 distributee.

11 **Section 183. Distribution to foreign personal representative.** When ad-
 12 ministration of an estate in this state has been completed and the estate is
 13 in a condition to be distributed, the court, upon application by the personal
 14 representative, may authorize the delivery to the personal representative
 15 of an estate of a decedent pending in a foreign jurisdiction of such property
 16 as the court finds appropriate for the payment of debts, taxes or other
 17 charges or for distribution to the distributees of the estate in the foreign
 18 jurisdiction.

19 Section 184. ORS 117.680 is amended to read:

20 117.680. **Compensation of personal representative.** (1) *Upon application*
 21 *to the court a personal representative is entitled to receive compensation*
 22 *for his services as provided in this section. If there is more than one*
 23 *personal representative acting concurrently, the compensation shall not be*
 24 *increased, but may be divided among them as they agree or as the court*
 25 *may order. The compensation ~~provided by law for an executor or adminis-~~*
 26 *trator is a commission upon the whole estate, ~~accounted for by him,~~ as*
 27 *follows:*

28 (a) *Upon the property subject to the jurisdiction of the court, including*
 29 *income and realized gains:*

30 ~~[(a)]~~ (A) Seven percent of any sum ~~up to~~ not exceeding \$1,000.

31 ~~[(b)]~~ (B) Four percent of all above \$1,000 and not exceeding \$10,000.

32 ~~[(c)]~~ (C) Three percent of all above \$10,000 and not exceeding \$50,000.

33 ~~[(d)]~~ (D) Two percent of all above \$50,000.

34 (b) *One percent of the property, exclusive of life insurance proceeds,*

1 *not subject to the jurisdiction of the court but reportable for Oregon*
2 *inheritance tax or federal estate tax purposes.*

3 (2) In all cases, such further compensation as is just and reasonable
4 may be allowed by the court ~~for judge thereof,~~ for any extraordinary and
5 unusual services not ordinarily required of ~~an executor or administrator~~
6 *a personal representative* in the discharge of his trust.

7 (3) *When a decedent by his will has made special provision for the*
8 *compensation of a personal representative, the personal representative is*
9 *not entitled to any other compensation for his services unless prior to*
10 *his appointment he signs and files with the clerk of the court a written*
11 *renunciation of the compensation provided by the will.*

12 **Section 185. Expenses of personal representative.** A personal represent-
13 ative shall be allowed in the settlement of his final account all necessary
14 expenses incurred in the care, management and settlement of the estate,
15 including reasonable fees of appraisers, attorneys and other qualified per-
16 sons employed by him. A personal representative who defends or prose-
17 cutes any proceeding in good faith and with just cause, whether successful
18 or not, is entitled to receive from the estate his necessary expenses and
19 disbursements, including reasonable attorney fees, in the proceeding.

20 **Section 186. Order of escheat.** If it appears to the court, at any time
21 after the expiration of four months after the date of the first publication
22 of notice to interested persons, that there is no known person to take by
23 descent the net intestate estate, the court shall order that the estate
24 escheat to the State of Oregon and that the whole of the estate, after
25 payment of claims, taxes and expenses of administration, be distributed
26 to the Division of State Lands. There shall be no further proceeding in
27 the administration of the estate, and the estate shall summarily be closed.

28 **Section 187. Disposition of unclaimed assets.** If a report filed in the
29 estate proceeding by the personal representative not less than 30 days
30 after the date of entry of the decree of distribution shows that payment
31 or delivery of property in his possession or under his control cannot be
32 made to a distributee entitled thereto, either because the distributee
33 refuses to accept the property or because he cannot be found, the court
34 may direct the personal representative to pay or deliver the property to

1 the Division of State Lands, to be placed in the escheat funds of the state.
2 The personal representative shall take the receipt of the Division of
3 State Lands stating from whom the property was received, a description
4 of the property and the name of the person entitled to the property. The
5 person entitled thereto may apply for and recover the property in the
6 manner provided for recovery of escheat funds.

7 **Section 188. Discharge of personal representative.** Upon the filing of
8 receipts or other evidence satisfactory to the court that distribution has
9 been made as ordered in the final decree, the court shall enter an order of
10 discharge. The discharge so entered operates as a release of the personal
11 representative from further duties and as a bar to any action against the
12 personal representative and his surety. The court may, in its discretion
13 and upon such terms as may be just, within one year after entry of the
14 order of discharge, permit an action to be brought against the personal
15 representative and his surety if the order of discharge was taken through
16 fraud or misrepresentation of the personal representative or his surety or
17 through the mistake, inadvertence, surprise or excusable neglect of the
18 claimant.

19 **Section 189. Recording of final decree and discharge order in other**
20 **counties.** If real property belonging to the estate is situated in a county
21 other than that in which the estate is being administered, the personal
22 representative shall cause to be recorded in the deed records of that
23 other county certified copies of the decree of final distribution and the
24 order discharging the personal representative.

25 **Section 190. Reopening estate of decedent.** Upon the petition of any in-
26 terested person, the court, with such notice as it may prescribe, may order
27 the estate of a decedent reopened if other property is discovered, if any
28 necessary act remains unperformed or for any other proper cause appear-
29 ing to the court. The court may reappoint the former personal repre-
30 sentative, or appoint another personal representative, to administer any
31 additional property or to perform such other acts as are considered
32 necessary. The provisions of law as to original administration apply, in
33 so far as applicable, to accomplish the purpose for which the estate is

1 reopened, but a claim that already is adjudicated or barred may not be
2 asserted in the reopened administration.

3 **Section 191. Reports by county clerks to Division of State Lands.** A
4 county clerk, upon request, shall furnish to the Director of the Division of
5 State Lands the titles of estates of decedents that have remained open for
6 more than three years and in which no heirs, or only persons whose right
7 to inherit the proceeds thereof is being contested, have appeared to claim
8 the estate.

9 Section 192. ORS 120.130 is amended to read:

10 120.130. **Recovery of escheated property.** (1) Within 10 years after
11 ~~judgment in any proceeding in the circuit court escheating real property to~~
12 ~~the state, or after the order of the court having probate jurisdiction directing~~
13 ~~the conveyance of escheated real property to the state, and in all other cases~~
14 ~~within 10 years after payment of the proceeds of escheated personal property~~
15 ~~to the State Land Board,] the entry of a decree of final distribution designa-~~
16 ~~ting title to an estate available for distribution in the Division of State~~
17 ~~Lands or an order of escheat to the state, a claim may be made for the~~
18 ~~property escheated, or the proceeds thereof, by or on behalf of a person~~
19 ~~not [a party or privy to such proceeding, nor] having actual knowledge of~~
20 ~~the [making of such judgment] decree or order [or of such payment to the~~
21 ~~State Land Board].~~

22 (2) The claim shall be made by a petition filed ~~in the court in which the~~
23 ~~escheat proceedings were held.] with the Director of the Division of State~~
24 ~~Lands. The claim is considered a contested case as provided in ORS~~
25 ~~183.310 and there is the right of judicial review as provided in ORS 183.480.~~
26 The petition shall be verified in the same manner as a complaint and
27 shall state:

28 (a) The age and place of residence of the claimant by whom or on
29 whose behalf the petition is filed;

30 (b) That the claimant lawfully is entitled to ~~such] the property or~~
31 ~~proceeds, briefly describing the [same] property or proceeds;~~

32 (c) That at the time the property escheated to the state the claimant
33 had no knowledge or notice thereof;

34 (d) That the claimant claims the property or proceeds as an heir ~~for~~

1 next of kin,] or as [executor, administrator, guardian or conservator of either,]
2 the personal representative of the estate of an heir, setting forth the rela-
3 tionship of the decedent[,], who at the time of his death was the owner
4 [of same];

5 (e) That 10 years have not elapsed since the [making of the judgment or
6 order] entry of the decree or order escheating the property to the state [, or
7 since the payment of the proceeds of the escheated estate by the administrator
8 thereof to the State Land Board pursuant to the order of the court having
9 probate jurisdiction]; and

10 (f) If the petition is not filed by the claimant himself, the status of
11 the petitioner [, whether executor, administrator, conservator or guardian].

12 [(3) The State Land Board shall be made a defendant in the proceeding,
13 and a copy of the petition must be served upon the clerk of the board at least
14 20 days before the hearing of the petition. The court must try the issue, as
15 issues are tried in civil actions, with the aid of a jury, if requested by either
16 party.]

17 [(4)] (3) If it is determined that the claimant is entitled to [such]
18 the property or the proceeds thereof, [the court must order the same to be
19 delivered] the Director of the Division of State Lands shall deliver the
20 property to the petitioner, subject to and charged with the inheritance tax
21 thereon, if any, and the costs and expenses of the state in connection there-
22 with. [The order for delivery shall be an order upon the State Land Board
23 to draw its warrant on the State Treasurer for the payment of the same, but
24 without interest or cost to the state, a certified copy of which order shall be
25 sufficient voucher for drawing such warrants.]

26 [(5)] (4) If the person whose property [or funds] escheated or reverted
27 to the state was at any time an inmate of a state institution in Oregon
28 for the [insane or feeble-minded] mentally ill or mentally deficient, the rea-
29 sonable unpaid cost, as determined by the Oregon State Board of Con-
30 trol, of the care and maintenance of the person while a ward of [such]
31 the institution, regardless of when the cost was incurred, may be deducted
32 from, or, if necessary, be offset in full against, the amount of the escheated
33 property. [or funds, and, for the purpose of collecting the charge, the State
34 Board of Control shall have the right to intervene and file an account in any

1 ~~proceeding, whether in the circuit court or before the State Land Board for~~
2 ~~the recovery of such property or funds.]~~

3 **Section 193. Payment of debt and delivery of property to foreign per-**
4 **sonal representative without local administration.** (1) Three months or
5 more after the death of a nonresident decedent, any person indebted to
6 the estate of the nonresident decedent or having possession of
7 personal property or an instrument evidencing a debt, obligation, stock
8 or chose in action belonging to the estate of the nonresident decedent may
9 make payment of the indebtedness, in whole or in part, or deliver the
10 personal property or the instrument evidencing the debt, obligation, stock
11 or chose in action to the foreign personal representative of the nonresident
12 decedent, upon a release given by the State Treasurer in respect to
13 inheritance taxes and an affidavit made by or on behalf of the foreign
14 personal representative stating:

15 (a) The date of the death of the nonresident decedent;
16 (b) That no local administration or application therefor is pending
17 in this state; and
18 (c) That the foreign personal representative is entitled to payment or
19 delivery.

20 (2) Payment or delivery made in good faith on the basis of the affi-
21 davit is a discharge of the debtor or person having possession of the per-
22 sonal property.

23 (3) Payment or delivery may not be made under this section if a resi-
24 dent creditor of the nonresident decedent has notified the debtor of the
25 nonresident decedent or the person having possession of the personal
26 property belonging to the nonresident decedent that the debt should not
27 be paid nor the property delivered to the foreign personal representa-
28 tive.

29 **Part 4. Apportionment of Estate Taxes**

30 **Section 194. Definitions.** As used in sections 194 to 202 of this Act:

31 (1) "Estate" means the gross estate of a decedent as determined for the
32 purpose of federal estate tax and the inheritance tax payable to this state
33 as provided in subsection (1) of ORS 118.100.

34 (2) "Person" means any individual, partnership, association, joint stock

1 (3) Any deduction for property previously taxed and any credit for gift
2 taxes or death taxes of a foreign country paid by the decedent or his
3 estate inures to the proportionate benefit of all persons liable to appor-
4 tionment.

5 (4) Any credit for inheritance, succession or estate taxes or taxes in
6 the nature thereof in respect to property or interests includable in the
7 estate inures to the benefit of the persons or interests chargeable with
8 the payment thereof to the extent that, or in proportion as, the credit
9 reduces the tax.

10 (5) To the extent that property passing to or in trust for a surviving
11 spouse or any charitable, public or similar gift or bequest does not con-
12 stitute an allowable deduction for purposes of the tax solely by reason of
13 an inheritance tax or other death tax imposed upon and deductible from
14 the property, the property shall not be included in the computation pro-
15 vided for in section 195 of this Act, and to that extent no apportionment
16 shall be made against the property. This subsection does not apply to any
17 case where the result will be to deprive the estate of a deduction other-
18 wise allowable under section 2053 (d) of the Internal Revenue Code of
19 1954 (26 U.S.C. 2053 (d)), as amended and in effect on January 1, 1969,
20 relating to deduction for state death taxes on transfers for public, charitable
21 or religious uses.

22 **Section 199. Income interests; life or temporary interests; charging**
23 **corpus.** No interest in income and no estate for years or for life or other
24 temporary interest in any property or fund is subject to apportionment as
25 between the temporary interest and the remainder. The tax on the tempo-
26 rary interest and the tax, if any, on the remainder is chargeable against
27 the corpus of the property or funds subject to the temporary interest and
28 remainder.

29 **Section 200. Proceedings for recovery of tax; liability of personal repre-**
30 **sentative; apportionment of amount not recovered.** Neither the personal
31 representative nor other person required to pay the tax is under any duty
32 to institute any suit or proceeding to recover from any person interested
33 in the estate the amount of the tax apportioned to that person until the
34 expiration of three months next following final determination of the tax.

1 A personal representative or other person required to pay the tax who
2 institutes the suit or proceeding within a reasonable time after the three-
3 month period is not subject to any liability or surcharge because any
4 portion of the tax apportioned to any person interested in the estate was
5 collectible at a time following the death of the decedent but thereafter
6 became uncollectible. If the personal representative or other person re-
7 quired to pay the tax cannot collect from any person interested in the
8 estate the amount of the tax apportioned to the person, the amount not
9 recoverable shall be equitably apportioned among the other persons in-
10 terested in the estate who are subject to apportionment.

11 **Section 201. Foreign personal representatives and estates.** A personal
12 representative acting in another state or a person required to pay the
13 tax who is domiciled in another state may institute an action in the courts
14 of this state and may recover a proportionate amount of the federal estate
15 tax, of an estate tax payable to another state or of a death duty due by
16 a decedent's estate to another state, from a person interested in the estate
17 who is either domiciled in this state or who owns property in this state
18 subject to attachment or execution. For the purposes of the action the
19 determination of apportionment by the court having jurisdiction of the
20 administration of the decedent's estate in the other state is prima facie
21 correct.

22 **Section 202. Construction.** Sections 194 to 202 of this Act embody the
23 Uniform Estate Tax Apportionment Act and shall be construed to ef-
24 fectuate its general purpose to make uniform the law of those states
25 which enact it.

26 **ARTICLE VII. ESTATES OF ABSENTEES**

27 **Section 203. Petition for administration of estate of absentee.** Adminis-
28 tration may be had upon the estate of an absentee. A petition for adminis-
29 tration shall state, in addition to the information required by section 83
30 of this Act:

31 (1) Whether the absentee, when last heard from, was a resident or
32 nonresident of this state.

33 (2) The address of the absentee at his last-known domicile.

34 (3) (a) That, to the best knowledge of the petitioner and after diligent

1 search, the whereabouts of the absentee is and has been unknown for a
2 period stated of not less than one year, and that the petitioner has reason
3 to believe and believes the absentee is dead; or

4 (b) That the death of the absentee at the time, location and in the
5 circumstances stated in the petition is probable, and that the fact of his
6 death is in doubt solely by reason of the failure to find or identify his
7 remains.

8 **Section 204. Setting date of hearing on petition; notice of hearing.** (1)

9 Upon the filing of a petition under section 203 of this Act, the clerk of the
10 court shall set a date for hearing not less than 30 days after the date of
11 filing the petition, unless the court sets an earlier date. A copy of the
12 notice of the hearing shall be sent:

13 (a) To the absentee at his last-known address by registered mail and
14 by postage prepaid letter to be forwarded through the United States
15 Social Security Administration to his last-known address available to that
16 agency.

17 (b) By ordinary mail to the devisees and heirs named in the petition.

18 (2) The court may order that additional notice of the hearing be
19 given by publication or by other means. Proof of mailing may be made
20 by the petitioner by affidavit.

21 **Section 205. Appointment of person to represent absentee; directing**
22 **search.** The court may appoint some disinterested person as guardian ad
23 litem to appear for the absentee at the hearing on the petition. The
24 court may direct the petitioner or the guardian ad litem to make search
25 for the absentee in any manner the court considers advisable, including
26 any or all of the following methods:

27 (1) By inserting in one or more suitable publications a notice request-
28 ing information from any person having knowledge of the whereabouts
29 of the absentee.

30 (2) By notifying officers of justice and public welfare agencies in
31 appropriate locations of the disappearance of the absentee.

32 (3) By engaging the services of an investigation agency.

33 **Section 206. Hearing on petition.** Upon the hearing on the petition the
34 court shall determine whether the absentee has died and if so, the date

1 of his death and whether he died testate or intestate. Upon finding that
2 the absentee has died, the court shall grant letters accordingly, or, in the
3 absence of that finding, may deny the petition. An appeal may be taken
4 from the order of the court.

5 **Section 207. Effect of finding of death.** The finding of the court that
6 the absentee has died is conclusive as to the estate of the absentee only if:

7 (1) Notice of the hearing on the petition was given as required by
8 section 204 of this Act; and

9 (2) The court finds that diligent search for the absentee was made.

10 **Section 208. Procedure for administering estate.** Upon the entry of the
11 order of the court finding that the absentee has died and granting letters,
12 administration of the estate of the absentee, whether testate or intestate,
13 shall proceed as provided for the estates of other decedents, except as
14 otherwise provided in sections 203 to 212 of this Act.

15 **Section 209. Revocation of letters; proceedings upon revocation.** Upon
16 proof that the absentee is alive, letters theretofore granted shall be re-
17 voked. Acts of the personal representative before revocation of letters are
18 as valid as though the letters had not been revoked, but after revocation the
19 personal representative has no further power in the capacity of personal
20 representative except as provided in this section. The personal representa-
21 tive shall pay claims allowed and proved, file an account of his administra-
22 tion for the period of time before revocation of letters and transfer any
23 property in his possession to the person for whose estate he acted or to the
24 authorized agent of that person.

25 **Section 210. Rights of absentee.** (1) If property of the absentee has
26 been sold by the personal representative, the absentee has no right, title
27 or interest in or to the property sold, but only to the proceeds realized
28 therefrom or so much thereof as may remain in the possession of the
29 personal representative upon the closing of the estate.

30 (2) The absentee, for a period of five years after distribution of the
31 estate, has a right to recover from the distributees any of the estate or
32 proceeds of the estate of the absentee that remain in their possession, but
33 there is no right of recovery from purchasers of property sold by the
34 distributees.

1 **Section 211. Substitution of parties.** After revocation of letters the
 2 absentee may be substituted as plaintiff in actions brought by the personal
 3 representative. The absentee may be substituted as defendant, upon his
 4 application or application by the plaintiff, in actions brought against the
 5 personal representative.

6 **Section 212. Costs, expenses and charges.** The costs, expenses and
 7 charges attending the granting of letters and their revocation shall be
 8 paid out of the estate of the absentee. If the petition for administration
 9 is not granted, the petitioner shall pay the costs, expenses and charges.

10 **ARTICLE VIII. INHERITANCE TAX**

11 **Section 213.** ORS 118.010 is amended to read:

12 **118.010. Property, transfers and interests subject to tax.** (1) All prop-
 13 erty, ~~tangible or intangible,~~ and any interest therein, within the juris-
 14 diction of the state, whether belonging to the inhabitants of this state or
 15 not, which passes or vests by ~~dower, curtesy,~~ survivorship, will or by
 16 statutes of inheritance of this, or any other state, or by reversion, repay-
 17 ment or settlement of any previously escheated estate or part thereof,
 18 or by the exercise or nonexercise of a general power of appointment as
 19 provided in subsection (5) of this section, or by deed, grant, bargain, sale
 20 or gift, or as an advancement or division of his or her estate, made in con-
 21 templation of the death of the grantor or bargainor or intended to take
 22 effect in possession or enjoyment after the death of the grantor, bargainor
 23 or donor to any person or persons, or to any body or bodies, politic or
 24 corporate, in trust or otherwise, or by reason whereof any person or body
 25 politic or corporate shall become beneficially entitled, in possession or ex-
 26 pectation, to any property or income thereof, is subject to tax at the rate
 27 specified in ORS 118.100, to be paid to the State Treasurer for the use
 28 of the state.

29 (2) (a) Whenever property, other than real property held by the en-
 30 tirety, is held in the joint names of two or more persons, or deposited in
 31 banks or other institutions or depositories in the joint names of two or
 32 more persons and payable to either or the survivor, upon the death of one
 33 of such persons the right of the surviving joint tenant or tenants, person
 34 or persons to the immediate ownership or possession and enjoyment of

1 such property shall be deemed a taxable transfer in the same manner as
2 though the whole property to which such transfer relates belonged
3 absolutely to the deceased joint tenant or depositor and had been devised
4 or bequeathed to the surviving joint tenant or tenants, person or persons,
5 excepting therefrom such parts thereof as may be shown to have originally
6 belonged to such surviving joint tenant or person, and never to have
7 been acquired from the decedent for less than a fair consideration in
8 money or money's worth, and if the property has been acquired from
9 decedent for less than such fair consideration, there shall be excepted
10 from the value of the property a portion equal to the amount of the con-
11 sideration so furnished.

12 (b) Upon the death of one of the tenants of real property held by the
13 entirety, the right of the surviving tenant to the immediate ownership or
14 possession and enjoyment of such property shall be deemed a taxable
15 transfer in the same manner as though one-half of the whole property
16 to which such transfer relates belonged absolutely to the deceased tenant
17 and had been devised or bequeathed to the surviving tenant.

18 (3) Any transfer of property made by a decedent by deed, grant, bar-
19 gain, sale or gift, within three years prior to the decedent's death without
20 a valuable and adequate consideration therefor, shall, unless shown to
21 the contrary, be deemed to have been made in contemplation of death
22 within the meaning of ORS 118.005 to 118.840; but no such transfer made
23 before such three-year period shall be treated as having been made in
24 contemplation of death if:

25 (a) No gift taxes were payable under ORS chapter 119 on such transfer;
26 or

27 (b) All gift taxes payable under ORS chapter 119 on such transfer
28 were paid when due.

29 (4) In the event of death of one of the tenants of property held by the
30 entirety, after sale thereof upon an executory or instalment contract, the
31 transfer of the decedent's interest in the unpaid balance owing upon such
32 contract at the time of death shall be deemed a taxable transfer in the
33 same manner as under paragraph (b) of subsection (2) of this section.

34 (5) When, after August 3, 1955, property passes or vests subject to a

1 general power of appointment, for the purposes of the taxes imposed by
2 ORS 118.005 to 118.840 by reason of the death of the donor, the donee is
3 deemed to have acquired the full taxable interest from the donor. For
4 the purposes of the taxes imposed by ORS 118.005 to 118.840 by reason of
5 the death of the donee of such a general power, an appointee, or benefi-
6 ciary who takes where the power of appointment is not exercised is deemed
7 to have acquired from the donee the full taxable interest of the property
8 which passes or vests by reason of the exercise or nonexercise of the
9 power by the donee. A general power of appointment is one which the
10 donee may exercise in favor of himself, his estate, his creditors or the
11 creditors of his estate, during lifetime or at death, and includes one under
12 which the donee may convey or transfer ownership of the property to
13 whomever he may choose. A power to consume, invade, or appropriate
14 property for the benefit of the donee which is limited by an ascertainable
15 standard relating to the health, education, support, or maintenance of the
16 donee shall not be deemed a general power of appointment.

17 Section 214. ORS 118.230 is amended to read:

18 118.230. **Lien of tax; liability for payment; limitation.** (1) Every tax
19 imposed by ORS 118.005 to 118.840 is a lien upon the property embraced in
20 any inheritance, devise, bequest, legacy or gift until paid, and the person
21 to whom such property is transferred, and the administrators, executors
22 and trustees of every estate embracing such property are personally liable
23 for such tax until its payment, to the extent of the value of such property.

24 (2) However, in all estates, excepting those of nonresident deceased, if
25 all inheritance taxes are not sued for within six years after the amount
26 of such taxes is determined by the ~~probate court and the notice of such~~
27 ~~determination has been served upon the~~ State Treasurer, as provided in
28 ~~ORS 118.690~~ section 221 of this 1969 Act, they are conclusively presumed
29 to be paid and cease to be a lien against the estate, or any part thereof,
30 except that as to property not previously reported to the State Treasurer,
31 the time limitation shall run only from the time of the reporting thereof.
32 In estates of nonresident deceased, such limitation period shall not apply
33 until one year has elapsed after official notice of the death of the non-

1 resident deceased, with description and probable value of the estate, has
2 been filed with the State Treasurer.

3 Section 215. ORS 118.280 is amended to read:

4 118.280. **Power to sell for payment of tax; tax lien transferred to pro-**
5 **ceeds when property of estate sold or mortgaged.** (1) Every executor,
6 administrator or trustee has power to sell as much of the property em-
7 braced in any inheritance, devise, bequest or legacy, as will enable him
8 to pay the tax imposed by ORS 118.005 to 118.840, in the same manner as he
9 is authorized to do for the payment of the debts of a decedent.

10 (2) Any part of the gross estate sold ~~[pursuant to an order of the court~~
11 ~~or by virtue of a power conferred by will]~~ for the payment of claims against
12 the estate and expenses of administration, for the payment of the tax
13 imposed by ORS 118.005 to 118.840, or for purposes of distribution, shall
14 be divested of the lien of such tax, and such lien shall be transferred to
15 the proceeds of such sale. A mortgage on property executed ~~[pursuant to~~
16 ~~an order of court or by virtue of a power conferred by will]~~ for payment of
17 claims against the estate and expenses of administration and for payment
18 of the tax imposed by ORS 118.005 to 118.840 shall constitute a lien upon
19 said property prior and superior to the inheritance tax lien, which in-
20 heritance tax lien shall attach to the proceeds of such mortgage.

21 Section 216. ORS 118.300 is amended to read:

22 118.300. **Deferred payment; bond.** Any person or corporation bene-
23 ficially interested in any property chargeable with a tax under ORS 118.010,
24 and executors, administrators and trustees thereof, may elect, within six
25 months from the death of the decedent, not to pay such tax until the
26 person or persons beneficially interested therein shall come into actual
27 possession or enjoyment thereof. If it is personal property, the person
28 or persons so electing shall give a bond to the state in ~~[the penalty of three~~
29 ~~times]~~ *double* the amount of ~~[such]~~ *the* tax, with such sureties as the
30 ~~[probate judge of the proper county]~~ *State Treasurer* may approve, condi-
31 tioned for the payment of such tax and interest thereon, at such time
32 and period as the person or persons beneficially interested therein may
33 come into actual possession or enjoyment of such property, which bond
34 shall be executed and filed, and a full return of such property ~~[upon oath]~~

1 made to the ~~probate court~~ *State Treasurer* within six months from the
2 date of transfer thereof, as in this section provided. Such bond must
3 be renewed every five years.

4 Section 217. ORS 118.350 is amended to read:

5 118.350. **Compromise and compounding tax; proceedings in case of**
6 **actions or suits involving title to real property.** (1) Whenever an estate,
7 devise, legacy or beneficial interest therein, charged or sought to be charged
8 with the inheritance tax is of such nature or is so disposed that the liabil-
9 ity of the same is doubtful, or the value thereof cannot with reasonable
10 certainty be ascertained under the provisions of law, the State Treasurer
11 may, with the written approval of the Attorney General setting forth the
12 reasons therefor, compromise with the beneficiaries or representatives of
13 such ~~estates~~ *estate*, and compound the tax thereon. ~~but the settlement~~
14 ~~must be approved by the court having jurisdiction of the estate, and after such~~
15 ~~approval~~ The payment of the amount of the taxes so agreed upon shall
16 discharge the lien against the property of the estate.

17 (2) In any suit or action ~~in the circuit court of the state~~ involving the
18 title to real property ~~only~~, in which it appears, by the pleadings or other-
19 wise, that an inheritance tax is or might be payable to the State of Oregon
20 by reason of the death of any person whose estate has not been adminis-
21 tered in Oregon, ~~such circuit~~ *the court* shall direct that a copy of the
22 pleadings in such cause be served upon the State Treasurer, such service
23 to be made as summons is served in any cause in the circuit court of this
24 state. Thereupon further proceedings in the cause shall be suspended
25 until the State Treasurer has had an opportunity to appear therein, such
26 appearance to be made within the time that is required by the service
27 of summons upon a private person or corporation. The State Treasurer
28 shall appear in the cause and present the claims of the state, if any, to
29 an inheritance tax, and it is the duty of the Attorney General of the state
30 to represent the state and the State Treasurer in such proceedings, and the
31 State Treasurer may, with written approval of the Attorney General
32 setting forth the reasons therefor, compromise and compound the tax
33 claimed to be due upon the passing of such real property. Such settle-
34 ment and compromise shall be entered of record in the journal of the pro-

1 ceedings of such court. Thereafter the payment of the amount of taxes so
2 agreed upon shall discharge the inheritance tax lien against the prop-
3 erty. If a compromise is not effected, the amount of tax, if any, due upon
4 the passing of the real property shall be determined by the ~~feircuit~~ court
5 as are other questions involved in such litigation, and subject to the same
6 right of appeal to the Supreme Court. The decree of the ~~feircuit~~ court
7 or of the Supreme Court, if there is an appeal, is conclusive as to the
8 amount of taxes due upon the passing of the real property and payment
9 thereof shall discharge the lien against the property.

10 Section 218. ORS 118.640 is amended to read:

11 118.640. **Evaluating particular interests.** (1) ~~Every inheritance, devise,~~
12 ~~bequest, legacy or gift, upon which a tax is imposed under ORS 118.005 to~~
13 ~~118.840, shall be appraised at its full and true value immediately upon the~~
14 ~~death of the decedent, or as soon thereafter as may be practicable.] The personal~~
15 ~~representative of the estate of a decedent shall inventory the property~~
16 ~~of the estate as provided in section 96 of this 1969 Act; [provided, that]~~
17 ~~but when [such] an interest is contingent, defeasible or of such a nature~~
18 ~~that its [full and] true cash value cannot sooner be ascertained, [at the~~
19 ~~date of decedent's death] it shall be [appraised] determined at the time~~
20 ~~when [such] the value first becomes ascertainable, at its [full and] true~~
21 ~~cash value as of the date of decedent's death and without diminution for~~
22 ~~or on account of any valuation made or tax paid theretofore upon the~~
23 ~~particular estates upon which the devise, bequest, legacy or gift may have~~
24 ~~been limited.~~

25 (2) Whenever a gift or devise of real property which is subject to
26 inheritance tax passes to or vests in a husband and wife as tenants by the
27 entirety, the inheritance tax thereon shall be determined in the same
28 manner as though ~~[each of such tenants by the entirety took an undivided~~
29 ~~one-half of the property as tenants in common] the grantees or devisees took~~
30 ~~undivided halves of the real property as tenants in common.~~

31 (3) Whenever ~~[any] an estate or interest is so limited that it may be~~
32 ~~divested by the act or omission of the devisee or legatee, [such] the estate~~
33 ~~or interest shall be taxed as [if] though there were no possibility of such~~
34 ~~divesting.~~

1 (4) The value of ~~every~~ a limited estate, income, interest or annuity
 2 dependent upon any life or lives in being shall be determined by the
 3 rules or standards of mortality and of value used by the "Actuaries' or
 4 Combined Experience Tables," except that the rate of interest on comput-
 5 ing the present value of all ~~such~~ limited estates, incomes, interests or
 6 annuities shall be four percent per year. The value of the interest or
 7 estate remaining after ~~such~~ the limited estate, income, interest or an-
 8 nuity shall be determined by deducting the amount found to be the value
 9 of ~~such~~ the limited estate, income, interest or annuity from the value
 10 of the entire property in which ~~such~~ the limited estate, income, interest
 11 or annuity exists.

12 Section 219. ORS 118.660, as amended by section 1, chapter 111, Oregon
 13 Laws 1969 (Enrolled House Bill 1275), is amended to read:

14 **118.660. Delivery to State Treasurer of tax return and copy of inventory.**

15 (1) ~~Every~~ The executor, administrator or trustee of ~~any~~ an estate
 16 subject to an inheritance tax under the laws of this state, whether or
 17 not any such tax may be payable, ~~as soon as practicable after the appraise-~~
 18 ~~ment or reappraisement of the estate and~~ before the court authorizes any
 19 payment or distribution to the legatees or to any parties entitled to a
 20 ~~beneficiary~~ beneficial interest therein, shall deliver to the State Treas-
 21 urer a copy of each inventory ~~and appraisement~~ duly certified to be such
 22 by the clerk of the court, or by the executor, administrator or trustee per-
 23 sonally or by his attorney of record ~~and shall file with the clerk proof~~
 24 ~~of such delivery~~.

25 (2) ~~Every such~~ The executor, administrator or trustee ~~or, if none is~~
 26 ~~appointed, an heir or other representative of the decedent,~~ shall, as soon
 27 as practicable, ~~make and~~ file with the State Treasurer a ~~report under the~~
 28 ~~penalties for false swearing and~~ return in a form to be prescribed by the
 29 State Treasurer, which ~~report~~ shall include a statement of the name, age
 30 and relationship to the deceased of each person entitled to any ~~beneficiary~~
 31 beneficial interest in the estate, together with the ~~full and~~ true cash value
 32 of ~~such~~ the interest, a list and description of all transfers of property, in
 33 trust or otherwise, made by the decedent in his lifetime as a division or
 34 distribution of his estate in contemplation of death or intended to take

1 effect at or after his death , ~~and~~ such other data as the State Treasurer
2 deems appropriate in the determination of inheritance taxes *and a compu-*
3 *tation of any tax payable.* ~~[If the estate of the decedent is subject to a tax,~~
4 ~~whether or not any such tax may be payable, but the estate will not be probated~~
5 ~~or administered, an heir of decedent, acceptable to the State Treasurer, shall~~
6 ~~file with the State Treasurer a like report, containing also therein a description~~
7 ~~of the assets and the properties of the estate, the full and true values thereof,~~
8 ~~and the items that may properly be deducted in the determination of inheritance~~
9 ~~taxes due therefrom as provided in ORS 118.070.]~~

10 **Section 220.** Section 221 of this Act is added to and made a part of
11 ORS 118.005 to 118.840.

12 **Section 221. Determination of tax by State Treasurer; notice.** The State
13 Treasurer shall determine the amount of the tax. If he determines that
14 there is a deficiency in the amount of the tax as computed in the return,
15 he shall give notice of the deficiency to the person who filed the return
16 and to the attorney for that person.

17 Section 222. ORS 118.700 is amended to read:

18 **118.700. Filing objection to determination of tax; redetermination by**
19 **court; appeal.** (1) Within 60 days after *notice* of the ~~[assessment and]~~ de-
20 termination by the ~~[probate court]~~ *State Treasurer* of any tax imposed by
21 ORS 118.005 to 118.840, or within such additional time thereafter as may
22 be fixed by written stipulation of the parties or as may be allowed by
23 the court, ~~[the State Treasurer, or]~~ any person interested therein ~~[,]~~ may
24 file with the court ~~[objections]~~ *objection* thereto in writing, and pray for
25 a ~~[reassessment and]~~ redetermination of ~~[such]~~ *the* tax.

26 (2) Upon ~~[any]~~ objection being so filed, the ~~[probate]~~ court shall appoint
27 a time for the hearing thereof, and cause notice of ~~[such]~~ *the* hearing to
28 be given by mail to the State Treasurer, and to all *other* parties inter-
29 ested, at least 10 days before the hearing ~~[thereof]~~. At the time appointed
30 in ~~[such]~~ *the* notice, the court shall proceed to hear ~~[such]~~ *the* objection
31 ~~[,]~~ and any evidence which may be offered in support thereof or opposi-
32 tion thereto. ~~[All evidence heard on such reappraisement shall be reduced~~
33 ~~to writing and filed with the clerk of court. If, after such hearing, the court~~
34 ~~finds the amount at which the property is appraised is its full and true value,~~

1 and the appraisalment was made fairly and in good faith, it shall approve
 2 such appraisalment; but if it finds that the appraisalment was made at a greater
 3 or smaller sum than the full and true value of the property, or that the same
 4 was not made fairly or in good faith, it shall, by order, set aside the appraise-
 5 ment and determine such value. If, upon the hearing, the court finds that
 6 the determination by the State Treasurer of any tax imposed by ORS
 7 118.005 to 118.840 was erroneous, the court shall, by order, redetermine the
 8 tax.

9 (3) The State Treasurer ~~[,]~~ or anyone interested in the ~~property ap-~~
 10 ~~praised, may appeal to the circuit court from the judgment, order, and decree~~
 11 ~~of the county court in the premises, and] determination of the tax may appeal~~
 12 ~~[to the Supreme Court] from the order [, judgment, or decree] of the [circuit]~~
 13 ~~court in the [same] manner [as is] provided by law [for appeals from the~~
 14 ~~county and circuit courts]. All appeals taken from the [judgment or decree]~~
 15 ~~order of the court shall be had and tried on appeal in the same manner~~
 16 ~~and with like effect as appeals in suits in equity are heard and tried.~~

17 Section 223. ORS 118.990 is amended to read:

18 118.990. **Penalties.** ~~[(1) Any person in] Possession or control of any~~
 19 ~~record, file or paper containing information relating to the estate of a~~
 20 ~~deceased person or any interest therein and failure, neglect or refusal [who~~
 21 ~~fails, neglects or refuses] to exhibit the same upon the written request of the~~
 22 ~~State Treasurer or his representative, specifying and describing such~~
 23 ~~instrument, by any person is a misdemeanor. [shall be punished by imprison-~~
 24 ~~ment in the county jail not more than one year or by a fine not exceeding \$500.]~~

25 ~~[(2) Violation of subsection (2) of ORS 118.650 is punishable, upon con-~~
 26 ~~viction in any court having jurisdiction of misdemeanors, by a fine of not more~~
 27 ~~than \$500, and imprisonment in the county jail not exceeding 90 days. In addi-~~
 28 ~~tion thereto, the probate judge shall dismiss the appraiser from service.]~~

29 **ARTICLE IX. GUARDIANSHIPS AND CONSERVATORSHIPS**

30 **Part 1. Guardianships**

31 Section 224. ORS 126.006 is amended to read:

32 126.006. **Definitions for ORS 126.006 to 126.565.** As used in ORS 126.006
 33 to 126.565, unless the context requires otherwise:

34 (1) "Court" means any court having probate jurisdiction or a judge
 thereof.

1 (2) "Guardian" means any person appointed under ORS 126.006 to
2 126.565 as guardian of the person, guardian of the estate, or both, for any
3 other person.

4 (3) "Incompetent" includes any person who, by reason of mental illness,
5 mental deficiency, advanced age, disease, weakness of mind or any other
6 cause, is unable unassisted to properly manage and take care of himself
7 or his property.

8 (4) "Institution" includes any public or private institution located within
9 or outside this state.

10 (5) "Minor" means any person who has not arrived at the age of ma-
11 jority as provided in ORS 109.510 or 109.520.

12 (6) "*Missing person*" means any person whose whereabouts is unknown
13 and whose absence is unexplained or who is known to be unable to return
14 to his usual place of abode and is unable to manage his affairs during his
15 absence.

16 ~~+(6)+~~ (7) "Spendthrift" includes any person who, by excessive drink-
17 ing, idleness, gaming or debauchery of any kind, spends, wastes or lessens
18 his estate so as to expose or likely to expose himself or his family to want
19 or suffering, or to cause any public authority or agency to be charged
20 for any expense of the support of himself or his family.

21 ~~+(7)+~~ (8) "Ward" means any person for whom a guardian has been
22 appointed.

23 Section 225. ORS 126.106 is amended to read:

24 126.106. **Jurisdiction to appoint guardians.** Any court having probate
25 jurisdiction may appoint:

26 (1) Guardians of the person, guardians of the estate, or both, for resi-
27 dent incompetents or resident minors.

28 (2) Guardians of the person or guardians of the person and estate for
29 incompetents or minors who, although not residents of this state, are
30 physically present in this state and whose welfare requires such appoint-
31 ment.

32 (3) Guardians of the estate for resident spendthrifts.

33 (4) Guardians of the estate for nonresident incompetents, nonresident
34 minors or nonresident spendthrifts who have property within this state.

1 (5) *Guardians of the estate for missing persons who are residents of*
2 *this state or have property within this state.*

3 Section 226. ORS 126.111 is amended to read:

4 126.111. **Venue for appointment of guardians.** The venue for the ap-
5 pointment of a guardian ~~shall be~~ is:

6 (1) *In the county where the proposed ward resides; ~~or~~*

7 (2) ~~If the proposed ward does not reside in this state,~~ *In any county in*
8 *which any property of the proposed ward is located ; ~~or~~*

9 (3) *In any county in which the proposed ward is physically present.*

10 Section 227. ORS 126.126 is amended to read:

11 126.126. **Petition for appointment of guardian.** Any person may file
12 with the clerk of the court a petition for the appointment of a guardian.
13 The petition shall include the following information, so far as known by
14 the petitioner:

15 (1) The name, age, residence and post-office address of the proposed
16 ward.

17 (2) Whether the proposed ward is an incompetent, minor, *missing*
18 *person* or spendthrift, and whether he is a resident or nonresident of this
19 state.

20 (3) Whether the appointment of a guardian of the person, guardian of
21 the estate, or both, is sought.

22 (4) The name, residence and post-office address of the proposed
23 guardian, and that the proposed guardian is qualified to serve as guardian.

24 (5) A general description and the probable value of the property of
25 the proposed ward and any income to which he is entitled. If any moneys
26 are paid or payable to the proposed ward by the United States through the
27 Veterans Administration, the petition shall so state.

28 (6) The name and address of any person or institution having the care,
29 custody or control of a proposed ward who is an incompetent or minor.

30 (7) The reasons why the appointment of a guardian is sought, the re-
31 lationship, if any, of the petitioner to the proposed ward and the interest,
32 if any, of the petitioner in the appointment.

33 Section 228. ORS 126.131 is amended to read:

34 126.131. **Issuance of citation.** (1) Except as otherwise provided in ORS

1 126.136, 126.141 and 126.146, the court, upon the filing of a petition under
2 ORS 126.126, shall order the issuance of a citation requiring the persons
3 or institutions referred to in subsection (2) of this section to appear and
4 show cause why a guardian should not be appointed for the proposed
5 ward.

6 (2) Citation issued under subsection (1) of this section shall be served:

7 (a) If the proposed ward is an incompetent, on any person or an of-
8 ficer of any institution having the care, custody or control of the incom-
9 petent, and on the incompetent.

10 (b) If the proposed ward is a minor, on any person or an officer of
11 any institution having the care, custody or control of the minor, and if
12 the minor is 14 years of age or older, on the minor.

13 (c) *If the proposed ward is a missing person, on the missing person and*
14 *on such other persons as the court may direct.*

15 ~~+(c)+~~ (d) If the proposed ward is a spendthrift, on the spendthrift.

16 ~~+(d)+~~ (e) If the proposed ward is receiving moneys paid or payable
17 by the United States through the Veterans Administration, on a representa-
18 tive of the Veterans Administration.

19 Section 229. ORS 126.146 is amended to read:

20 126.146. **Service of citation; appearance.** (1) The citation issued under
21 ORS 126.131 shall require the person or institution served to appear and
22 show cause *why a guardian should not be appointed for the proposed ward:*

23 (a) If served personally within the county in which the proceeding is
24 pending, within 10 days after the date of service.

25 (b) If served personally within any other county in this state, within
26 20 days after the date of service.

27 (c) If served by publication or if served personally outside this state
28 but within the United States, within four weeks after the date of first
29 publication or after the date of personal service.

30 (d) If served personally outside the United States, within six weeks
31 after the date of service.

32 (2) The citation shall be served and returned as summons is served
33 on a defendant and returned in a civil action. *If the proposed ward is*
34 *a missing person, citation shall be served on the missing person by publi-*

1 cation as summons is served by publication in a civil action, by registered
2 mail to his last-known address and by postage prepaid letter to be forwarded
3 through the United States Social Security Administration to his last-known
4 address available to that agency.

5 (3) Service of citation is not necessary on a person or an officer of an
6 institution who has signed the petition, has signed a written waiver of
7 service of citation or makes a general appearance.

8 Section 230. ORS 126.151 is amended to read:

9 126.151. **Order of appointment.** If it appears to the court that the
10 allegations of the petition are sufficient and that a guardian should be ap-
11 pointed for the proposed ward, the court shall make an order appointing a
12 guardian. The order shall specify whether the guardian appointed is
13 guardian of the person, guardian of the estate, or both; whether the ward
14 is an incompetent, minor, *missing person* or spendthrift; and whether the
15 ward is a resident or nonresident of this state. The court by order shall
16 specify the amount of the bond to be executed and filed by the guardian.

17 Section 231. ORS 126.166 is amended to read:

18 126.166. **Preferences in appointing guardians.** The parents of a minor,
19 or either of them, if qualified and suitable, shall be preferred over all
20 others for appointment as guardian of the person for the minor. Subject
21 to this preference, the court shall appoint as guardian for an incompetent,
22 minor, *missing person* or spendthrift the qualified person most suitable
23 who is willing to serve, having due regard, among other factors, to:

24 (1) Any request for the appointment as guardian for an incompetent
25 contained in a written instrument executed by the incompetent while com-
26 petent.

27 (2) Any request for the appointment as guardian for a minor child con-
28 tained in a will or other written instrument executed by a parent of the
29 minor child.

30 (3) Any request for the appointment as guardian for a minor 14 years
31 of age or older made by the minor.

32 (4) The relationship by blood or marriage of the proposed guardian
33 to the proposed ward.

1 **Section 232.** Section 233 of this Act is added to and made a part of
2 ORS 126.006 to 126.565.

3 **Section 233. Term of bond; new bond; increasing or reducing bond.**

4 (1) The bond of a guardian continues in effect until his final account is
5 approved and an order of discharge is entered, but a surety may termi-
6 nate his obligation upon notice in writing to the guardian and the court
7 specifying a date, not less than 30 days after the date of the notice, on
8 which the termination becomes effective. Before the date so specified the
9 guardian shall execute and file in the guardianship proceeding a new
10 bond, with sufficient surety or sureties, in the same amount and upon
11 the same conditions. If the guardian fails to do so, his authority as guardian
12 shall cease on the effective date of termination of the obligation of the
13 surety on his bond, the letters of guardianship shall thereupon be canceled
14 and he shall make and file his final account.

15 (2) The court may at any time increase or reduce the amount of the
16 bond required of a guardian for the protection of the ward and the estate
17 of the ward, either upon its own motion or upon the motion of the guardian
18 or any interested person.

19 **Section 234.** ORS 126.186 is amended to read:

20 **126.186. Letters of guardianship.** When a guardian has filed a bond as
21 provided in ORS 126.171, and his name, residence and post-office address
22 as provided in ORS 126.181, the court shall cause to be issued letters
23 of guardianship to the guardian. Letters of guardianship may be in the
24 following form:

25 _____
26 State of Oregon)
27) ss.
28 County of _____)

29 TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

30 KNOW YE, That on _____, 19____, the _____
31 (month) (day)
32 Court, _____ County, State of Oregon, appointed
33 _____ guardian of the _____
34 (name of guardian) (person)

1 _____ for _____,
 2 or estate or person and estate) (name of ward)
 3 a(n) _____,
 4 (incompetent ~~for~~, minor, *missing person* or spendthrift)
 5 that the named guardian has qualified and has the authority and shall
 6 perform the duties of guardian of the _____
 7 (person or estate or person and estate)
 8 for the named ward as provided by law.

9 IN TESTIMONY WHEREOF, I have hereunto subscribed my name
 10 and affixed the seal of the court at my office on _____,
 11 (month) (day)
 12 19____,

13 _____, Clerk of the Court
 14 (Seal) By _____, Deputy
 15 _____

16 Section 235. ORS 126.230 is amended to read:

17 126.230. **Inventory and appraisal of ward's property.** (1) Within 60
 18 days after the date of his appointment, or, if necessary, such further time
 19 as the court may allow, a guardian of the estate shall make and file in the
 20 guardianship proceeding a verified inventory of all the property of the
 21 ward which comes to his possession or knowledge.

22 (2) Whenever any property of the ward not mentioned in the inven-
 23 tory comes to the possession or knowledge of a guardian of the estate,
 24 he shall either make and file in the guardianship proceeding a verified
 25 supplementary inventory within 30 days after the property comes to his
 26 possession or knowledge, or include the property in his next accounting,
 27 but the court may order which of the two methods the guardian shall
 28 follow.

29 (3) The court may order all or any part of the property of the ward
 30 appraised as provided in ~~{ORS 116.420 to 116.435}~~ section 98 of this 1969 Act.

31 Section 236. ORS 126.245 is amended to read:

32 126.245. **Discovery of debts or property.** Upon the filing of a petition
 33 in the guardianship proceeding by the guardian, the ward or any other
 34 interested person, alleging that any person is indebted to the ward, or

1 has, or is suspected of having, concealed, embezzled, converted or disposed
2 of any property of the ward, or has possession or knowledge of any such
3 property or of any writing relating to such property, the court may require
4 such person to appear and answer under oath concerning the matter, and
5 proceed as provided in ~~{ORS 116.310 and 116.315}~~ section 139 of this 1969
6 Act.

7 Section 237. ORS 126.265 is amended to read:

8 126.265. **Borrowing money for ward.** A guardian of the estate, with
9 prior approval of the court by order, may borrow money for the account
10 of the ward and may mortgage or pledge any property of the ward as
11 security therefor. If the court determines that the borrowing is necessary
12 or proper, the court shall make an order approving the borrowing. The
13 order approving the borrowing may authorize one or more separate loans
14 thereunder. The order shall prescribe the maximum amount of, the
15 maximum rate of interest on and the date of final maturity of the loan or
16 loans, and shall describe the property, if any, to be mortgaged or pledged
17 to secure the loan or loans. Any part of any such loan at any time not
18 fully secured is a general charge upon the estate of the ward , *but one*
19 *who acquires an interest in any of the property of the estate for value*
20 *and without actual knowledge of the charge takes free from it.* ~~{This~~
21 ~~section does not affect the application of ORS 126.406 to 126.495, so far as~~
22 ~~they relate to mortgages; but, so far as possible, the proceedings with respect~~
23 ~~to the loan or loans may be combined with the proceedings, if any, with respect~~
24 ~~to mortgages as security therefor.}~~

25 Section 238. ORS 126.295 is amended to read:

26 126.295. **Gifts from ward's estate; expenditures for ward's relatives.** A
27 guardian of the estate, with prior approval of the court by order, may, from
28 the estate of the ward which is not necessary for the proper care, main-
29 tenance, education and support of the ward and of persons to whom the
30 ward owes a legal duty of support:

31 (1) Make reasonable gifts , *on behalf of the ward*, to charitable or
32 religious institutions ~~{on behalf of the ward}~~ *or to persons who are or have*
33 *been related to the ward by blood or marriage. If the court determines*

1 *that a gift made under this subsection shall be treated as an advancement,*
2 *the court shall so provide in the order authorizing the gift.*

3 (2) Provide for or contribute to the care, maintenance, education or
4 support of persons who are or have been related to the ward by blood or
5 marriage.

6 (3) Pay or contribute to the payment of reasonable expenses of remedial
7 care and treatment for, and reasonable funeral and burial expenses of,
8 persons who are or have been related to the ward by blood or marriage.

9 Section 239. ORS 126.338 is amended to read:

10 **126.338. Distribution of copies of accounts; court settlement of accounts.**

11 (1) Before filing any account other than his final account, a guardian of
12 the estate shall cause a copy of the account to be mailed or delivered:

13 (a) If the ward has been committed or admitted to, and not discharged
14 from, a state institution listed in ORS 426.010, 427.010 or 428.420, to the
15 Secretary of the Oregon State Board of Control and to the superintendent
16 of the institution who has presented a written request for a copy to the
17 guardian and filed a copy of the request in the guardianship proceeding
18 before the filing of the account.

19 (b) If there is a guardian of the person for the ward other than the
20 guardian of the estate, to the guardian of the person.

21 (c) If the ward is a minor 14 years of age or older or a spendthrift,
22 to the ward.

23 (d) If the ward is a minor, *a missing person* or an incompetent, to the
24 ward's spouse who is not under legal disability and to those of the ward's
25 children, parents, brothers or sisters who are not under legal disability
26 and have presented a written request for a copy to the guardian and filed
27 a copy of the request in the guardianship proceeding before the filing of
28 the account.

29 (2) A guardian of the estate shall file with each account other than his
30 final account his affidavit or other proof satisfactory to the court that
31 copies of the account have been mailed or delivered as provided in sub-
32 section (1) of this section, showing the names of the persons to whom,
33 and the addresses to or at which, the copies were mailed or delivered.

34 (3) A guardian of the estate shall cause a copy of his final account

1 to be mailed or delivered to a ward not under legal disability, to each
2 person to whom copies of other accounts are required to be mailed or de-
3 livered as provided in subsection (1) of this section, to the executor or
4 administrator of a deceased ward's estate and to a successor guardian.
5 Within 10 days after the date of the mailing or delivery, any such person
6 may make and file in the guardianship proceeding written objections to
7 the final account.

8 (4) The court, before settlement of any account, may provide for in-
9 spection of the balance of the property of the ward on hand. The court
10 shall settle each account filed by a guardian of the estate by allowing
11 or disallowing, either in whole or in part, or surcharging such account;
12 but without prejudice to objections thereto at the time and in the manner
13 that objections may be made to a final account.

14 Section 240. ORS 126.406 is amended to read:

15 126.406. **Sale or lease of ward's property; purposes.** A guardian of the
16 estate, with prior approval of the court by order, may sell ~~†, mortgage†~~ or
17 lease any of the property of the ward:

18 (1) For the purpose of paying claims against the ward, the guardian-
19 ship estate or the guardian of the estate as such.

20 (2) For the purpose of providing for the proper care, maintenance,
21 education and support of the ward and of any person to whom the ward
22 owes a legal duty of support.

23 (3) For the purpose of investing the proceeds.

24 (4) For any other purpose that is in the best interests of the ward.

25 Section 241. ORS 126.411 is amended to read:

26 126.411. **Petition for sale or lease.** A guardian of the estate may file
27 in the guardianship proceeding a petition for the sale ~~†, mortgage†~~ or lease
28 of any property of the ward. The petition shall include the following in-
29 formation, so far as known by the petitioner:

30 (1) The name, age, residence and post-office address of the ward.

31 (2) Whether the ward is an incompetent, minor, *missing person* or
32 spendthrift.

33 (3) The name and address of any person or institution having the
34 care, custody or control of a ward who is an incompetent or minor.

1 (4) A general description and the probable value of all the property
2 of the ward that has come to the possession or knowledge of the guardian
3 and not theretofore disposed of, and of all the property to which the
4 ward may be entitled upon any distribution of any estate or of any trust.

5 (5) The income being received from the property to be sold ~~† mort-~~
6 ~~gaged,†~~ or leased, from all other property of the ward and from all other
7 sources, and the application of such income.

8 (6) Such other information concerning the guardianship estate and
9 the condition of the ward as is necessary to enable the court to be fully
10 informed.

11 (7) The purpose of the proposed sale ~~† mortgage†~~ or lease, a general
12 description of the requirements for such purpose and the aggregate
13 amount needed therefor.

14 (8) A specific description of the property to be sold ~~† mortgaged†~~
15 or leased.

16 Section 242. ORS 126.416 is amended to read:

17 **126.416. Sale or lease of personal property.** Except as provided in ORS
18 126.471, if the court, upon the filing of a petition under ORS 126.411 for
19 the sale ~~† mortgage†~~ or lease of personal property, determines that the
20 sale ~~† mortgage†~~ or lease is necessary or proper for any purpose re-
21 ferred to in ORS 126.406, the court shall order the sale ~~† mortgage†~~ or
22 lease to be made subject to such terms and conditions as the court may
23 consider necessary or proper. The court may, in its discretion, order a
24 hearing upon such petition and with such notice as the court may order
25 or without notice. If the proceeds of the sale ~~† mortgage†~~ exceed \$1,000,
26 the guardian, within 15 days after the date of the sale ~~† mortgage†~~, shall
27 make and file in the guardianship proceeding a return of his proceedings
28 concerning the sale ~~† mortgage†~~, but such sale ~~† mortgage†~~ need not
29 be confirmed by the court.

30 Section 243. ORS 126.426 is amended to read:

31 **126.426. Sale or lease for more than five years of real property; issuance**
32 **of citation.** (1) Except as otherwise provided in ORS 126.431 and 126.471,
33 the court, upon the filing of a petition under ORS 126.411 for the sale
34 ~~† mortgage†~~ of real property, or the lease of real property for a term

1 exceeding five years, shall order the issuance of a citation requiring the
2 persons or institutions referred to in subsection (2) of this section to
3 appear and show cause why an order for the sale ~~+~~ ~~mortgage~~ or lease
4 should not be made.

5 (2) Citation issued under subsection (1) of this section shall be served:

6 (a) If the ward is an incompetent, on any person or an officer of any
7 institution having the care, custody or control of the incompetent, and
8 on the incompetent.

9 (b) If the ward is a minor, on any person or an officer of any institu-
10 tion having the care, custody or control of the minor, and if the minor is
11 14 years of age or older, on the minor.

12 (c) If the ward is an incompetent or minor in the care, custody or con-
13 trol of any institution, on any person paying or liable for the care and
14 maintenance of the incompetent or minor at the institution.

15 (d) *If the ward is a missing person, on the missing person and on*
16 *such other persons as the court may direct.*

17 ~~+(d)~~ (e) If the ward is a spendthrift, on the spendthrift.

18 Section 244. ORS 126.431 is amended to read:

19 126.431. **Service of citation; appearance.** (1) The citation issued under
20 ORS 126.426 shall require the person or institution served to appear and
21 show cause *why an order for the sale or lease should not be made:*

22 (a) If served personally within the county in which the proceeding is
23 pending, within 10 days after the date of service.

24 (b) If served personally within any other county in this state, within
25 20 days after the date of service.

26 (c) If served by publication or if served personally outside this state
27 but within the United States, within four weeks after the date of first
28 publication or after the date of personal service.

29 (d) If served personally outside the United States, within six weeks
30 after the date of service.

31 (2) The citation shall be served and returned as summons is served
32 on a defendant and returned in a civil action. *If the ward is a missing*
33 *person, citation shall be served on the missing person by publication as*
34 *summons is served by publication in a civil action, by registered mail to*

1 *his last-known address and by postage prepaid letter to be forwarded*
2 *through the United States Social Security Administration to his last-*
3 *known address available to that agency.*

4 (3) Service of citation is not necessary on a person or an officer of an
5 institution who has signed the petition, has signed a written waiver of
6 service of citation or makes a general appearance.

7 Section 245. ORS 126.436 is amended to read:

8 **126.436. Order for sale or lease; terms and conditions.** If it appears to
9 the court that the sale ~~[, mortgage]~~ or lease referred to in ORS 126.426 is
10 necessary or proper for any purpose referred to in ORS 126.406, the court
11 shall order the sale ~~[, mortgage]~~ or lease to be made. A ~~[mortgage]~~ sale or
12 ~~[surface]~~ lease ordered shall be made subject to such terms and conditions
13 as the court may consider necessary or proper. ~~[An order authorizing the~~
14 ~~execution of a lease or other instrument for the purpose of exploring or~~
15 ~~prospecting for and extracting, removing and disposing of oil, gas and other~~
16 ~~hydrocarbons, and all other minerals or substances, similar or dissimilar, that~~
17 ~~may be produced from a well drilled by the lessee, shall require a minimum of~~
18 ~~one-eighth royalty and shall set forth the annual rental, if any rental is required~~
19 ~~to be paid, the period of the lease which shall be for a primary term of 10 years~~
20 ~~and so long thereafter as oil, gas, other hydrocarbons or other leased substances~~
21 ~~are produced in paying quantities from the leased premises or lands pooled or~~
22 ~~unitized therewith, or mining or drilling operations are conducted on the~~
23 ~~leased premises or lands pooled or unitized therewith, and may authorize such~~
24 ~~other terms and conditions as the court may consider necessary or proper in-~~
25 ~~cluding, without limitation, a provision empowering the lessee to enter into~~
26 ~~any agreement authorized by ORS chapter 520 with respect to the land covered~~
27 ~~by the lease, including provisions for pooling or unitization by the lessee. A~~
28 ~~sale ordered shall be made as provided in ORS 126.441 to 126.466, and subject~~
29 ~~to such additional terms and conditions as the court may consider necessary~~
30 ~~or proper.]~~

31 Section 246. ORS 126.441 is amended to read:

32 **126.441. Public or private sale of real property; sale on credit.** (1) The
33 order for the sale of real property under ORS 126.436 or 126.471 shall direct
34 that the sale be public or, if the court determines that it is in the best

1 interests of the ward, private. If public, the sale shall be made in the
2 same manner as like property is sold on execution, or, if the court de-
3 termines that it is in the best interests of the ward, the court may order
4 the property to be sold on the premises or elsewhere.

5 ~~{(2) Except as otherwise provided in this subsection, before proceeding to~~
6 ~~sell real property at private sale, the guardian shall cause a notice of the sale~~
7 ~~to be published in a newspaper published in the county in which the property~~
8 ~~is situated, or if no newspaper is published in such county, then in a newspaper~~
9 ~~of general circulation therein, once a week for four successive weeks, or four~~
10 ~~publishings in all. The notice shall include a description of the property, the~~
11 ~~place where bids will be received, the terms and conditions of the sale and~~
12 ~~that on and after a designated day certain, which day shall be not less than~~
13 ~~one week after the date of last publication, the guardian will proceed to sell the~~
14 ~~property. When the court determines from the inventory or otherwise that~~
15 ~~the value of the property does not exceed \$1,000, the court may order the sale~~
16 ~~without the publication of notice of the sale.}~~

17 ~~{(3)}~~ (2) When the sale of real property is upon credit, the guardian
18 may take the promissory note of the purchaser for the deferred balance of
19 the purchase money, with a mortgage upon the property to secure the
20 payment thereof, or the guardian may sell the property on contract of
21 sale, with title reserved until the deferred balance of the purchase price
22 and interest thereon, if any, are paid.

23 Section 247. ORS 126.456 is amended to read:

24 **126.456. Confirming or vacating sale of real property.** (1) Upon the
25 hearing under ORS 126.451 of objections to the sale of real property or in
26 the absence of objections, the court shall make an order confirming the
27 sale and directing the execution of a proper conveyance to the proper
28 person by the guardian, unless the court determines that:

29 (a) There was substantial irregularity in the sale;

30 (b) The sum bid for the property is unreasonably less than the value
31 of the property; or

32 (c) By reason of another bid, a net price can be obtained for the
33 property which exceeds by at least 10 percent the net price to be obtained
34 from the sale returned.

1 (2) If the court determines that there was substantial irregularity in
2 the sale, the court shall make an order vacating the sale and directing that
3 the property be resold as though no prior sale had been made.

4 (3) If the court determines that the sum bid for the property is un-
5 reasonably less than the value of the property, the court shall make an
6 order vacating the sale and directing that the property be resold ~~without~~
7 ~~further notice of sale, but~~ subject to confirmation as provided in this
8 section.

9 (4) If the court determines that, by reason of another bid, a net price
10 can be obtained for the property which exceeds by at least 10 percent the
11 net price to be obtained from the sale returned, the court shall make an
12 order vacating the sale, and either directing that the property be resold
13 to the higher bidder without further order ~~or notice of sale~~, or directing
14 that the property be resold ~~without further notice of sale, but~~ subject to
15 confirmation as provided in this section.

16 Section 248. ORS 126.461 is amended to read:

17 **126.461. Conveyance of real property; effect.** ~~[A conveyance executed by~~
18 ~~the guardian under ORS 126.456 shall set forth the book and page of the~~
19 ~~journal of the court where the order for and the order confirming or directing~~
20 ~~the sale of the real property are entered.]~~ The effect of ~~the~~ a conveyance
21 of real property by a guardian under ORS 126.456 shall be the same as
22 though made by the ward while not under legal disability.

23 Section 249. ORS 126.471 is amended to read:

24 **126.471. Sale or lease of property of spendthrift ward.** (1) If the court,
25 upon the filing of a petition under ORS 126.411 for the sale ~~or mortgage~~
26 or lease of any of the property of a ward who is a spendthrift, determines
27 that the ward is competent and consents to the sale ~~or mortgage~~ or lease
28 and that the sale ~~or mortgage~~ or lease is necessary or proper for any purpose
29 referred to in ORS 126.406, the court may order the sale ~~or mortgage~~ or
30 lease to be made subject to such terms and conditions as the court may
31 consider necessary, without the issuance of citation ~~or publication of notice~~
32 ~~of sale~~ or confirmation by the court. If the proceeds of the sale ~~or~~
33 ~~mortgage~~ exceed \$1,000, the guardian, within 15 days after the date of

1 the sale ~~for mortgage~~, shall make and file in the guardianship proceeding
2 a return of his proceedings concerning the sale ~~for mortgage~~.

3 (2) In the absence of a determination by the court that the ward who
4 is a spendthrift is competent and consents to the sale ~~for mortgage~~ or
5 lease of his property, such sale ~~for mortgage~~ or lease may be made only
6 as otherwise provided in ORS 126.406 to 126.495.

7 (3) ~~[A conveyance of real property executed by a guardian under sub-~~
8 ~~section (1) of this section shall set forth the book and page of the journal of~~
9 ~~the court where the order for the sale is entered.]~~ The effect of ~~the~~ a con-
10 veyance of real property by a guardian under subsection (1) of this section
11 shall be the same as though made by the ward while not under legal
12 disability.

13 (4) Within 60 days after the date of the order under subsection (1)
14 of this section for the sale of real property of the ward situated in any
15 county other than the county in which the order for the sale was made,
16 the guardian shall cause to be recorded in the record of deeds of such other
17 county a copy of the order for the sale certified by the clerk of the court.

18 Section 250. ORS 126.476 is amended to read:

19 **126.476. Exchange, partition, sale or surrender of ward's property.** (1) A
20 guardian of the estate, with prior approval of the court by order, may
21 accept an offer to exchange real or personal property, or both, of the
22 ward for real or personal property, or both, of another, or to effect a
23 voluntary partition of real or personal property, or both, in which the
24 ward owns an undivided interest, where it appears from the petition
25 therefor and the court determines that such exchange or partition is in
26 the best interests of the ward.

27 (2) A guardian of the estate, with prior approval of the court by order,
28 may accept an offer for the purchase or surrender of the interest or estate
29 of the ward in real or personal property, or both, where it appears from
30 the petition therefor and the court determines that:

31 (a) The interest or estate of the ward in such property is contingent
32 or dubious;

33 (b) The interest or estate of the ward in such property is a servitude
34 upon the property of the offeror;

1 (c) The interest or estate of the ward in such property is an undivided
2 interest in property in which the offeror owns or is offering to purchase
3 another or the other undivided interest or interests; or

4 (d) For any other reason, there is no market for the interest or estate
5 of the ward in such property except by such sale or surrender to the
6 offeror.

7 (3) A guardian of the estate may file in the guardianship proceeding
8 a petition for authority to accept an offer under subsection (1) or (2) of
9 this section. The petition shall include the following information, so far
10 as known by the petitioner:

11 (a) The name, age, residence and post-office address of the ward.

12 (b) Whether the ward is an incompetent, minor, *missing person* or
13 spendthrift.

14 (c) The name and address of any person or institution having the care,
15 custody or control of a ward who is an incompetent or minor.

16 (d) The name and address of the offeror.

17 (e) A specific description of the property, interest or estate to be
18 exchanged, partitioned, sold or surrendered, and the price or property
19 to be received therefor.

20 (f) Such other information as the petitioner may consider necessary
21 to enable the court to be fully informed in respect of the subject matter.

22 (4) If the property, interest or estate to be exchanged, partitioned,
23 sold or surrendered consists solely of personal property or an interest
24 or estate therein, the provisions of ORS 126.416 shall apply, except that
25 no return of his proceedings need be made and filed by the guardian.

26 (5) If the property, interest or estate to be exchanged, partitioned,
27 sold or surrendered consists in whole or in part of real property or an
28 interest or estate therein, the provisions of ORS 126.426 and 126.431 and
29 subsection (1) of ORS 126.471 shall apply, except that no return of his
30 proceedings need be made and filed by the guardian.

31 (6) Upon the entry of an order of the court authorizing acceptance
32 of an offer under subsection (1) or (2) of this section, the guardian may
33 execute such instruments as are appropriate to effect such exchange,
34 partition, sale or surrender. If the guardian executes a conveyance of real

1 property or an interest or estate therein, the provisions of ORS 126.461
2 and 126.466 and subsections (3) and (4) of ORS 126.471 shall apply.

3 (7) Except as otherwise provided in this section, the provisions of
4 ORS 126.406 to 126.471 do not apply to exchanges, partitions, sales or sur-
5 renders under this section.

6 Section 251. ORS 126.490 is amended to read:

7 126.490. **Collateral attack on sale, mortgage, lease or other disposition**
8 **of ward's property.** No proceedings for the sale, exchange, surrender,
9 partition, mortgage, pledge or lease [~~including a lease executed for the pur-~~
10 ~~poses of exploring or prospecting for and extracting, removing and disposing~~
11 ~~of oil, gas, other hydrocarbons and all other minerals or substances, similar~~
12 ~~or dissimilar, that may be produced from a well drilled pursuant to such~~
13 ~~lease)] of any property of the ward by a guardian of the estate are
14 subject to collateral attack on account of any irregularity in the proceed-
15 ings if the court which ordered the sale, exchange, surrender, partition,
16 mortgage, pledge or lease had jurisdiction to do so.~~

17 Section 252. ORS 126.495 is amended to read:

18 126.495. **Transfer of ward's property not an ademption.** In case of the
19 sale or other transfer by a guardian of the estate of any real or personal
20 property specifically devised or bequeathed by ~~the~~ a ward ~~]~~ who was
21 competent to make a will at the time he executed the will but was not
22 competent to make a will at the time of the sale or transfer and never
23 regained such competency , *or specifically devised or bequeathed by a*
24 *ward who was a missing person subsequently found to be dead and who*
25 *did not make a valid will after the sale or transfer*, so that the devised
26 or bequeathed property is not contained in the estate of the ward at the
27 time of his death, the devisee or legatee may at his option take the value
28 of the property at the time of the death of the ward with the incidents of a
29 general devise or bequest, or the proceeds of such sale or other transfer
30 with the incidents of a specific devise or bequest.

31 Section 253. ORS 126.540 is amended to read:

32 126.540. **Discharge of guardian; exoneration of surety; vacating order.**
33 The court, *after hearing objections filed pursuant to ORS 126.338 to the*
34 *final account and upon settlement of the final account* ~~of a guardian of~~

1 ~~the estate]~~ and determination that property of the ward has been delivered
 2 to the person lawfully entitled thereto, shall discharge the guardian and
 3 exonerate the ~~[sureties]~~ surety on his bond. ~~[The discharge terminates the~~
 4 ~~authority and duties of the guardian not previously terminated. The discharge~~
 5 ~~and exoneration do not relieve the guardian or the sureties on his bond from~~
 6 ~~liability for previous acts or omissions of the guardian.]~~ *The court may, in*
 7 *its discretion and upon such terms as may be just, at any time within*
 8 *one year after notice thereof, vacate the order discharging the guardian*
 9 *to permit recovery against the guardian and the surety on his bond, or*
 10 *either of them, when it appears that the failure of the claimant to object*
 11 *to the final account of the guardian resulted from fraud or misrepresenta-*
 12 *tion of the guardian or the surety on his bond or from the mistake, in-*
 13 *advertence, surprise or excusable neglect of the claimant.*

14 **Part 2. Transactions Without Oregon Guardianship**

15 **Section 254.** Section 255 of this Act is added to and made a part of
 16 ORS 126.006 to 126.565.

17 **Section 255. Money or tangible chattels to or for minor.** (1) Any
 18 person under a duty to pay or deliver money or tangible chattels to a
 19 minor may perform that duty, in amounts not exceeding \$5,000 in the
 20 aggregate, by paying or delivering the money or chattels to:

21 (a) The minor, if he is 18 years of age or older;

22 (b) A parent or other relative of the minor with whom the minor
 23 resides; or

24 (c) A guardian of the person for the minor.

25 (2) This section does not apply if the person making the payment or
 26 delivery has actual knowledge that a guardian of the estate for the minor
 27 has been appointed or that proceedings for the appointment of a guardian
 28 of the estate for the minor are pending.

29 (3) A person, other than the minor, receiving delivery of tangible
 30 chattels under subsection (1) of this section may sell them for cash without
 31 order of court.

32 (4) Moneys received by a person, other than a minor, under subsection
 33 (1) or (3) of this section may be applied by that person to the support
 34 and education of the minor, excluding any compensation or other payments

1 to himself except by way of reimbursement for out-of-pocket expenses
2 for goods and services furnished by third persons that were necessary
3 for the support and education of the minor. Any money and any unsold
4 chattels in excess of sums required for the support and education of the
5 minor shall be preserved for the future support and education of the
6 minor and any balance not so used shall be turned over to the minor when
7 he arrives at the age of majority as provided in ORS 109.510 or 109.520.

8 (5) Persons owing money or property to minors who pay or deliver
9 it pursuant to paragraph (b) or (c) of subsection (1) of this section shall
10 not be responsible for the proper application thereof.

11 Section 256. ORS 126.555 is amended to read:

12 126.555. **Settling claims or receiving or selling property without guardi-**
13 **anship.** (1) *In addition to the authorization under section 255 of this 1969*
14 *Act for payment or delivery of money or tangible chattels to or for a*
15 *minor, where it appears that a guardian of the estate for a person under*
16 *legal disability has not been appointed, any court having probate juris-*
17 *diction, upon petition therefor and with such notice, or without notice, as*
18 *the court may order, and without the appointment of a guardian of the*
19 *estate for such person, may make an order authorizing a person designated*
20 *in the order to:*

21 (a) Settle any debt or other chose in action not exceeding \$1,000 due
22 to the person under legal disability and receive payment thereof;

23 (b) Receive property having a value not exceeding \$1,000 of the person
24 under legal disability; or

25 (c) Sell for cash with such notice, or without notice, as the court
26 may order, any of the real or personal property having a value not
27 exceeding \$1,000 of the person under legal disability and receive the pro-
28 ceeds thereof.

29 (2) The person designated in the order of the court under subsection
30 (1) of this section may give a release and discharge for any debt or other
31 chose in action so settled and paid or for any property so received, or
32 may execute such instruments as are appropriate to effect the conveyance
33 or transfer of any real or personal property so sold for cash. He shall

1 hold, invest or use all funds or other property so received as ordered by
2 the court.

3 **Section 257. When power of attorney not terminated by disability. (1)**

4 When a principal designates another his attorney in fact or agent by a
5 power of attorney in writing and the writing contains no words which
6 otherwise limit the period of time of its effectiveness, the powers of the
7 attorney in fact or agent shall be exercisable by him on behalf of the
8 principal notwithstanding later disability or incompetence of the principal
9 at law.

10 (2) All acts done by the attorney in fact or agent pursuant to the power
11 of attorney during any period of disability or incompetence of the prin-
12 cipal at law shall have the same effect and shall inure to the benefit of
13 and bind the principal as though the principal were not disabled or
14 incompetent.

15 (3) If a guardian of the estate or conservator of the estate is appointed
16 thereafter for the principal, the attorney in fact or agent, during the con-
17 tinuance of that appointment, shall account to the guardian or conservator
18 rather than to the principal. The guardian or conservator has the same
19 power that the principal would have, but for his disability or incompetence,
20 to revoke, suspend or terminate all or any part of the power of attorney.

21 **Part 3. Conservatorships**

22 **Section 258.** Sections 259 to 261 of this Act are added to and made a
23 part of ORS 126.606 to 126.675.

24 **Section 259. Continuing business of ward.** The court, by order, may
25 authorize a conservator to continue any business of the ward solely or
26 jointly with one or more of the ward's partners or joint venturers or
27 as a corporation of which the ward is or becomes a shareholder. The order
28 may be made upon the petition for the appointment of the conservator
29 and that he shall be so authorized or upon the petition of the conservator
30 and citation or consent as upon sale or lease of property of a spendthrift
31 for whom a guardian of the estate has been appointed.

32 **Section 260. Gifts from ward's estate; expenditures for ward's relatives.**

33 (1) The court, by order, may authorize a conservator, from the estate
34 of the ward which is not necessary for the proper care, maintenance, edu-

1 cation and support of the ward and of persons to whom the ward owes a
2 legal duty of support, to:

3 (a) Make reasonable gifts, on behalf of the ward, to charitable or
4 religious institutions or to persons who are or have been related to the
5 ward by blood or marriage. If the court determines that a gift made under
6 this paragraph shall be treated as an advancement, the court shall so
7 provide in the order authorizing the gift.

8 (b) Provide for or contribute to the care, maintenance, education or
9 support of persons who are or have been related to the ward by blood or
10 marriage.

11 (c) Pay or contribute to the payment of reasonable expenses of remedial
12 care and treatment for, and reasonable funeral and burial expenses of,
13 persons who are or have been related to the ward by blood or marriage.

14 (2) The order may be made upon the petition for the appointment of
15 the conservator and that he be so authorized or upon the petition of the
16 conservator and citation or consent as upon sale or lease of property of a
17 spendthrift for whom a guardian of the estate has been appointed.

18 **Section 261. Accounting by conservator.** (1) A conservator shall make
19 and file in the conservatorship proceeding a written verified account of
20 his administration at the times and of the kind required of a guardian of
21 the estate by ORS 126.336.

22 (2) Before filing any account other than his final account, a con-
23 servator shall cause a copy of the account to be mailed or delivered to the
24 ward. If the ward is incompetent, the conservator shall cause a copy of
25 the account to be mailed or delivered to the ward's spouse who is not
26 under legal disability and to those of the ward's children, parents, brothers
27 or sisters who are not under legal disability and have presented a written
28 request for a copy to the conservator and filed a copy of the request in
29 the conservatorship proceeding before the filing of the account. Proof by
30 affidavit of the mailing or delivery shall be filed with the account.

31 (3) A conservator shall cause a copy of his final account to be served
32 on the ward if living and competent; otherwise, on the guardian of the
33 estate for the ward or the executor or administrator of the deceased ward's

1 estate and on each person to whom copies of other accounts are required
 2 to be mailed or delivered as provided in subsection (1) of this section.
 3 Objections to the final account may be made within 30 days after the date
 4 of the service.

5 Section 262. ORS 126.675 is amended to read:

6 **126.675. Orders of court in winding up conservatorship affairs; discharge**
 7 **of conservator; exoneration of surety; vacating order.** (1) After the termi-
 8 nation of a conservatorship, the court may make orders *as provided in*
 9 *ORS 126.535.* ~~† the conservator shall be discharged and the sureties on his~~
 10 ~~bond exonerated and†~~

11 (2) *The court, after hearing objections made pursuant to section 261*
 12 *of this 1969 Act to the final account and upon settlement of the final ac-*
 13 *count and determination that property of the ward has been delivered to*
 14 *the person lawfully entitled thereto, shall discharge the conservator and*
 15 *exonerate the surety on his bond. The court may, in its discretion and*
 16 *upon such terms as may be just, at any time within one year after notice*
 17 *thereof, vacate the order discharging the conservator to permit recovery*
 18 *against the conservator and the surety on his bond, or either of them,*
 19 *when it appears that the failure of the claimant to object to the final*
 20 *account of the conservator resulted from fraud or misrepresentation of*
 21 *the conservator or the surety on his bond or from the mistake, inadvertence,*
 22 *surprise or excusable neglect of the claimant.*

23 (3) A copy of the order discharging the conservator may be recorded
 24 as provided in ORS ~~†126.535 to†~~ 126.545.

25 **ARTICLE X. MISCELLANEOUS PROVISIONS**

26 **Part 1. Miscellaneous Amendments**

27 Section 263. ORS 3.101 is amended to read:

28 **3.101. District court judge acting as circuit court judge in certain cases;**
 29 **orders; effect.** (1) Whenever by reason of absence, illness or injury there
 30 is not within a county in which a district court organized under ORS
 31 46.025 is located, a judge of the circuit court able to preside over and
 32 conduct the business of the circuit court, any judge of the district court for

1 the county may, within the county, exercise the powers and duties of
2 judge of the circuit court for the county in so far as they pertain to:

3 (a) The commencement, trial and disposition of juvenile court matters
4 and proceedings.

5 (b) Sanity inquests and the commitment of mentally diseased persons.

6 (c) The appointment of guardians ad litem for infants and others under
7 legal disability.

8 (d) The granting of orders to make service of summons by publication.

9 (e) The granting of preliminary injunctions.

10 ~~[(2) A district court judge exercising the powers and duties of circuit court~~
11 ~~judge as provided in subsection (1) of this section also may, within the county,~~
12 ~~give and make any order, other than one setting apart exempt property or~~
13 ~~fixing a widow's allowance, that by law is ex parte in nature or is upon default~~
14 ~~of the appearance of, or expressly consented to in writing by, the adverse party~~
15 ~~or parties, in any matter, cause or proceeding in probate pending in the county.]~~

16 ~~[(3)]~~ (2) If the district court judge is not a party to, or directly in-
17 terested in, the suit, action or proceeding, and if the question or matter
18 passed upon by him has not been presented to, or passed upon by, any
19 circuit court judge, any decree, judgment or order given and made by a
20 district court judge pursuant to his powers and duties under this section,
21 when filed and entered in the suit, action or proceeding, has the same
22 effect as though given and made by a circuit court judge.

23 Section 264. ORS 3.130 is amended to read:

24 **3.130. Transfer of judicial jurisdiction of certain county courts to circuit**
25 **courts.** (1) All judicial jurisdiction, authority, powers, functions and duties
26 of the county courts and the judges thereof, except the jurisdiction,
27 authority, powers, functions and duties exercisable in the transaction of
28 county business, are transferred to the circuit courts and the judges thereof:

29 (a) In Clackamas, Columbia, Coos, Douglas, Jackson, Josephine,
30 Klamath, Lake, Lane, Marion and Tillamook Counties.

31 (b) In any county for which a county charter providing for such
32 transfer is adopted under ORS 203.710 to 203.790, to the extent that the
33 judicial jurisdiction, authority, powers, functions and duties were not
34 previously transferred as provided by law.

1 ~~{(2) All judicial jurisdiction, authority, powers, functions and duties of~~
 2 ~~the county court and the judge thereof, except probate jurisdiction, authority,~~
 3 ~~powers, functions and duties and the jurisdiction, authority, powers, functions~~
 4 ~~and duties exercisable in the transaction of county business, are transferred~~
 5 ~~to the circuit court and the judges thereof in Coos County.}~~

6 ~~{(3)}~~ (2) All matters, causes and proceedings relating to judicial juris-
 7 diction, authority, powers, functions and duties transferred to the circuit
 8 courts and the judges thereof under this section, and pending in a county
 9 court on the effective date of the transfer, are transferred to the circuit
 10 court for the county.

11 Section 265. ORS 5.080 is amended to read:

12 **5.080. County judge as interested party.** *Except as otherwise provided*
 13 *in section 8 of this 1969 Act,* any judicial proceedings commenced in the
 14 county court in which the county judge is a party or directly interested,
 15 may be certified to the circuit court for the county in which the pro-
 16 ceedings are pending, ~~†. If the matter is one in probate, then all the original~~
 17 ~~papers and proceedings shall be certified to the circuit court, and the judge~~
 18 ~~of that court shall proceed in the manner in which the county judge would~~
 19 ~~be required to proceed had the matter remained in the county court. If} and~~
 20 ~~the matter {is other than a probate matter, it} shall be proceeded with in~~
 21 ~~{this} the circuit court as upon appeal from the county court to the circuit~~
 22 ~~court.~~

23 Section 266. ORS 5.100 is amended to read:

24 **5.100. Order of docketing and disposal of county court business; records.**

25 (1) The business of the county court at each term shall be docketed and
 26 disposed of in the following order:

27 (a) ~~{The business pertaining to a court of probate as specified in ORS~~
 28 ~~5.040} Judicial business.~~

29 (b) County business.

30 (2) The proceedings and records of the court pertaining to the respective
 31 classifications of business specified in this section shall be kept in separate
 32 books.

33 Section 267. ORS 7.230 is amended to read:

34 **7.230. Probate and juvenile court records to be kept separate.** In so far

1 as may be practicable and convenient the records and proceedings per-
2 taining to probate and juvenile matters shall be kept separate from the
3 other records and proceedings of the circuit courts ~~{described in ORS 3-130}.~~

4 Section 268. ORS 12.190 is amended to read:

5 **12.190. Effect of death on limitations.** (1) If a person entitled to bring
6 an action dies before the expiration of the time limited for its commence-
7 ment, ~~{and the cause of action survives,}~~ an action may be commenced by
8 his personal ~~{representatives}~~ *representative* after the expiration of ~~{the}~~
9 *that* time, and within one year ~~{from}~~ *after* his death.

10 (2) If a person against whom an action may be brought dies before the
11 expiration of the time limited for its commencement, ~~{and the cause of}~~
12 ~~action survives,}~~ an action may be commenced against his personal ~~{repre-~~
13 ~~sentatives}~~ *representative* after the expiration of that time, and within
14 one year after *his death*. ~~{the issuing of letters testamentary or of adminis-~~
15 ~~tration; but no suit or action for collection of any claim against the estate~~
16 ~~of a decedent may be maintained, when no letters testamentary or of adminis-~~
17 ~~tration shall have been issued before the expiration of six years after the death~~
18 ~~of the decedent.}~~

19 Section 269. ORS 13.080 is amended to read:

20 **13.080. Nonabatement of action or suit by death, disability or transfer;**
21 **continuing proceedings.** (1) No action or suit shall abate by the death or
22 disability of a party, or by the transfer of any interest therein ~~{, if the}~~
23 ~~cause of action survives or continues}.~~

24 (2) *In case of the death of a party, the court shall, on motion, allow*
25 *the action or suit to be continued:*

26 (a) *By his personal representative or successors in interest at any time*
27 *within one year after his death.*

28 (b) *Against his personal representative or successors in interest at any*
29 *time within four months after the date of the first publication of notice*
30 *to interested persons, but not more than one year after his death.*

31 (3) In case of the ~~{death or}~~ disability of a party, the court may, at any
32 time within one year thereafter, on motion, allow the action or suit to
33 be continued by or against his ~~{personal representatives}~~ *guardian or con-*
34 *servator* or successors in interest.

1 (4) *In case of the transfer of an interest in the action or suit, the court*
2 *may, on motion, allow the action or suit to be continued against the suc-*
3 *cessors in interest of the transferor.*

4 Section 270. ORS 23.260 is amended to read:

5 **23.260. Exemption inapplicable to mechanics' and purchase-money liens**
6 **and mortgages.** ORS 23.240 to 23.270 ~~[, 116.590 and 116.595]~~ do not apply
7 to mechanics' liens for work, labor or material done or furnished exclu-
8 sively for the improvement of the property claimed as a homestead, and
9 to purchase money liens and mortgages lawfully executed.

10 Section 271. ORS 41.520 is amended to read:

11 **41.520. Evidence to prove a will.** Evidence of a ~~last~~ will ~~and testament,~~
12 ~~except when made pursuant to ORS 114.050, shall not be received, other than]~~
13 *shall be the written instrument itself, or secondary evidence of [its con-*
14 ~~tents] the contents of the will, in the cases prescribed by law.~~

15 Section 272. ORS 46.092 is amended to read:

16 **46.092. Transfer of certain judicial jurisdiction of certain county courts**
17 **to district courts.** ~~[(1)]~~ All judicial jurisdiction, authority, powers, functions
18 and duties of the county courts and the judges thereof, except juvenile
19 court jurisdiction, authority, powers, functions and duties and the juris-
20 diction, authority, powers, functions and duties exercisable in the trans-
21 action of county business, are transferred to the district courts and the
22 judges thereof:

23 ~~[(a)]~~ (1) In Benton, Clatsop, Curry, Deschutes, Hood River, Lincoln,
24 Linn, Polk, Umatilla, Wasco, Washington and Yamhill Counties.

25 ~~[(b)]~~ (2) In any county for which a county charter providing for such
26 transfer is adopted under ORS 203.710 to 203.790, to the extent that the
27 judicial jurisdiction, authority, powers, functions and duties were not
28 previously transferred as provided by law.

29 ~~[(2)]~~ All probate jurisdiction, authority, powers, functions and duties of
30 the county court and the judge thereof are transferred to the district court
31 and the judge thereof in Coos County.]

32 Section 273. ORS 91.020 is amended to read:

33 **91.020. Tenancies classified.** Tenancies are as follows: Tenancy at suf-
34 ferance, tenancy at will, tenancy for years, tenancy from year to year,

1 tenancy from month to month, ~~{tenancy by curtesy,}~~ tenancy by entirety
2 and tenancy for life. The times and conditions of the holdings shall deter-
3 mine the nature and character of the tenancy.

4 Section 274. ORS 91.030 is amended to read:

5 **91.030. Tenancy by entirety or for life.** A ~~{tenancy by curtesy, a}~~ tenancy
6 by entirety and a tenancy for life shall be such as now fixed and defined
7 by the laws of the State of Oregon.

8 Section 275. ORS 93.190 is amended to read:

9 **93.190. Trustees or personal representatives as joint tenants; filling**
10 **vacancies in office.** (1) Every conveyance, deed of trust, mortgage or
11 devise of an interest *in* or lien ~~{in or}~~ upon real or personal property to
12 two or more persons as trustees or ~~{executors}~~ *personal representatives*,
13 creates a joint tenancy in such interest or lien in the trustees or ~~{executors}~~
14 *personal representatives* unless it is expressly declared in the conveyance,
15 deed of trust, mortgage or devise that the trustees or ~~{executors}~~ *personal*
16 *representatives* shall take or hold the property as tenants in common or
17 otherwise.

18 (2) If the conveyance, deed of trust, mortgage or devise provides for
19 filling any vacancy in the office of trustee or ~~{executor}~~ *personal repre-*
20 *sentative*, it may be filled as therein provided, ~~{excepting that}~~ *but* a
21 court of competent jurisdiction may fill a vacancy in the trusteeship ac-
22 cording to the established rules and principles of equity. In whichever
23 way the vacancy is filled, the new trustee shall hold the property with
24 all powers, rights and duties of an original trustee unless otherwise di-
25 rected by conveyance, deed of trust, mortgage or devise, or order or de-
26 cree of the court. ~~{No vacancy in an executorship shall be filled without an~~
27 ~~order therefor by a county court sitting in probate as in the case of an original~~
28 ~~appointment of an executor.}~~

29 Section 276. ORS 93.240 is amended to read:

30 **93.240. Rights to deferred instalments of purchase price where two or**
31 **more persons join as sellers in contract of sale of real property.** (1) Subject
32 to the provisions contained in this section, whenever two or more per-
33 sons join as sellers in the execution of a contract of sale of real property,
34 unless a contrary purpose is expressed in the contract, the right to receive

1 payment of deferred instalments of the purchase price shall be owned by
2 them in the same proportions, and with the same incidents, as title to
3 the real property was vested in them immediately preceding the execu-
4 tion of the contract of sale.

5 ~~[(2) If immediately preceding the execution of any such contract one or~~
6 ~~more of the sellers held no estate in the real property covered thereby other than~~
7 ~~an inchoate estate of or right to dower or curtesy, then, unless a contrary pur-~~
8 ~~pose is expressed in the contract, the joinder of such party or parties shall be~~
9 ~~deemed to have been for the purpose of barring dower or curtesy only and,~~
10 ~~except to the extent specifically prescribed therein, such person or persons~~
11 ~~shall have no interest in or right to any portion of the unpaid balance of the~~
12 ~~purchase price of said real property.]~~

13 ~~[(3)]~~ (2) If immediately prior to the execution of a contract of sale
14 of real property title to any interest in the property therein described
15 was vested in the sellers or some of the sellers as tenants by the entirety
16 or was otherwise subject to any right of survivorship, then, unless a con-
17 trary purpose is expressed in the contract, the right to receive payment
18 of deferred instalments of the purchase price of ~~[such]~~ the property shall
19 likewise be subject to like rights of survivorship.

20 ~~[(4) This section, being declaratory of existing law, applies to contracts of~~
21 ~~sale of real property heretofore executed as well as to those hereafter executed.]~~

22 (3) Nothing contained in this section shall be deemed to modify or
23 amend the provisions of subsection (4) of ORS 118.010 relating to inherit-
24 ance taxes payable by reason of succession by survivorship as provided
25 by subsection ~~[(3)]~~ (2) of this section.

26 Section 277. ORS 93.420 is amended to read:

27 **93.420. Execution of deed where personal representative, guardian or**
28 **conservator is unable or refuses to act.** If any person is entitled to a deed
29 from ~~[an executor, administrator,]~~ a personal representative, guardian or
30 conservator who has died or resigned, has been discharged, disqualified
31 or removed or refuses to execute it, the deed may be executed by the
32 judge ~~[authorizing the sale,]~~ before whom the proceeding is pending or by
33 his successor.

1 Section 278. ORS 94.330 is amended to read:

2 94.330. **Registration of transfer or mortgage when interests are out-**
3 **standing.** No transfer or mortgage of any estate or interest in registered
4 land shall be registered until it is made to appear to the registrar that the
5 land has not been sold for any tax or assessment upon which a deed has
6 been given and the title is outstanding, or upon which a deed may there-
7 after be given ~~;~~ and that the ~~dower, right of dower, and estate of homestead,~~
8 ~~if any, have been released or extinguished or that the transfer or mortgage is~~
9 ~~intended to be subject thereto, in which case it shall be stated in the certificate~~
10 ~~of title.~~

11 Section 279. ORS 97.130 is amended to read:

12 97.130. **Right to control disposition of remains.** The right to control the
13 disposition of the remains of a decedent, unless other directions have been
14 given by him, vests in his surviving spouse, his surviving children, his
15 surviving parents and the person in the next degree of kindred to him,
16 in the order named. *If disposition of the remains has not been directed*
17 *and authorized within 10 days after the date of the death of the decedent,*
18 *a public health officer, the special administrator or the personal repre-*
19 *sentative of the estate of the decedent may direct and authorize disposition*
20 *of the remains.*

21 Section 280. ORS 116.115 is amended to read:

22 116.115. **Authority of personal representative when will includes gift**
23 **of body for scientific and medical purposes; nonliability for actions.** The
24 authority of a person named ~~executor~~ *personal representative in* ~~of~~ a will
25 which includes a gift pursuant to ORS 97.132 extends to performing acts
26 necessary to carrying out the gift although ~~the~~ letters testamentary have
27 not been issued. A person named ~~executor~~ *personal representative* who
28 carries out the gift of the testator before issuance of letters testamentary
29 or under a will which is not admitted to probate shall not be liable to the
30 surviving spouse or next of kin for performing acts necessary to carry
31 out the gift of the testator.

32 Section 281. ORS 105.050 is amended to read:

33 105.050. **Cotenant shall prove ouster.** In an action ~~for the recovery of~~
34 ~~dower before admeasurement or~~ by a tenant in common of real property

1 against a cotenant, the plaintiff shall show, in addition to the evidence of
2 his right of possession, that the defendant either denied the plaintiff's
3 right or did some act amounting to a denial.

4 Section 282. ORS 105.340 is amended to read:

5 105.340. **Provision for future rights or interests.** In all cases of sales in
6 partition when it appears that ~~[a married woman has an inchoate right of~~
7 ~~dower in any of the property sold, or that]~~ any person has a vested or con-
8 tingent future right or estate ~~[therein]~~ in any of the property sold, the
9 court shall ascertain and settle the proportional value of the ~~[inchoate,]~~
10 contingent or vested right or estate according to the principles of law
11 applicable to annuities and survivorship, and shall direct such proportion
12 of the proceeds of sale to be invested, secured or paid over in such manner
13 as to protect the rights and interests of the parties.

14 Section 283. ORS 107.100 is amended to read:

15 107.100. **Provisions of decree of divorce or annulment.** (1) Whenever
16 a marriage is declared void or dissolved, the court has power further to
17 decree as follows:

18 (a) For the future care and custody of the minor children of the
19 marriage as it may deem just and proper. In determining custody the
20 court shall consider the best interests of the child and the past conduct
21 and demonstrated moral standards of each of the parties. No preference
22 in custody shall be given to the mother over the father for the sole reason
23 that she is the mother.

24 (b) For the recovery from the party not allowed the care and custody
25 of such children, such amount of money, in gross or in instalments, or
26 both, as may be just and proper for such party to contribute toward the
27 nurture and education of such children.

28 (c) For the recovery from the party at fault or, under unusual cir-
29 cumstances in the discretion of the court, from the party not at fault, such
30 amount of money, in gross or in instalments, or both, as may be just and
31 proper for such party to contribute to the maintenance of the other; pro-
32 vided that in case recovery from the party not at fault is allowed, the
33 decree must contain special findings of the facts constituting the unusual
34 circumstances; provided, further, that the court may approve, ratify and

1 decree voluntary property settlement agreements that provide for con-
2 tribution by the prevailing party to the maintenance and support of the
3 party in fault. In case a divorce is granted under the provisions of sub-
4 section (7) of ORS 107.030, the court may require the prevailing party
5 to contribute to the support and maintenance of the mentally ill party
6 to such extent and in such manner as the court may determine to be just
7 and equitable.

8 (d) For the delivery to one party of such party's personal property in
9 the possession or control of the other at the time of giving the decree.

10 (e) For the appointment of one or more trustees to collect, receive,
11 expend, manage or invest, in such manner as the court directs, any sum of
12 money decreed for the maintenance of a party or the nurture and education
13 of minor children committed to such party's care and custody.

14 (f) To change the name of the wife.

15 (g) A judgment against one party in favor of the other for any sums
16 of money found to be then remaining unpaid upon any enforceable order
17 or orders theretofore duly made and entered in the proceedings pursuant
18 to any of the provisions of ORS 107.090, and for any such further sums as
19 additional attorney fees or additional costs and expenses of suit or defense
20 as the court finds reasonably and necessarily incurred by such party; or,
21 in the absence of any such order or orders pendente lite, a like judgment
22 for such amount of money as the court finds was reasonably necessary
23 to enable such party to prosecute or defend the suit, as the case may be.

24 ~~[(h) For the extinguishment and barring of dower and curtesy.]~~

25 (2) If an appeal is taken from a decree declaring a marriage void or
26 dissolved or from any part of a decree rendered in pursuance of the pro-
27 visions of ORS 107.010 to 107.100, the court making such decree shall
28 provide for the temporary support of the minor children of the parties
29 thereto, and may provide for the temporary support of the party found
30 not to be at fault. The order may be modified at any time by the court
31 making the decree appealed from, shall provide that the support money
32 be paid in monthly instalments, and shall further provide that it is to be
33 in effect only during the pendency of the appeal to the Supreme Court.
34 No appeal to the Supreme Court lies from any such temporary order.

1 (3) If an appeal is taken from the decree or other appealable order in
2 a suit for dissolution or annulment of the marriage contract, and the Su-
3 preme Court awards costs and disbursements to the prevailing party, it
4 may also award to that party, as part of the costs, such additional sum of
5 money as it may adjudge reasonable as an attorney fee on the appeal.

6 (4) Whenever a marriage is declared void or dissolved, the court
7 shall make such division or other disposition between the parties of the
8 real or personal property, or both, of either or both of the parties as may
9 be just and proper in all the circumstances, in addition to any further
10 relief decreed as provided for in subsection (1), (2) or (3) of this section.

11 (5) If, as a result of a suit for the dissolution or annulment of a mar-
12 riage, the parties to such suit become owners of an undivided interest in
13 any real or personal property, or both, either party may maintain supple-
14 mental proceedings by filing a petition in such suit for the partition of
15 such real or personal property, or both, within two years from the entry
16 of said decree, showing among other things that the original parties to
17 such decree and their joint or several creditors having a lien upon any
18 such real or personal property, if any there be, constitute the sole and
19 only necessary parties to such supplemental proceedings. The procedure
20 in the supplemental proceedings shall be, as far as applicable, the pro-
21 cedure provided for in ORS 105.205 to 105.405, for the partition of real
22 property, and the court granting such decree and the judges thereof shall
23 have in the first instance and retain jurisdiction in equity for such pur-
24 pose of partition as provided for in this subsection.

25 Section 284. ORS 107.110 is amended to read:

26 **107.110. Annulment or divorce decree ends marriage; when effective;**
27 **appeal; content of decree.** (1) A decree declaring a marriage void or
28 dissolved at the suit or claim of either party shall give the court jurisdic-
29 tion to award, to be effective immediately, the relief provided by ORS
30 107.100. ~~{The decree shall revoke any will pursuant to the provisions of ORS~~
31 ~~114.130, but}~~ The decree shall not be effective in so far as it affects the mari-
32 tal status of the parties until the expiration of 60 days from the date of the
33 decree or, if an appeal is taken, until the suit is determined on appeal,

1 whichever is later. However, the right of one party to cohabit with the
2 other shall cease on the date of the decree.

3 (2) In case either party dies within the 60-day period specified in sub-
4 section (1) of this section, the decree shall be considered to have entirely
5 terminated the marriage relationship immediately before such death, un-
6 less an appeal is pending.

7 (3) (a) The Supreme Court shall continue to have jurisdiction of such
8 an appeal pending at the time of death of either party, the estate of the
9 decedent being the nominal party therefor. The attorney of record on the
10 appeal, for the deceased party, may be allowed a reasonable attorney fee,
11 to be paid from the decedent's estate. However, costs on appeal may not
12 be awarded to either party.

13 (b) The Supreme Court shall have the power to determine finally all
14 matters presented on such appeal. Before making final disposition, the
15 Supreme Court may refer the proceeding back to the trial court for such
16 additional findings of fact as are required.

17 (4) The marriage relationship is terminated in all respects at the expira-
18 tion of the 60-day period specified in subsection (1) of this section or, if an
19 appeal is taken, when the suit is determined on appeal, whichever is later,
20 without any further action by either party. However, at any time within
21 the 60-day period or while an appeal is pending, the court may set aside
22 the decree upon the motion of both parties.

23 (5) A decree declaring a marriage void or dissolved shall include the
24 substance of subsections (1) to (4) of this section and shall specify the date
25 on which the decree becomes finally effective to terminate the marital
26 status of the parties.

27 Section 285. ORS 107.280 is amended to read:

28 107.280. **Decreeing disposition of property.** Whenever a decree of
29 permanent or unlimited separation from bed and board has been granted,
30 the party at whose prayer such decree was granted shall be awarded in
31 individual right such undivided or several interest in any right, interest or
32 estate in real or personal property owned by the other or owned by them
33 as tenants by the entirety at the time of such decree, as may be just and
34 proper in all circumstances, in addition to the decree of maintenance. ~~The~~

1 court may, in making such award, decree that dower and curtesy, as well as
2 homestead rights under ORS 116.010 and the election provided in ORS 113.050,
3 are extinguished and barred.]

4 **Note:** Section 286 was deleted by amendment.

5 Section 287. ORS 109.326 is amended to read:

6 109.326. **Consent where parents not married to each other.** (1) The
7 consent of the mother of the child is sufficient, and for the purpose of
8 giving such consent the mother of the child shall be deemed to have arrived
9 at the age of majority and for all purposes relating to the adoption of the
10 child the father of the child shall be disregarded just as if he were dead,
11 when it is shown in the court in which the adoption proceedings are pending
12 that:

13 (a) The mother of the child was unmarried at the time of the conception
14 of the child to be adopted and remained unmarried at the time of the
15 birth of the child and was not married to the father of the child at the
16 time of her consent to the adoption or surrender of the child for the purpose
17 of adoption under ORS 418.270; or

18 (b) When the mother of the child was married at the time of the con-
19 ception or birth of the child, and it has been judicially determined that
20 her husband at such time or times was not the father of the child. Such
21 determination of nonpaternity may be made by any court having adoption
22 or juvenile court jurisdiction. The testimony or affidavit of the mother
23 or such husband shall constitute competent evidence before the court
24 making such determination. Before making such determination of non-
25 paternity, citation to show cause why such husband's parental rights should
26 not be terminated shall be served on him personally, if found in the state,
27 and if not found in the state, then a copy of the citation shall be published
28 or served in the manner provided by ORS ~~116.750~~ 15.110 to 15.140 for
29 the service of citation by publication or for personal service outside the
30 state; except that the citation so served by publication need not contain
31 the names of the adoptive parents.

32 (2) If the mother described in subsection (1) of this section is dead or
33 unknown, consent shall be obtained in the same manner as if such child
34 had no living parent.

1 ~~School Fund~~, and without other or further proceeding shall be paid or
2 turned over by the officials of the above institutions to the ~~State Land~~
3 ~~Board, who~~ *Division of State Lands, which* shall issue therefor receipts
4 in duplicate. One of the receipts shall be filed in the office of the Secretary
5 of State. However, if such escheated money, certificates of deposit, se-
6 curities or other personal property exceeds the sum of \$50, a notice of such
7 escheated property shall be published under direction of the ~~State Land~~
8 ~~Board~~ *Division of State Lands* in a newspaper of general circulation
9 within the county in which such institution paying or turning over the same
10 is situated, and also in a newspaper in the county from which the inmate
11 was committed, once each week for not less than three consecutive weeks.
12 The expense of such publication shall be paid out of the proceeds of the
13 escheated property.

14 Section 293. ORS 120.220 is amended to read:

15 120.220. **Collection and disposition by Division of State Lands.** The
16 money, certificates of deposit, securities or other personal property men-
17 tioned in ORS 120.210 shall be collected or liquidated by the ~~State Land~~
18 ~~Board~~ *Division of State Lands*, and the ~~board~~ *division* may sell, indorse
19 and collect all such money, certificates of deposit, securities or other per-
20 sonal property and place the proceeds thereof in the State Treasury ~~to the~~
21 ~~credit of the Common School Fund~~.

22 Section 294. ORS 120.230 is amended to read:

23 120.230. **Owners' and representatives' rights to reclaim property; limita-**
24 **tion.** The money or the proceeds of ~~such~~ *the* certificates of deposit,
25 securities or other personal property which ~~has~~ *have* escheated to the
26 state under ~~the provisions of~~ ORS 120.210, may be reclaimed by the
27 original owner , or by his ~~or her~~ heirs~~,~~ or personal representatives, at
28 any time within 10 years after such escheat, in the same manner as property
29 belonging to estates of deceased persons which have escheated to the state.

30 Section 295. ORS 179.650 is amended to read:

31 179.650. **Appeal from order declaring financial ability; order effective**
32 **until modified.** (1) An appeal may be taken from the determination of
33 ~~the~~ *a county* court under ORS 179.640 to the circuit court , within 30 days
34 *after the date of the entry thereof, and from the circuit court to the Su-*

1 *preme Court, in the ~~ordinary~~ manner ~~for taking appeals from orders of~~*
2 *the probate court and, within 30 days from the entry of the order of the circuit*
3 *court, to the Supreme Court} provided by ORS 5.120. An appeal may be*
4 *taken from the determination of a circuit court under ORS 179.640 to the*
5 *Supreme Court, within 30 days after the date of the entry thereof, in the*
6 *manner provided by law for appeals from the circuit court.*

7 (2) An order declaring the financial ability of the person at the state
8 institution, his estate or his responsible relatives to pay for care and main-
9 tenance of such person under ORS 179.640 shall remain in full force and
10 effect, unless modified by subsequent court or board orders.

11 Section 296. ORS 179.670 is amended to read:

12 **179.670. District attorney's duties in proceedings under ORS 179.640.**

13 (1) The district attorney, on request of the Board of Control or on request
14 of the probate court, shall appear in the probate court proceedings under
15 ORS 179.640 and present evidence with respect to the ability of the person
16 at the state institution or his estate or responsible relatives to pay the cost
17 of his care and maintenance in the state institution.

18 (2) If the Board of Control feels aggrieved by the order of the probate
19 court under ORS 179.640, the district attorney, on request of *and as directed*
20 *by the board*, shall appeal ~~such cause to the circuit court and the Supreme~~
21 ~~Court, or either, as directed} as provided in ORS 179.650.~~

22 Section 297. ORS 179.740 is amended to read:

23 **179.740. Collection of amounts due from estates.** (1) The board may
24 present and file a claim for any support money under subsection (3) of
25 ORS 179.620 in a proceeding upon the administration of the estate of any
26 deceased person who was at a state institution in like manner as other
27 claims of creditors are filed and with such priorities as are provided in
28 ~~ORS 117.110} section 152 of this 1969 Act.~~

29 (2) The board may petition any court of competent jurisdiction for
30 the issuance of letters of administration or testamentary in the estate of
31 any such person who was at a state institution who did not pay or for
32 whom was not paid the full amount of cost of his care and maintenance as
33 determined by ORS 179.701 and under the laws applicable to prior years.
34 However, the board shall not file a petition under this subsection until at

1 697.270, 697.290 and 697.440 to 697.470 shall be a personal privilege and shall
2 not be assignable.

3 (2) Upon the death of any collection agency licensee, the Real Estate
4 Division shall have the right to transfer the license of the decedent to the
5 ~~executor or administrator~~ *personal representative* of his estate for the
6 period of the unexpired term of the license and thereupon the court having
7 jurisdiction of the probate of the estate of said decedent may authorize
8 such ~~executor or administrator~~ *personal representative* to continue the
9 collection agency business of the decedent pursuant to the provisions of
10 ~~ORS 116.170 to 116.180~~ *section 127 of this 1969 Act*, and upon such other
11 terms and conditions as the court may prescribe.

12 (3) The death of the operator of a corporate licensee shall in no way
13 interfere with the continuation of the licensed business providing another
14 licensed operator is placed in management control of the corporate licensee.

15 Section 301. ORS 697.695 is amended to read:

16 **697.695. Assignability of licenses; procedure on death of licensee.** (1)
17 Except as provided in subsection (2) of this section, any license granted
18 under ORS 697.610 to 697.655 and 697.660 to 697.785 is a personal privilege
19 and shall not be assignable.

20 (2) Upon the death of any licensee the commissioner shall have the
21 right to transfer the license of the decedent to the ~~executor or admin-
22 istrator~~ *personal representative* of his estate for the period of the unex-
23 pired term of the license and thereupon the court having jurisdiction of
24 the probate of the estate of said decedent may authorize such ~~executor
25 or administrator~~ *personal representative* to continue the business of debt
26 consolidating formerly carried on by the decedent pursuant to the pro-
27 visions of ~~ORS 116.170 to 116.180~~ *section 127 of this 1969 Act*, and upon
28 such other terms and conditions as the court may prescribe.

29 Section 302. ORS 708.520, as amended by section 1, chapter ———, Ore-
30 gon Laws 1969 (Enrolled Senate Bill 228), is amended to read:

31 **708.520. Disposition of deposit on death intestate of depositor.** (1) On
32 the death of any depositor of any bank or trust company, such
33 bank or trust company may pay, if such depositor was married, to the sur-
34 viving spouse, or if there is no surviving spouse, to the surviving children

1 of lawful age, or if the depositor left no surviving spouse or children, to his
2 or her surviving parent or parents, or if there is no surviving spouse, sur-
3 viving child or surviving parent, to the depositor's surviving brothers
4 and sisters of lawful age, the moneys on deposit to the credit of the de-
5 ceased depositor in cases where the amount of deposit does not exceed
6 \$2,500, upon receipt of an affidavit from the surviving spouse, or if there
7 be no surviving spouse, from the surviving children of lawful age, or if the
8 depositor left no surviving spouse or children, an affidavit from his sur-
9 viving parent or parents, or if there be no surviving parent or parents, an
10 affidavit from such depositor's surviving brothers and sisters that the
11 depositor died and had on deposit in all banks and trust companies within
12 the State of Oregon money not exceeding \$2,500.

13 (2) The affidavit shall show the relationship of the affiant or affiants
14 to the deceased depositor and shall embody a promise to pay the expenses
15 of last sickness and funeral expenses and just debts of the deceased out
16 of the deposit to the full extent thereof if necessary.

17 (3) The bank or trust company shall be obligated to determine the
18 relationship of the affiant or affiants to the deceased depositor.

19 (4) No probate proceeding is necessary to establish the right of the
20 surviving spouse or surviving children or surviving parent or parents or
21 surviving brothers and sisters to withdraw the deposits upon the filing
22 of an affidavit as in this section provided. However, whenever an admin-
23 istrator or executor is appointed in an estate where a withdrawal of de-
24 posits has been had in compliance with the Bank Act, the person so with-
25 drawing the deposits shall account for them to the administrator or ex-
26 ecutor.

27 ~~[(5) The penalty provided in ORS 116.090 does not apply to transactions~~
28 ~~had under this section.]~~

29 **Part 2. Application of Act and Repeals**

30 **Section 303. Application of Act.** Except as specifically provided other-
31 wise in this Act, on the effective date of this Act:

32 (1) This Act applies to wills executed thereon or thereafter and pro-
33 ceedings concerning decedents dying thereon or thereafter. Wills executed
34 before the effective date shall be governed by the law then in effect, except

**TABLE SHOWING DISPOSITION
OF EXISTING STATUTE SECTIONS**

Column (1) lists every section of Oregon Revised Statutes that is included within or repealed by the bill proposing a new Oregon probate code. Column (2) indicates whether the ORS section listed is amended (A), or repealed (R). Column (3) indicates, in the case of an amended ORS section, the section of the bill that accomplishes the amendment; and, in the case of a repealed ORS section, the section of the bill that contains subject matter comparable to that found in the repealed ORS section.

(1)	(2)	(3)	(1)	(2)	(3)
3.101	A	263	113.040	R	116
3.130	A	264	113.050	R	112
3.140	R	5, 6	113.060	R	116
3.180	R	2	113.070	R	103
3.340	R	5, 6	113.080	R	.....
5.040	R	5	113.090	A	79
5.050	R	8	113.110	R	.....
5.070	R	.....	113.120	R	.....
5.080	A	265	113.130	R	.....
5.100	A	266	113.140	R	.....
7.230	A	267	113.150	R	.....
12.190	A	268	113.160	R	.....
13.080	A	269	113.210	R	.....
21.313	R	.....	113.220	R	.....
23.260	A	270	113.230	R	.....
41.520	A	271	113.240	R	.....
46.092	A	272	113.250	R	.....
91.020	A	273	113.260	R	.....
91.030	A	274	113.270	R	.....
93.170	R	.....	113.280	R	.....
93.190	A	275	113.290	R	.....
93.240	A	276	113.410	R	.....
93.420	A	277	113.420	R	.....
94.330	A	278	113.430	R	.....
97.130	A	279	113.440	R	.....
105.050	A	281	113.450	R	.....
105.065	R	.....	113.510	R	.....
105.340	A	282	113.520	R	.....
107.100	A	283	113.530	R	.....
107.110	A	284	113.540	R	.....
107.280	A	285	113.610	R	.....
109.326	A	287	113.620	R	.....
109.330	A	288	113.630	R	.....
109.370	A	289	113.640	R	.....
111.010	R	24, 25	113.650	R	.....
111.020	R	19 to 23, 120	113.660	R	.....
111.030	R	19 to 23, 120	113.670	R	.....
111.040	R	27	113.680	R	.....
111.050	R	.....	113.690	R	.....
111.060	R	58 to 68	114.010	R	1(31)
111.070	R	.....	114.020	R	36
111.110	R	30	114.030	R	37
111.120	R	30	114.040	R	37
111.130	R	.....	114.050	R	37, 39
111.140	R	31	114.060	R	39
111.150	R	30	114.070	R	40
111.160	R	30	114.110	R	42
111.170	R	32	114.120	R	43
111.210	R	33	114.130	R	44, 45
111.212	R	33	114.140	R	46
111.231	R	28	114.150	R	47, 162
112.010	A	69	114.210	R	.....
112.020	A	70	114.220	R	48
112.030	A	71	114.230	R	47, 49, 50
112.040	A	73	114.240	R	53
112.050	R	.....	114.250	R	54
112.060	A	74	114.260	R	.....
112.070	A	75	114.270	R	.....
112.080	A	76	114.310	R	38
113.010	R	.....	114.320	R	38
113.020	R	.....	114.330	R	38
113.030	R	112	114.340	R	38

(1)	(2)	(3)	(1)	(2)	(3)
114.410	R	57	116.435	R	98
114.420	R	57	116.440	R	125
114.430	R	57	116.445	R	126
114.440	R	57	116.450	R	.....
115.010	R	12	116.455	R	.....
115.020	R	83	116.460	R	.....
115.110	R	56	116.465	R	.....
115.120	R	83	116.505	R	95
115.130	R	56	116.510	R	141, 147, 148
115.140	R	81, 82	116.515	R	142, 144
115.150	R	.....	116.520	R	153
115.160	R	16, 86	116.525	R	154, 155
115.170	R	85	116.530	R	154, 156
115.180	R	86, 87	116.535	R	156
115.190	R	88, 92	116.540	R	155, 156
115.200	R	101	116.545	R	155, 156
115.210	R	92	116.550	R	156
115.220	R	94	116.555	R	159, 160
115.310	R	81, 84, 88	116.560	R	156
115.320	R	88	116.565	R	146
115.330	R	80	116.570	R	146
115.340	R	101	116.575	R	154
115.350	R	92	116.580	R	150, 157
115.410	R	89	116.585	R	150, 157
115.420	R	89	116.590	R	110
115.430	R	90, 91	116.595	R	110
115.440	R	90	116.705	R	129
115.450	R	91	116.710	R	129
115.460	R	91	116.715	R	129
115.470	R	99	116.720	R	129, 180
115.480	R	99	116.725	R	129
115.490	R	99	116.730	R	129, 180
115.500	R	100, 101	116.735	R	129, 180
115.510	R	100, 101	116.740	R	129
115.520	R	101	116.745	R	129
115.990	R	56	116.750	R	129
116.005	R	103, 106	116.755	R	129
116.010	R	108	116.760	R	129
116.015	R	104, 109	116.765	R	129
116.020	R	108, 111	116.770	R	129
116.025	R	.....	116.775	R	129
116.105	R	121, 123	116.780	R	129
116.110	R	127(4)	116.785	R	127(16), 129
116.115	A	280	116.790	R	127(16), 129
116.120	R	128	116.795	R	127(16), 129
116.125	R	127(14)	116.800	R	127(16), 129
116.130	R	127(15)	116.805	R	129
116.135	R	127(15)	116.811	R	129
116.140	R	162 to 164	116.815	R	129
116.145	R	164	116.820	R	129, 132
116.150	R	164	116.825	R	129
116.155	R	163	116.830	R	129
116.160	R	164	116.835	A	133
116.165	R	163	116.840	R	129
116.170	R	127(20)	116.850	R	129
116.175	R	127(20)	116.860	R	129
116.180	R	127(22)	116.870	R	129
116.186	R	193	116.880	R	129
116.190	R	189	116.890	R	129
116.195	R	188, 189	116.900	R	129
116.305	R	139	116.990	R	.....
116.310	R	139	117.010	R	175
116.315	R	139	117.020	R	.....
116.320	R	139	117.030	R	151, 152
116.325	R	.....	117.110	R	146, 151, 152
116.330	R	140	117.120	R	146, 152
116.335	R	140	117.130	R	146
116.340	R	140	117.140	R	152
116.405	R	96	117.150	R	127(1)
116.410	R	96	117.160	R	152
116.415	R	97	117.170	R	145, 147, 148
116.420	R	98	117.180	R	.....
116.425	R	98	117.310	R	187
116.430	R	.....	117.315	R	255

(1)	(2)	(3)
127.160	R	.....
127.170	R	.....
127.180	R	.....
127.190	R	.....
127.310	R	227 to 229
127.320	R	.....
127.330	R	.....
127.340	R	.....
127.350	R	.....
178.080	A	290

(1)	(2)	(3)
179.650	A	295
179.670	A	296
179.740	A	297
419.488	A	298
427.085	A	299
697.165	A	300
697.695	A	301
708.520	A	302
722.385	R	.....

**TABLE SHOWING SOURCE
FROM EXISTING STATUTE SECTIONS
OF BILL SECTIONS**

Column (1) lists every section of the bill proposing a new Oregon probate code. Column (2) indicates whether the bill section is new (N) or an amendment of an existing section of Oregon Revised Statutes (A). Column (3) indicates, in the case of a new section derived from or containing subject matter comparable to that found in an existing ORS section, the ORS section; and in the case of an amendment of an existing ORS section, the ORS section.

(1)	(2)	(3)	(1)	(2)	(3)
1			58	N	111.060
(1-30)	N	.....	59	N	111.060
(31)	N	114.010	60	N	111.060
2	N	3.130, 3.180, 46.092	61	N	111.060
3	N	.....	62	N	111.060
4	N	.....	63	N	111.060
5	N	3.140, 3.340, 5.040	64	N	111.060
6	N	3.140, 3.340, 117.510 to 117.560	65	N	111.060
7	N	5.120	66	N	111.060
8	N	5.050, 5.080	67	N	111.060
9	N	3.101	68	N	111.060
10	N	.....	69	A	112.010
11	N	.....	70	A	112.020
12	N	115.010	71	A	112.030
13	N	.....	72	N	.....
14	N	.....	73	A	112.040
15	N	.....	74	A	112.060
16	N	43.110, 115.160	75	A	112.070
17	N	.....	76	A	112.080
18	N	.....	77	N	.....
19	N	111.020, 111.030	78	N	.....
20	N	111.020, 111.030	79	A	113.090
21	N	111.020, 111.030	80	N	115.330
22	N	111.020, 111.030	81	N	115.140, 115.310
23	N	111.020, 111.030, 120.010	82	N	115.140
24	N	111.010(4)	83	N	115.020, 115.120, 118.420
25	N	111.010(5)	84	N	115.310(2)
26	N	.....	85	N	115.170
27	N	111.040	86	N	115.160, 115.180(2)
28	N	111.231	87	N	115.180
29	N	.....	88	N	115.190, 115.310, 115.320
30	N	111.110, 111.120, 111.150, 111.160	89	N	115.410, 115.420
31	N	111.140	90	N	115.430, 115.440
32	N	111.170	91	N	115.430(4), 115.450, 115.460
33	N	111.210, 111.212	92	N	115.190, 115.210, 115.350
34	N	.....	93	N	.....
35	N	.....	94	N	115.200
36	N	114.020	95	N	116.505
37	N	114.030 to 114.050	96	N	116.405, 116.410, 118.610, 118.620
38	N	114.310 to 114.340	97	N	116.415
39	N	114.050, 114.060	98	N	116.420, 116.425, 116.435, 118.420, 118.630, 118.650
40	N	114.070	99	N	115.470 to 115.490
41	N	.....	100	N	115.500(1), 115.510
42	N	114.110	101	N	115.200, 115.340, 115.500 to 115.520
43	N	114.120	102	N	.....
44	N	114.130	103	N	113.070, 116.005
45	N	114.130	104	N	116.015
46	N	114.140	105	N	.....
47	N	114.150, 114.230(3)	106	N	116.005
48	N	114.220	107	N	.....
49	N	114.230(1)	108	N	116.010, 116.020
50	N	114.230(2)	109	N	116.015
51	N	.....	110	N	116.590, 116.595
52	N	.....	111	N	116.020
53	N	114.240	112	N	113.030, 113.050
54	N	114.250	113	N	.....
55	N	.....	114	N	.....
56	N	115.110, 115.130, 115.990			
57	N	114.410 to 114.440			

(1)	(2)	(3)	(1)	(2)	(3)
115	N	107.280	170	N	117.361(3), 117.370
116	N	113.040, 113.060	171	N	117.361(4)
117	N	126.300	172	N	117.380, 117.390
118	N	.....	173	N	117.640, 117.650
119	N	.....	174	N	117.640, 117.650
120	N	111.020, 111.030, 117.320	175	N	117.010, 117.610
121	N	116.105, 117.320	176	N	117.612, 117.615
122	N	.....	177	N	117.620
123	N	116.105	178	N	117.630
124	N	.....	179	N	117.630
125	N	116.440	180	N	116.720, 116.730, 116.735, 117.330, 117.340
126	N	116.445	181	N	.....
127			182	N	.....
(1)	N	97.130, 117.150	183	N	.....
(2, 3)	N	.....	184	A	117.680
(4)	N	116.110	185	N	117.660
(5-13)	N	.....	186	N	.....
(14)	N	116.125	187	N	117.310
(15)	N	116.130, 116.135	188	N	116.195
(16)	N	116.785 to 116.800	189	N	116.190, 116.195
(17-19)	N	.....	190	N	117.710
(20)	N	116.170, 116.175	191	N	178.080(6)
(21)	N	.....	192	A	120.130
(22)	N	116.180	193	N	116.186
(23-25)	N	.....	194	N	.....
128	N	116.120	195	N	.....
129	N	116.705 to 116.830, 116.840 to 116.900	196	N	.....
130	N	.....	197	N	.....
131	N	.....	198	N	.....
132	N	116.820	199	N	.....
133	A	116.835	200	N	.....
134	N	.....	201	N	.....
135	N	.....	202	N	.....
136	N	.....	203	N	120.310 to 120.330
137	N	.....	204	N	120.310
138	N	.....	205	N	.....
139	N	116.305 to 116.320	206	N	120.340, 120.350
140	N	116.330 to 116.340	207	N	.....
141	N	116.510	208	N	120.360
141a	N	.....	209	N	120.380
142	N	116.515	210	N	120.370, 120.380
143	N	.....	211	N	120.390
144	N	116.515	212	N	120.400
145	N	117.170	213	A	118.010
146	N	116.565, 116.570, 117.110(5), 117.120, 117.130	214	A	118.230
147	N	116.510, 117.170	215	A	118.280
148	N	116.510, 117.170	216	A	118.300
149	N	.....	217	A	118.350
150	N	116.580, 116.585	218	A	118.640
151	N	117.030, 117.110	219	A	118.660
152	N	117.030, 117.110, 117.120, 117.140, 117.160	220	N	.....
153	N	116.520	221	N	118.420, 118.670 to 118.690
154	N	116.525, 116.530, 116.575	222	A	118.700
155	N	116.525, 116.540, 116.545	223	A	118.990
156	N	116.530 to 116.550, 116.560	224	A	126.006
157	N	116.580, 116.585	225	A	126.106
158	N	.....	226	A	126.111
159	N	116.555	227	A	126.126
160	N	116.555	228	A	126.131
161	N	.....	229	A	126.146
162	N	114.150, 116.140	230	A	126.151
163	N	116.140, 116.155, 116.165	231	A	126.166
164	N	116.140 to 116.150, 116.160	232	N	.....
165	A	121.020	233	N	126.176
166	N	.....	234	A	126.186
167	A	121.090	235	A	126.230
168	N	.....	236	A	126.245
169	N	117.350, 117.361(1)(2)	237	A	126.265
			238	A	126.295
			239	A	126.338
			240	A	126.406
			241	A	126.411

(1)	(2)	(3)	(1)	(2)	(3)
242	A	126.416	274	A	91.030
243	A	126.426	275	A	93.190
244	A	126.431	276	A	93.240
245	A	126.436	277	A	93.420
246	A	126.441	278	A	94.330
247	A	126.456	279	A	97.130
248	A	126.461	280	A	116.115
249	A	126.471	281	A	105.050
250	A	126.476	282	A	105.340
251	A	126.490	283	A	107.100
252	A	126.495	284	A	107.110
253	A	126.540	285	A	107.280
254	N	.....	287	A	109.326
255	N	117.315, 126.555	288	A	109.330
256	A	126.555	289	A	109.370
257	N	.....	290	A	178.080
258	N	.....	291	N	.....
259	N	.....	292	A	120.210
260	N	.....	293	A	120.220
261	N	.....	294	A	120.330
262	A	126.675	295	A	179.650
263	A	3.101	296	A	179.670
264	A	3.130	297	A	179.740
265	A	5.080	298	A	419.488
266	A	5.100	299	A	427.085
267	A	7.230	300	A	697.165
268	A	12.190	301	A	697.695
269	A	13.080	302	A	708.520
270	A	23.260	303	N	.....
271	A	41.520	304	N	.....
272	A	46.092	305	N	.....
273	A	91.020	306	N	.....

HOUSE AMENDMENTS TO PRINTED ENGROSSED SENATE BILL 506

By COMMITTEE ON JUDICIARY

May 12, 1969

- 1 On page 1 of the printed engrossed bill, line 8, delete "116.115,".
- 2 In line 14, delete "and 708.520" and insert ", 708.520, section 6, chapter
3 _____, Oregon Laws 1969 (Enrolled House Bill 1158), and section 1, chapter
4 _____, Oregon Laws 1969 (Enrolled House Bill 1195)".
- 5 On page 6, line 30, delete "Supreme Court" and insert "Court of Ap-
6 peals".
- 7 In line 33, delete "Supreme Court" and insert "Court of Appeals".
- 8 On page 29, line 29, after "person" insert "or executor named in the
9 will".
- 10 On page 88, line 17, after "118.700" insert ", as amended by section 58,
11 chapter _____, Oregon Laws 1969 (Enrolled House Bill 1195)".
- 12 On page 89, line 12, delete "[Supreme Court]" and insert "[Court of
13 Appeals]".
- 14 On page 89, line 18, after "Penalties." delete the rest of the line and insert
15 "[~~(1)~~] *Failure, neglect or refusal* by any person in possession or control of
16 any".
- 17 In line 20, after "therein" delete the rest of the line.
- 18 In line 23, delete "by any person".
- 19 On page 111, after line 26 insert:
- 20 "Section 262a. Section 1, chapter _____, Oregon Laws 1969 (Enrolled
21 House Bill 1195), is amended to read:
- 22 "Sec. 1. **Court of Appeals; creation; appellate jurisdiction.** (1) As part
23 of the judicial branch of state government, there is created a court of
24 justice to be known as the Court of Appeals.

NOTE: Matter in *italics* in an amended section is new; matter ~~[lined out and bracketed]~~ is existing law to be omitted; complete new sections begin with **Section**.

1 “(2) The Court of Appeals shall have exclusive jurisdiction of appeals
2 in the following matters:

3 “(a) Appeals from judgments, as defined in ORS 19.005, of circuit
4 courts in criminal cases:

5 “(A) Arising under ORS 138.010 to 138.300 and 138.510 to 138.680.

6 “(B) In habeas corpus proceedings seeking to adjudicate the validity of
7 any conviction or imprisonment; but this subparagraph does not abrogate
8 the original habeas corpus jurisdiction of the Supreme Court.

9 “(C) In extradition proceedings under ORS chapter 147.

10 “(D) In proceedings relating to probation or parole.

11 “(E) In proceedings arising under ORS chapter 168.

12 “(F) In proceedings arising under ORS 221.360.

13 “(b) Appeals from judgments, as defined in ORS 19.005, of circuit courts:

14 “(A) *In proceedings arising under section 7, chapter _____, Oregon*
15 *Laws 1969 (Enrolled Senate Bill 506).*

16 “~~[(A)]~~ (B) In proceedings arising under ORS chapters ~~[111, 112, 113,~~
17 ~~114, 115, 116, 117,] 118 [,] and 119 [, 120 and 121].~~

18 “~~[(B)]~~ (C) In guardianship and conservatorship proceedings.

19 “~~[(C)]~~ (D) In adoption proceedings under ORS 109.305 to 109.400.

20 “(c) Appeals from judgments, as defined in ORS 19.005, of circuit
21 courts exercising jurisdiction under ORS chapter 419.

22 “(d) Appeals from judgments, as defined in ORS 19.005, of circuit
23 courts:

24 “(A) In suits for divorce, either absolute or from bed and board.

25 “(B) In suits for annulment of the marriage contract.

26 “(C) In suits or other proceedings relating to child custody or support.

27 “(D) In filiation proceedings.

28 “(e) Appeals from judgments, as defined in ORS 19.005, of circuit courts
29 on any action of or failure to act by state agencies, as defined by ORS
30 183.010, 183.310 or 291.002 or by any agency of local government, except
31 orders and rulings that are appealable to the Oregon Tax Court pursuant to
32 ORS 305.410.

33 “(3) Nothing in this section is intended to provide or create a right of
34 appeal where such a right is not otherwise provided or created by law.”.

1 On page 112, line 23, after "3.130" insert ", as amended by section 1,
2 chapter _____, Oregon Laws 1969 (Enrolled House Bill 1576),".

3 In line 29, after "In" insert "Baker,".

4 On page 118, delete lines 11 through 31 and insert:

5 "Section 278a. Section 6, chapter _____, Oregon Laws 1969 (Enrolled
6 House Bill 1158), is amended to read:

7 "Sec. 6. **Manner of executing anatomical gifts.** (1) ~~Notwithstanding~~
8 ~~ORS 114.020,~~ A gift of all or part of the body under subsection (1) of
9 section 4, ~~of this Act~~ chapter _____, Oregon Laws 1969 (Enrolled House
10 Bill 1158), may be made by will. The gift becomes effective upon the death
11 of the testator without waiting for probate. If the will is not probated, or if
12 it is declared invalid for testamentary purposes, the gift, to the extent
13 that it has been acted upon in good faith, is nevertheless valid and ef-
14 fective.

15 "(2) A gift of all or part of the body under subsection (1) of section
16 4, ~~of this Act~~ chapter _____, Oregon Laws 1969 (Enrolled House Bill 1158),
17 may also be made by document other than a will. The gift becomes effective
18 upon the death of the donor. The document, which may be a card designed
19 to be carried on the person, must be signed by the donor in the presence
20 of two witnesses who must sign the document in his presence. If the donor
21 cannot sign, the document may be signed for him at his direction and in
22 his presence in the presence of two witnesses who must sign the document
23 in his presence. Delivery of the document of gift during the donor's lifetime
24 is not necessary to make the gift valid.

25 "(3) The gift may be made to a specified donee or without specifying
26 a donee. If the latter, the gift may be accepted by the attending physician
27 as donee upon or following death. If the gift is made to a specified donee
28 who is not available at the time and place of death, the attending physician
29 upon or following death, in the absence of any expressed indication that
30 the donor desired otherwise, may accept the gift as donee. The physician
31 who becomes a donee under this subsection shall not participate in the
32 procedures for removing or transplanting a part.

33 "(4) Notwithstanding subsection (2) of section 9, ~~of this Act~~ chapter
34 _____, Oregon Laws 1969 (Enrolled House Bill 1158), the donor may desig-

1 nate in his will, card, or other document of gift the surgeon or physician
2 to carry out the appropriate procedures. In the absence of a designation
3 or if the designee is not available, the donee or other person authorized
4 to accept the gift may employ or authorize any surgeon or physician for
5 the purpose.

6 “(5) Any gift by a person designated in subsection (2) of section 4, ~~of~~
7 ~~this Act~~ chapter _____, Oregon Laws 1969 (Enrolled House Bill 1158), shall
8 be made by a document signed by him or made by his telegraphic, recorded
9 telephonic, or other recorded message.

10 “Section 279. ORS 97.130, as amended by section 10, chapter _____, Ore-
11 gon Laws 1969 (Enrolled House Bill 1158), is amended to read:

12 “97.130. **Right to control disposition of remains.** (1) Subject to the
13 provisions of sections 1 to 9, ~~of this 1969 Act~~ chapter _____, Oregon Laws
14 1969 (Enrolled House Bill 1158), any of the following persons, in order
15 of priority stated, when persons in prior classes are not available at the
16 time of death, and in the absence of actual notice of opposition by a member
17 of the same or a prior class, shall have the right to control the disposition
18 of the remains of a decedent:

19 “~~{(1)}~~ (a) The spouse.

20 “~~{(2)}~~ (b) A son or daughter 18 years of age or older.

21 “~~{(3)}~~ (c) Either parent.

22 “~~{(4)}~~ (d) A brother or sister 18 years of age or older.

23 “~~{(5)}~~ (e) A guardian of the person of the decedent at the time of his
24 death.

25 “~~{(6)}~~ (f) A person in the next degree of kindred.

26 “(2) Subject to the provisions of sections 1 to 9, chapter _____, Oregon
27 Laws 1969 (Enrolled House Bill 1158), if disposition of the remains of a de-
28 cedent has not been directed and authorized under subsection (1) of this
29 section within 10 days after the date of the death of the decedent, a public
30 health officer, the special administrator or the personal representative
31 of the estate of the decedent may direct and authorize disposition of the
32 remains.

33 “**Note:** Section 280 was deleted by amendment.”

- 1 On page 119, line 14, after "107.100" insert ", as amended by section 53,
2 chapter _____, Oregon Laws 1969 (Enrolled House Bill 1195),".
- 3 On page 120, line 33, after "appeal" insert a period and delete the rest
4 of the line.
- 5 In line 34, delete "to the Supreme Court".
- 6 On page 121, line 2, delete "Su-".
- 7 In line 3, delete "preme Court" and insert "appellate court".
- 8 In line 25, after "107.110" insert ", as amended by section 1, chapter
9 _____, Oregon Laws 1969 (Enrolled House Bill 1332), and by section 54,
10 chapter _____, Oregon Laws 1969 (Enrolled House Bill 1195),".
- 11 In line 27, delete "; content of decree".
- 12 In line 31, delete "mari-".
- 13 In line 32, delete "tal status" and insert "marriage relationship".
- 14 On page 122, line 7, after "The" insert "Court of Appeals or the".
- 15 In line 8, after "party" insert a period and delete the rest of the line.
- 16 In line 9, delete "decendent being the nominal party therefor." and insert
17 "The appeal may be continued by the personal representative of the de-
18 ceased party."
- 19 In line 13, after "The" insert "Court of Appeals or the".
- 20 In line 14, after "the" insert "Court of Appeals or the".
- 21 In line 23, delete "include the".
- 22 In line 24, delete "substance of subsections (1) to (4) of this section
23 and shall".
- 24 In line 25, delete "marital".
- 25 In line 26, delete "status" and insert "marriage relationship".
- 26 After line 26 insert:
- 27 "(6) The 60-day period specified in subsection (1) of this section does
28 not apply when a decree declares a marriage void under ORS 107.010."
- 29 On page 130, line 31, delete "intestate".
- 30 On page 131, delete lines 32 through 34 and insert:
- 31 "(1) This Act applies to wills of decedents dying thereon or thereafter,
32 and a will executed before the effective date of this Act shall be considered
33 lawfully executed if the application of section 39 of this Act would make it
34 so, but the construction of a will executed before the effective date of this

- 1 Act shall be governed by the law in effect on the date of execution unless
- 2 a contrary intent is established by the will.”.
- 3 On page 132, delete lines 1 and 2.
- 4 In line 15, after “date” insert “of this Act”.
- 5 In line 16, after “date” insert “of this Act”.
- 6 In line 20, after “date” insert “of this Act”.
- 7 In line 27, after “Repeals.” insert “(1)”.
- 8 On page 133, after line 32 insert:
- 9 “(2) If House Bill 1162 (1969) becomes law, ORS 21.313 and 114.410,
- 10 both as amended by chapter —, Oregon Laws 1969 (Enrolled House
- 11 Bill 1162), are repealed on the effective date of this Act.”.



SENATE AMENDMENTS TO SENATE BILL 506

By COMMITTEE ON JUDICIARY

April 23, 1969

- 1 On page 1 of the printed bill, line 6, delete "109.041,".
- 2 On page 2, line 9, delete "118.480,".
- 3 On page 3, line 33, delete "which" and insert "that".
- 4 On page 4, line 6, after "children" insert "and their issue".
- 5 On page 9, line 20, delete "two" and insert "three".
- 6 On page 12, delete lines 15 through 22 and insert:
 - 7 **"Section 28. Succession where parents not married.** (1) For all pur-
 - 8 poses of intestate succession, full effect shall be given to all relationships
 - 9 as described in ORS 109.060, except as otherwise provided by law in case
 - 10 of adoption.
 - 11 "(2) For all purposes of intestate succession and for those purposes
 - 12 only, before the relationship of father and child and other relationships
 - 13 dependent upon the establishment of paternity shall be given effect under
 - 14 subsection (1) of this section:
 - 15 "(a) The paternity of the child shall have been established under ORS
 - 16 109.070 during the lifetime of the child or;
 - 17 "(b) The father shall have acknowledged himself to be the father in
 - 18 writing signed by him during the lifetime of the child."
 - 19 On page 13, line 18, delete "for".
 - 20 On page 13, delete lines 19 through 34 and insert:
 - 21 **"Section 33. Adopted persons.** (1) An adopted person, his issue and
 - 22 kindred shall take by intestate succession from his adoptive parents, their
 - 23 issue and kindred, and his adoptive parents, their issue and kindred shall
 - 24 take by intestate succession from the adopted person, his issue and kindred,
 - 25 as though the adopted person were the natural child of his adoptive parents.

NOTE: Matter in *Italics* in an amended section is new; matter ~~lined out and bracketed~~ is existing law to be omitted; complete new sections begin with **Section**.

1 “(2) An adopted person shall cease to be treated as the child of his
2 natural parents for all purposes of intestate succession by the adopted
3 person, his issue and kindred and his natural parents, their issue and
4 kindred, except:

5 “(a) If a natural parent of a person marries or remarries and the person
6 is adopted by his stepparent, the adopted person shall continue also to be
7 treated, for all purposes of intestate succession, as the child of the natural
8 parent who is the spouse of the adoptive parent.

9 “(b) If a natural parent of a person dies, the other natural parent re-
10 marries and the person is adopted by his stepparent, the adopted person
11 shall continue also to be treated, for all purposes of intestate succession
12 by any person through the deceased natural parent, as the child of the
13 deceased natural parent.

14 “(3) Sections 1 to 212 of this Act apply to adopted persons who were
15 adopted in this state or elsewhere.

16 **“Section 34. Effect of more than one adoption.** For all purposes of
17 intestate succession, a person who has been adopted more than once shall
18 be treated as the child of the parents who have most recently adopted him
19 and, except as otherwise provided in this section, shall cease to be treated
20 as the child of his previous adoptive parents. He shall continue also to
21 be treated as the child of his natural parent or previous adoptive parent
22 only to the extent provided in subsection (2) of section 33 of this Act, and
23 for the purpose of applying that subsection with reference to a previous
24 adoptive parent, ‘natural parent’ in that subsection means the previous
25 adoptive parent.

26 **“Section 35. References in wills, deeds and other instruments to accord**
27 **with law of intestate succession.** Unless a contrary intent is established
28 by the instrument, all references in a will, deed, trust instrument or other
29 instrument to an individual or member of a class described generically in
30 relation to a particular person as children, issue, grandchildren, de-
31 scendants, heirs, heirs of the body, next of kin, distributees, grandparents,
32 brothers, nephews or other relatives shall include any person who would
33 be treated as so related for all purposes of intestate succession, except
34 that an adopted person so included must have been adopted as a minor or

- 1 after having been a member of the household of the adoptive parent while
- 2 a minor.”.
- 3 On page 14, delete lines 1 through 14.
- 4 On page 17, line 5, delete “indicating” and insert “establishing”.
- 5 In line 7, after “a” insert “written”.
- 6 On page 23, line 25, after “estate” delete the period and insert a colon.
- 7 On page 31, line 21, delete “named”.
- 8 In line 22, delete “executor in the will”.
- 9 On page 32, line 5, delete “persons interested” and insert “interested
- 10 persons”.
- 11 On page 34, line 3, after “of” insert “a”.
- 12 In line 4, delete “there” and insert “therein”.
- 13 In line 23, delete “two” and insert “three”.
- 14 On page 36, line 9, after “grounds” delete “of” and insert “for”.
- 15 In line 19, delete “nominated” and insert “named”.
- 16 On page 37, line 28, delete “any dependent child” and insert “de-
- 17 pendent children” and in the same line after “decedent” insert “, or any
- 18 of them,”.
- 19 On page 38, line 14, delete “any dependent child” and insert “de-
- 20 pendent children” and in the same line after “decedent” insert “, or any
- 21 of them,”.
- 22 On page 39, line 6, delete “any”.
- 23 In line 7, delete “child” and insert “children” and in the same line after
- 24 “decedent” insert “or any of them”.
- 25 In line 33, after “support” delete the comma and insert a period.
- 26 In line 34, delete “but” and insert “The provision” and in the same line
- 27 after “administration” insert “, but shall not be a deduction for inheritance
- 28 tax purposes”.
- 29 On page 40, line 1, delete “Small estates; setting” and insert “Setting”
- 30 and in the same line after “estate” insert “for support”.
- 31 In line 4, delete “any dependent child” and insert “dependent children”.
- 32 In line 5, after “cedent” insert “, or any of them,”.
- 33 On page 42, line 9, after “than” insert “the”.
- 34 On page 45, line 10, delete “became” and insert “becomes”.

1 In line 26, after the period insert: "Only those funeral expenses neces-
2 sary for a plain and decent funeral and disposition of the remains of the
3 decedent may be paid from the estate if the assets are insufficient to pay
4 the claims of the State Public Welfare Commission and the Oregon State
5 Board of Control."

6 On page 46, line 12, after "loan" insert "association".

7 On page 47, line 8, delete "advisors" and insert "advisers".

8 In line 26, after "of" insert "the".

9 On page 48, line 12, after "paying" delete the comma.

10 On page 49, line 18, delete "in" and insert "of".

11 On page 50, line 27, delete "on" and insert "for".

12 On page 51, line 26, after "taxes" insert "shall".

13 In line 27, delete "him" and insert "the decedent".

14 On page 52, line 5, after "as" insert "a".

15 After line 18 insert:

16 **"Section 141a. Claims for personal injury, death or property damage**
17 **covered by insurance.** A claim for injury to or death of a person or damage
18 to property, to the extent that the liability of the decedent therefor is
19 covered by insurance, is not barred by failure to present it as provided in
20 subsection (3) of section 141 of this Act, but payment of the claim not so
21 presented may be made only from the insurance proceeds. The estate of
22 the decedent may be reopened for the purpose of asserting the claim and
23 payment thereof, if allowed or established, from the insurance proceeds."

24 On page 55, line 9, delete "shall".

25 In line 12, after "appealed," insert "shall".

26 In line 30, after "possession" insert "of the estate of the decedent".

27 On page 56, line 34, delete "or suit".

28 On page 57, line 1, delete "or suit".

29 In line 2, delete "or suit".

30 In line 4, delete "or suit".

31 In line 7, delete "or suit".

32 In line 12, delete "or".

33 In line 13, delete "suit".

34 In line 15, delete "or suit".

- 1 In line 21, delete "or suit".
- 2 In line 29, delete "or suit".
- 3 In line 31, delete "or suit".
- 4 On page 58, line 1, delete "or suit".
- 5 On page 59, line 2, after "if" insert a colon.
- 6 In line 4, after "and" insert a colon.
- 7 In line 13, delete "beneficiary under the will" and insert "devisee".
- 8 In line 14, delete "beneficiary" and insert "devisee".
- 9 In line 17, delete "beneficiary" and insert "devisee".
- 10 On page 60, line 5, delete "pay" and insert "discharge".
- 11 In line 9, delete "Payment" and insert "Discharge".
- 12 In line 22, delete "or suit".
- 13 In line 23, delete "or suit".
- 14 In line 32, after "representative" delete the comma.
- 15 On page 61, line 27, after "amended" insert "and in effect on Janu-
16 ary 1, 1969".
- 17 On page 62, line 12, after "settlement" insert "and distribution".
- 18 In line 24, after "security" insert "of any distributee".
- 19 In line 30, after "order" insert ", except as otherwise provided in sec-
20 tions 1 to 212 of this Act".
- 21 On page 63, line 13, delete "is" and insert "may be" and in the same
22 line after "and" insert "is".
- 23 On page 64, line 3, delete "which" and insert "that".
- 24 On page 65, line 3, delete "beneficiaries" and insert "distributees".
- 25 On page 65, after line 26 insert:
26 "(4) If the State Public Welfare Commission or its authorized agent
27 has presented a claim under ORS chapters 411 to 417, or the Oregon State
28 Board of Control or its authorized agent has presented a claim under sub-
29 section (3) of ORS 179.620, and the claim has not been settled or paid in
30 full, the personal representative shall cause to be mailed to the commis-
31 sion or board a copy of the final account at the same time, and shall make
32 proof of the mailing in the same manner, as the notice provided for in
33 this section."
- 34 On page 67, line 24, delete "Abatement".

- 1 After line 24 insert:
- 2 "(4) Abatement".
- 3 In line 26, delete "beneficiaries" and insert "distributees".
- 4 In line 28, delete "(4)" and insert "(5)".
- 5 In line 30, delete "gift" and insert "devise".
- 6 In line 31, delete "gift" and insert "devise".
- 7 In line 32, delete "(5)" and insert "(6)".
- 8 On page 68, line 3, delete "three" and insert "five".
- 9 In line 20, delete "beneficiaries" and insert "distributees".
- 10 On page 69, line 4, after "court" delete the comma.
- 11 In line 12, after "services" delete the comma.
- 12 On page 70, line 14, delete "suit" and insert "action".
- 13 In line 17, delete "a suit" and insert "an action".
- 14 In line 18, after "through" insert "fraud or misrepresentation of the
- 15 personal representative or his surety or through".
- 16 On page 72, line 2, after "representative of" insert "the estate of".
- 17 In line 5, after "decree" insert "or order".
- 18 On page 73, line 6, delete "tangible".
- 19 In line 10, delete "tangible".
- 20 In line 12, after "upon" insert "a release given by the State Treasurer
- 21 in respect to inheritance taxes and".
- 22 On page 76, line 19, after "amended" insert "and in effect on Jan-
- 23 uary 1, 1969".
- 24 On page 79, line 17, delete "valid for all purposes," and insert "as valid
- 25 as though the letters had not been revoked,".
- 26 In line 22, delete "duly".
- 27 On page 80, line 4, after the period delete the rest of the line.
- 28 Delete lines 5 and 6.
- 29 In line 14, delete ", tangible or intangible,".
- 30 On page 86, line 12, after "118.660" insert ", as amended by section 1,
- 31 chapter 111, Oregon Laws 1969 (Enrolled House Bill 1275),".
- 32 Delete lines 26 through 28 and insert "as practicable, ~~make and~~ file
- 33 with the State Treasurer a ~~report under the penalties for false swearing and~~

- 1 *return* in a form to be prescribed by the State Treasurer, which ~~[report]~~
2 shall include a statement of the”.
- 3 On page 87, line 5, delete “[~~schedule, list~~]” and insert “[~~report,~~]”.
- 4 In line 6, delete “[~~or statement,~~]”.
- 5 On page 88, line 12, delete “to the Supreme Court”.
- 6 In line 18, delete “Any person in possession” and insert “Possession”.
- 7 In line 20, delete “who fails, neglects or refuses” and insert “failure,
8 neglect or refusal”.
- 9 In line 22, delete “shall be” and insert “by any person is a misdemeanor.”.
- 10 Delete lines 23 and 24.
- 11 On page 90, line 1, after “who” insert “are residents of this state or”.
- 12 On page 92, line 1, after “cation” insert “as summons is served by pub-
13 lication in a civil action” and in the same line delete “or certified”.
- 14 On page 99, line 31, after “publication” insert “as summons is served
15 by publication in a civil action”.
- 16 In line 32, delete “or certified”.
- 17 On page 106, line 10, after “from” insert “fraud or misrepresentation
18 of the guardian or the surety on his bond or from”.
- 19 On page 108, line 30, after “conservator” insert “, from the estate of
20 the ward which is not necessary for the proper care, maintenance, educa-
21 tion and support of the ward and of persons to whom the ward owes a
22 legal duty of support,”.
- 23 On page 110, line 14, after “from” insert “fraud or misrepresentation
24 of the conservator or the surety on his bond or from”.
- 25 On page 113, line 26, restore “or against”.
- 26 On page 117, line 16, after “representative” delete “of” and insert “in”.
- 27 On page 121, delete lines 29 through 34 and insert:
28 “**Note:** Section 286 was deleted by amendment.”.
- 29 On page 122, delete lines 1 through 12.
- 30 On page 130, line 3, after “708.520” insert “, as amended by section 1,
31 chapter —, Oregon Laws 1969 (Enrolled Senate Bill 228),”.
- 32 In line 5, delete “intestate”.
- 33 In line 13, delete “\$1,000” and insert “\$2,500”.
- 34 In line 18, delete “intestate”.

- 1 In line 19, delete "\$1,000" and insert "\$2,500".
- 2 In line 27, after "children" insert "or surviving parent or parents".
- 3 In line 29, after "administrator" insert "or executor".
- 4 In line 32, after "administrator" insert "or executor".
- 5 On page 132, line 28, delete "118.480,".



PROPOSED OREGON PROBATE CODE

SENATE BILL 506 (1969 REGULAR SESSION)

Table Showing Source
From Preliminary Draft Sections
Of Bill Sections

Senate Bill 506 (1969 Regular Session) embodies a proposed Oregon probate code that was initially prepared by the Advisory Committee on Probate Law Revision, with the assistance of the Oregon State Bar Committee on Probate Law and Procedure, and thereafter reviewed, approved and submitted to the Oregon Legislative Assembly by the Law Improvement Committee.

Prior to review, approval and submission by the Law Improvement Committee, the proposed code was distributed to all active members of the Oregon State Bar in Oregon and others, in the form of a blue, paperback publication entitled "Preliminary Draft -- Proposed Oregon Probate Code." In addition to the statutory substance of the proposed code, the preliminary draft contained comments by the Advisory Committee that included references to sources of proposed new provisions of law and reasons for proposed changes in or elimination of present law.

In the course of preparing the proposed code for introduction as Senate Bill 506, some of the sections of the preliminary draft were relocated and many were renumbered. To assist those persons examining sections of Senate Bill 506 in locating comparable sections of the preliminary draft, and vice versa, the following table has been prepared.

The first column on each page of the table sets forth, by number, the sections of Senate Bill 506, followed by the comparable sections, by number, of the preliminary draft. The second column sets forth the preliminary draft sections, followed by the comparable sections of Senate Bill 506. "Added" indicates that a section in the bill did not appear in the preliminary draft. "Deleted" indicates a section in the preliminary draft that does not appear in the bill.

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Senate Bill 506

By COMMITTEE ON JUDICIARY (at the request of the
Law Improvement Committee)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as **introduced**.

Enacts new Oregon probate code. Revises laws relating to probate courts and procedure, intestate succession, wills, initiation of estate proceedings, appointment and qualification of personal representatives (executors and administrators), administration and distribution of decedents' estates, guardianships and conservatorships. Generally eliminates distinctions in treatment of real and personal property. Replaces dower and curtesy with enlarged intestate share and election against will of surviving spouse. Lowers age for making will from 21 to 18. Expands requirements for notice to interested persons of initiation of estate proceeding, but reduces number of published notices. Shortens time period for contesting will and filing claims for preferential payment from 6 to 4 months. Broadens and makes more flexible the support allowance for surviving spouse and dependent children. Simplifies handling of small, solvent estates by permitting them, after paying claims, expenses and taxes, to be set apart as family support, with summary closure of estate proceeding. Gives personal representative more power to act without court proceeding and approval, but allows him or any interested person to obtain court instruction or approval. Makes inventory and appraisal requirements more flexible. Simplifies escheat proceedings. Imparts finality and conclusiveness to court's decree of final distribution. Modifies procedures for handling estates of absentees, including substitution of finding of death based on actual search instead of 7-year presumption. Makes changes in inheritance tax procedures to simplify and conform them to modifications of probate laws. Eliminates separate procedures for conserving property of missing persons, and makes estates of such persons subject to guardianship proceedings. Makes many other substantive changes and refinements in probate laws, rearranges and clarifies those laws and conforms other laws that are geared to probate courts and procedures.

Effective July 1, 1970.

NOTE: Matter in *italics* in an amended section is new; matter ~~lined out and bracketed~~ is existing law to be omitted; complete new sections begin with **Section**.

PROBATE CODE

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1 A BILL FOR AN ACT

2 Relating to procedures concerning certain persons and their property,
3 including but not limited to provisions constituting a new probate code;
4 creating new provisions; amending ORS 3.101, 3.130, 5.080, 5.100, 7.230,
5 12.190, 13.080, 23.260, 41.520, 46.092, 91.020, 91.030, 93.190, 93.240, 93.420,
6 94.330, 97.130, 105.050, 105.340, 107.100, 107.110, 107.280, 109.041, 109.326,
7 109.330, 109.370, 112.010, 112.020, 112.030, 112.040, 112.060, 112.070, 112.080,
8 113.090, 116.115, 116.835, 117.680, 118.010, 118.230, 118.280, 118.300, 118.350,
9 118.640, 118.660, 118.700, 118.990, 120.130, 120.210, 120.220, 120.230, 121.020,
10 121.090, 126.006, 126.106, 126.111, 126.126, 126.131, 126.146, 126.151, 126.166,
11 126.186, 126.230, 126.245, 126.265, 126.295, 126.338, 126.406, 126.411, 126.416,
12 126.426, 126.431, 126.436, 126.441, 126.456, 126.461, 126.471, 126.476, 126.490,
13 126.495, 126.540, 126.555, 126.675, 178.080, 179.650, 179.670, 179.740, 419.488,
14 427.085, 697.165, 697.695 and 708.520; repealing ORS 3.140, 3.180, 3.340,
15 5.040, 5.050, 5.070, 21.313, 93.170, 105.065, 111.010, 111.020, 111.030, 111.040,
16 111.050, 111.060, 111.070, 111.110, 111.120, 111.130, 111.140, 111.150, 111.160,
17 111.170, 111.210, 111.212, 111.231, 112.050, 113.010, 113.020, 113.030, 113.040,
18 113.050, 113.060, 113.070, 113.080, 113.110, 113.120, 113.130, 113.140, 113.150,
19 113.160, 113.210, 113.220, 113.230, 113.240, 113.250, 113.260, 113.270, 113.280,
20 113.290, 113.410, 113.420, 113.430, 113.440, 113.450, 113.510, 113.520, 113.530,
21 113.540, 113.610, 113.620, 113.630, 113.640, 113.650, 113.660, 113.670, 113.680,
22 113.690, 114.010, 114.020, 114.030, 114.040, 114.050, 114.060, 114.070, 114.110,
23 114.120, 114.130, 114.140, 114.150, 114.210, 114.220, 114.230, 114.240, 114.250,
24 114.260, 114.270, 114.310, 114.320, 114.330, 114.340, 114.410, 114.420, 114.430,
25 114.440, 115.010, 115.020, 115.110, 115.120, 115.130, 115.140, 115.150, 115.160,
26 115.170, 115.180, 115.190, 115.200, 115.210, 115.220, 115.310, 115.320, 115.330,
27 115.340, 115.350, 115.410, 115.420, 115.430, 115.440, 115.450, 115.460, 115.470,
28 115.480, 115.490, 115.500, 115.510, 115.520, 115.990, 116.005, 116.010, 116.015,
29 116.020, 116.025, 116.105, 116.110, 116.120, 116.125, 116.130, 116.135, 116.140,
30 116.145, 116.150, 116.155, 116.160, 116.165, 116.170, 116.175, 116.180, 116.186,
31 116.190, 116.195, 116.305, 116.310, 116.315, 116.320, 116.325, 116.330, 116.335,
32 116.340, 116.405, 116.410, 116.415, 116.420, 116.425, 116.430, 116.435, 116.440,
33 116.445, 116.450, 116.455, 116.460, 116.465, 116.505, 116.510, 116.515, 116.520,
34 116.525, 116.530, 116.535, 116.540, 116.545, 116.550, 116.555, 116.560, 116.565,

1 116.570, 116.575, 116.580, 116.585, 116.590, 116.595, 116.705, 116.710, 116.715,
 2 116.720, 116.725, 116.730, 116.735, 116.740, 116.745, 116.750, 116.755, 116.760,
 3 116.765, 116.770, 116.775, 116.780, 116.785, 116.790, 116.795, 116.800, 116.805,
 4 116.811, 116.815, 116.820, 116.825, 116.830, 116.840, 116.850, 116.860, 116.870,
 5 116.880, 116.890, 116.900, 116.990, 117.010, 117.020, 117.030, 117.110, 117.120,
 6 117.130, 117.140, 117.150, 117.160, 117.170, 117.180, 117.310, 117.315, 117.320,
 7 117.330, 117.340, 117.350, 117.361, 117.370, 117.380, 117.390, 117.510, 117.520,
 8 117.530, 117.540, 117.550, 117.560, 117.610, 117.612, 117.615, 117.620, 117.630,
 9 117.640, 117.650, 117.660, 117.670, 117.690, 117.710, 118.420, 118.480, 118.500,
 10 118.610, 118.620, 118.630, 118.650, 118.670, 118.680, 118.690, 120.010, 120.020,
 11 120.030, 120.040, 120.050, 120.060, 120.070, 120.080, 120.090, 120.100, 120.110,
 12 120.120, 120.140, 120.150, 120.310, 120.320, 120.330, 120.340, 120.350, 120.360,
 13 120.370, 120.380, 120.390, 120.400, 121.030, 121.040, 121.050, 121.060, 121.070,
 14 121.080, 121.100, 121.210, 121.220, 121.230, 121.240, 121.250, 121.260, 121.270,
 15 121.280, 121.290, 121.300, 121.310, 121.320, 121.330, 121.340, 121.350, 121.360,
 16 121.370, 126.011, 126.176, 126.300, 126.446, 126.611, 127.010, 127.020, 127.030,
 17 127.040, 127.050, 127.060, 127.070, 127.080, 127.090, 127.100, 127.110, 127.120,
 18 127.130, 127.140, 127.150, 127.160, 127.170, 127.180, 127.190, 127.310, 127.320,
 19 127.330, 127.340, 127.350 and 722.385; and prescribing an effective date.

20 *Be It Enacted by the People of the State of Oregon:*

21 **ARTICLE I. GENERAL PROVISIONS**

22 **Part 1. Definitions**

23 **Section 1. Definitions.** As used in sections 1 to 212 of this Act, unless
 24 the context requires otherwise:

25 (1) "Abate" means to reduce a devise on account of the insufficiency
 26 of the estate to pay all claims, expenses and devises in full.

27 (2) "Action" includes suits and legal proceedings.

28 (3) "Administration" means any proceeding relating to the estate of
 29 a decedent, whether the decedent died testate, intestate or partially
 30 intestate.

31 (4) "Advancement" means a gift by a decedent to an heir to enable
 32 the donee to anticipate his inheritance to the extent of the gift.

33 (5) "All purposes of intestate succession" means succession by, through
 34 or from a person, both lineal and collateral.

- 1 (6) "Assets" includes real, personal and intangible property.
- 2 (7) "Claim" includes liabilities of a decedent, whether arising in con-
3 tract, in tort or otherwise.
- 4 (8) "Court" or "probate court" means the court in which jurisdiction
5 of probate matters, causes and proceedings is vested as provided in sec-
6 tion 4 of this Act.
- 7 (9) "Decedent" means a person who has died leaving property that is
8 subject to administration.
- 9 (10) "Devise," when used as a noun, means property disposed of by a
10 will, and includes "legacy" and "bequest."
- 11 (11) "Devise," when used as a verb, means to dispose of property by
12 a will, and includes "bequeath."
- 13 (12) "Devisee" includes "legatee" and "beneficiary."
- 14 (13) "Distributee" means a person entitled to any property of a de-
15 cedent under his will or under intestate succession.
- 16 (14) "Domicile" means the place of abode of a person, where he in-
17 tends to remain and to which, if absent, he intends to return.
- 18 (15) "Estate" means the real and personal property of a decedent, as
19 from time to time changed in form by sale, reinvestment or otherwise, and
20 augmented by any accretions or additions thereto and substitutions there-
21 for or diminished by any decreases and distributions therefrom.
- 22 (16) "Funeral" includes burial or other disposition of the remains of a
23 decedent, including the plot or tomb and other necessary incidents to the
24 disposition of the remains.
- 25 (17) "General devise" means a devise chargeable generally on the
26 estate of a testator and not distinguishable from other parts thereof or
27 not so given as to amount to a specific devise.
- 28 (18) "Heir" means any person, including the surviving spouse, who is
29 entitled under intestate succession to the property of a decedent who died
30 wholly or partially intestate.
- 31 (19) "Interested person" includes heirs, devisees, children, spouses,
32 creditors and any others having a property right or claim against the estate
33 of a decedent which may be affected by the proceeding. It also includes
34 fiduciaries representing interested persons.

1 (20) "Intestate" means one who dies without leaving a valid will, or
2 the circumstance of dying without leaving a valid will, effectively disposing
3 of all his estate.

4 (21) "Intestate succession" means succession to property of a decedent
5 who dies intestate or partially intestate.

6 (22) "Issue" includes adopted children and, when used to refer to per-
7 sons who take by intestate succession, includes all lineal descendants, ex-
8 cept those who are the lineal descendants of living lineal descendants.

9 (23) "Net estate" means the real and personal property of a decedent,
10 except property used for the support of his surviving spouse and children
11 and for the payment of expenses of administration, funeral expenses,
12 claims and taxes.

13 (24) "Net intestate estate" means any part of the net estate of a de-
14 cedent not effectively disposed of by his will.

15 (25) "Personal property" includes all property other than real prop-
16 erty.

17 (26) "Personal representative" includes executor, administrator, admin-
18 istrator with will annexed and administrator de bonis non, but does not
19 include special administrator.

20 (27) "Property" includes both real and personal property.

21 (28) "Real property" includes all legal and equitable interests in land,
22 in fee and for life.

23 (29) "Settlement" includes, as to the estate of a decedent, the full
24 process of administration, distribution and closing.

25 (30) "Specific devise" means a devise of a specific thing or specified
26 part of the estate of a testator that is so described as to be capable of
27 identification. It is a gift of a part of the estate identified and differentiated
28 from all other parts.

29 (31) "Will" includes codicil; it also includes a testamentary instrument
30 that merely appoints an executor or that merely revokes or revives an-
31 other will.

32 **Part 2. Probate Courts and Commissioners**

33 **Section 2. Transfer of probate jurisdiction.** (1) All probate jurisdiction,
34 authority, powers, functions and duties of the county courts and the judges

1 thereof and the district courts and the judges thereof are transferred to
2 the circuit courts and the judges thereof in all counties except Gilliam,
3 Grant, Harney, Malheur, Sherman and Wheeler Counties.

4 (2) All probate jurisdiction, authority, powers, functions and duties of
5 the circuit courts and the judges thereof are transferred to the county
6 courts and the judges thereof in Gilliam, Grant, Harney, Malheur, Sherman
7 and Wheeler Counties.

8 **Section 3. Transfer of pending proceedings; contested matters; appeals.**

9 (1) Except as otherwise provided in this section, all matters, causes and
10 proceedings relating to probate jurisdiction, authority, powers, functions
11 and duties pending on the effective date of this Act in a court from which
12 the jurisdiction, authority, powers, functions and duties are transferred
13 by section 2 of this Act are transferred to the court to which the juris-
14 diction, authority, powers, functions and duties are so transferred.

15 (2) Contested matters pending in the circuit court for Gilliam, Grant,
16 Harney, Malheur, Sherman or Wheeler County under ORS 5.050, and
17 pending appeals therefrom, on the effective date of this Act shall be
18 conducted and completed pursuant to the provisions of law in effect
19 immediately before that date.

20 (3) Appeals pending in a circuit court under ORS 5.120, 109.370, 116.535,
21 118.500, subsection (3) of 118.700, subsection (1) of 179.650 or ORS 427.085
22 on the effective date of this Act shall be conducted and completed pur-
23 suant to the provisions of law in effect immediately before that date.

24 **Section 4. Probate jurisdiction vested.** Jurisdiction of all probate mat-
25 ters, causes and proceedings is vested in the county courts of Gilliam,
26 Grant, Harney, Malheur, Sherman and Wheeler Counties and in the
27 circuit court for each other county and as provided in section 8 of this Act.

28 **Section 5. Probate jurisdiction described.** The jurisdiction of the pro-
29 bate court includes, but is not limited to:

30 (1) Appointment and qualification of personal representatives.

31 (2) Probate and contest of wills.

32 (3) Determination of heirship.

33 (4) Determination of title to and rights in property claimed by or
34 against personal representatives, guardians and conservators.

1 (5) Administration, settlement and distribution of estates of decedents.

2 (6) Construction of wills, whether incident to the administration or
3 distribution of an estate or as a separate proceeding.

4 (7) Guardianships and conservatorships, including the appointment and
5 qualification of guardians and conservators and the administration, settle-
6 ment and closing of guardianships and conservatorships.

7 (8) Supervision and disciplining of personal representatives, guardians
8 and conservators.

9 **Section 6. Powers of probate court.** (1) The general legal and equitable
10 powers of a circuit court are applicable to effectuate the jurisdiction of
11 a probate court, punish contempts and carry out its determinations, orders,
12 judgments and decrees as a court of record with general jurisdiction in
13 law and equity, and the same validity, finality and presumption of regu-
14 larity shall be accorded to its determinations, orders, judgments and de-
15 crees, including determinations of its own jurisdiction, as to those of a
16 court of record with general jurisdiction in law and equity.

17 (2) A probate court has full, legal and equitable powers to make de-
18 claratory judgments, as provided in ORS 28.010 to 28.160, in all matters
19 involved in the administration of an estate, including those pertaining to
20 the title of real property, the determination of heirship and the distribu-
21 tion of the estate.

22 **Section 7. Appeals from probate court; reexamination of issues.** (1) Ex-
23 cept as otherwise provided in this section, no issue determined in a probate
24 court shall be tried again on appeal or otherwise reexamined in a manner
25 other than those appropriate to issues determined by a court of record
26 with general jurisdiction in law and equity.

27 (2) Appeals from a circuit court sitting in probate shall be taken to
28 the Supreme Court in the manner provided by law for appeals from the
29 circuit court.

30 (3) Appeals from a county court sitting in probate shall be taken to
31 the circuit court and Supreme Court in the manner provided by ORS
32 5.120.

33 **Section 8. Transfer of estate proceeding from county court to circuit**
34 **court.** (1) An estate proceeding, including all probate matters, causes and

1 proceedings pertaining thereto, may be transferred at any time from a
2 county court sitting in probate to the circuit court for the county by order
3 of the county court.

4 (2) An estate proceeding, including all probate matters, causes and
5 proceedings pertaining thereto, commenced in a county court sitting in
6 probate and in which the county judge is a party or directly interested
7 shall be transferred from the county court to the circuit court for the
8 county by order of the county court.

9 (3) Upon transfer of an estate proceeding from a county court to the
10 circuit court under this section, the county clerk shall certify and cause
11 to be filed in the records of the circuit court all original papers and pro-
12 ceedings pertaining to the estate proceeding, and thereafter jurisdiction
13 of all probate matters, causes and proceedings pertaining to the estate pro-
14 ceeding is vested in the circuit court as if that jurisdiction had been
15 originally and exclusively vested in the circuit court.

16 **Section 9. District court judge acting as probate court judge.** (1) In
17 Benton, Clatsop, Coos, Curry, Deschutes, Hood River, Lincoln, Wasco and
18 Washington Counties, a judge of the district court for the county may
19 exercise the powers and duties of judge of the circuit court for the county
20 in any matter, cause or proceeding in probate pending in the county. In
21 any other county, a judge of the district court for the county may exercise
22 any power or duty of judge of the circuit court in any matter, cause or
23 proceeding in probate pending in the circuit court of the judicial district
24 in which the district court is located, which is assigned to him by a judge
25 of the circuit court of the judicial district.

26 (2) Whenever by reason of absence, illness or injury there is not within
27 a county a judge of the probate court able to preside over and conduct
28 the business of the probate court, any judge of a district court located in
29 the judicial district may exercise the powers and duties of judge of the
30 probate court for the county in any matter, cause or proceeding in probate
31 pending in the county.

32 (3) If the district judge is not a party to, or directly interested in, the
33 matter, cause or proceeding, and if the question or matter passed upon by
34 him has not been presented to, or passed upon by, any probate court

1 judge, any decree, judgment or order given and made by a district court
2 judge pursuant to his powers and duties under this section, when filed
3 and entered in the matter, cause or proceeding, has the same effect as
4 though given and made by a probate court judge.

5 **Section 10. Appointment of probate commissioner.** The court may ap-
6 point the clerk of the probate court or some other suitable person at the
7 county seat to act as probate commissioner within the county. If the clerk
8 of the probate court is appointed probate commissioner, his deputy has
9 the power to perform any act as probate commissioner that the clerk has,
10 and the clerk is responsible for conduct of the deputy so acting.

11 **Section 11. Powers of probate commissioner.** (1) A probate commis-
12 sioner may act upon uncontested petitions for appointment of special ad-
13 ministrators, for probate of wills and for appointment of personal repre-
14 sentatives, guardians and conservators, to the extent authorized by rule
15 of the court. Pursuant thereto he may make and enter orders on behalf of
16 the court admitting wills to probate and appointing and setting the amount
17 of the bonds of special administrators, personal representatives, guardians
18 and conservators, subject to his orders being set aside or modified by the
19 judge of the court within 30 days after the date an order is entered.

20 (2) Any matter presented to the probate commissioner may be referred
21 by him to the judge.

22 (3) Unless set aside or modified by the judge, the orders of the probate
23 commissioner have the same effect as if made by the judge.

24 **Part 3. Probate Procedure Generally**

25 **Section 12. Pleadings and mode of procedure.** No particular pleadings
26 or forms thereof are required in the exercise of jurisdiction of probate
27 courts. The mode of procedure in the exercise of jurisdiction is in the
28 nature of a suit in equity except as otherwise provided by statute. The
29 proceedings shall be in writing and upon the petition of a party in interest
30 or the order of the court. All petitions, reports and accounts shall be veri-
31 fied by at least one of the persons making them or by his attorney, or
32 in case of a corporation by its agent. The court exercises its powers by
33 means of:

34 (1) A petition of a party in interest.

1 (2) A notice to a party.

2 (3) A subpoena to a witness.

3 (4) Orders and decrees.

4 (5) An execution or warrant to enforce its orders and decrees.

5 **Section 13. Notice; method and time of giving.** (1) Except as otherwise
6 specifically provided in sections 1 to 212 of this Act, whenever notice is
7 required to be given of a hearing on any petition or other matter upon
8 which an order is sought, the petitioner or other person filing the matter
9 shall cause notice of the date, time and place of the hearing to be given
10 to each person interested in the subject of the hearing or to his attorney,
11 if he has appeared by attorney or requested that notice be sent to his
12 attorney, in any one or more of the following ways and within the follow-
13 ing times:

14 (a) By mailing a copy thereof addressed to him or his attorney at least
15 14 days before the date set for the hearing.

16 (b) By delivering a copy thereof to him personally or to his attorney
17 at least five days before the date set for the hearing.

18 (c) If the address of any person is not known or cannot be ascertained
19 with reasonable diligence, by publishing a copy thereof once in each of
20 two consecutive weeks in a newspaper of general circulation in the county
21 where the hearing is to be held, the last publication of which shall be at
22 least 10 days before the date set for the hearing.

23 (2) Upon good cause shown the court may change the requirements
24 as to the method or time of giving notice for any hearing.

25 (3) Proof of the giving of notice must be made at or before the hear-
26 ing and filed in the proceeding. Proof shall be by an admission of serv-
27 ice, a return receipt from the postal authorities or an affidavit or certifi-
28 cate of the person giving notice or the publisher, or one of his employes,
29 of the newspaper publishing the notice.

30 **Section 14. Waiver of notice.** A guardian, a guardian ad litem, a con-
31 servator or a person who is neither incompetent nor a minor may waive
32 notice by a writing signed by him or his attorney and filed in the pro-
33 ceeding, or by his appearance at the hearing.

34 **Section 15. Filing objections to petition.** Any interested person, on or

1 before the date set for a hearing, may file written objections to a petition
2 previously filed.

3 **Section 16. Proof of documents; certification.** (1) Proof of documents
4 pursuant to sections 1 to 212 of this Act may be made as follows:

5 (a) Of a will, by a certified copy thereof.

6 (b) That a will has been probated or established in a foreign juris-
7 diction, by a certified copy of the order admitting the will to probate
8 or evidencing its establishment.

9 (c) Of letters testamentary or of administration, by a certified copy
10 thereof. The certification may include a statement that the letters have not
11 been revoked.

12 (2) A document or order filed or entered in a foreign jurisdiction may
13 be proved by a copy thereof, certified by a clerk of the court in which the
14 document or order was filed or entered or by any other official having legal
15 custody of the original document or order.

16 **Section 17. Translation of documents.** If a document or part thereof
17 is not in the English language, a translation certified by the translator to
18 be accurate may be attached thereto and shall be regarded as sufficient
19 evidence of the contents of the document, unless objection is made thereto.
20 In the absence of objection, if any person relies in good faith on the accu-
21 racy of the translation he shall not be prejudiced thereafter because of its
22 inaccuracy.

23 **Section 18. Stenographic record.** The judge of the court may, on his
24 own motion or on the request of an interested person, direct the reporter
25 of his court to attend any hearing and make a stenographic record of the
26 same.

27 **ARTICLE II. INTESTATE SUCCESSION AND WILLS**

28 **Part 1. Intestate Succession**

29 **Section 19. Net intestate estate.** Any part of the net estate of a decedent
30 not effectively disposed of by his will shall pass as provided in sections
31 20 to 23 of this Act.

32 **Section 20. Share of surviving spouse if decedent leaves issue.** If the
33 decedent leaves a surviving spouse and issue, the surviving spouse shall
34 have a one-half interest in the net intestate estate.

1 **Section 21. Share of surviving spouse if decedent leaves no issue.** If the
2 decedent leaves a surviving spouse and no issue, the surviving spouse
3 shall have all of the net intestate estate.

4 **Section 22. Share of others than surviving spouse.** The part of the net
5 intestate estate not passing to the surviving spouse shall pass:

6 (1) To the issue of the decedent. If the issue are all of the same de-
7 gree of kinship to the decedent, they shall take equally, but if of unequal
8 degree, then those of more remote degrees take by representation.

9 (2) If there is no surviving issue, to the surviving parents of the de-
10 cendent.

11 (3) If there is no surviving issue or parent, to the brothers and sisters
12 of the decedent and the issue of any deceased brother or sister of the
13 decedent by representation. If there is no surviving brother or sister, the
14 issue of brothers and sisters take equally if they are all of the same de-
15 gree of kinship to the decedent, but if of unequal degree, then those of
16 more remote degrees take by representation.

17 (4) If there is no surviving issue, parent or issue of a parent, to the
18 grandparents of the decedent and the issue of any deceased grandparent
19 of the decedent by representation. If there is no surviving grandparent,
20 the issue of grandparents take equally if they are all of the same degree of
21 kinship to the decedent, but if of unequal degree, then those of more re-
22 mote degrees take by representation.

23 (5) If, at the time of taking, surviving parents or grandparents of the
24 decedent are married to each other, they shall take real property as ten-
25 ants by the entirety and personal property as joint owners with the right
26 of survivorship.

27 **Section 23. Escheat.** If no person takes under sections 20 to 22 of this
28 Act, the net intestate estate shall escheat to the State of Oregon.

29 **Section 24. Representation defined.** "Representation" means the method
30 of determining the passing of the net intestate estate when the distribu-
31 tees are of unequal degrees of kinship to the decedent. It is accomplished
32 as follows: The estate shall be divided into as many shares as there
33 are surviving heirs of the nearest degree of kinship and deceased persons
34 of the same degree who left issue who survive the decedent, each surviving

1 heir of the nearest degree receiving one share and the share of each de-
2 ceased person of the same degree being divided among his issue in the
3 same manner.

4 **Section 25. Time of determining relationships; afterborn heirs.** The re-
5 lationships existing at the time of the death of the decedent govern the
6 passing of his net intestate estate, but persons conceived before his death
7 and born alive thereafter inherit as though they were alive at the time of
8 his death.

9 **Section 26. Heir to survive decedent by five days.** Any person who fails
10 to survive the decedent by five days is considered to have predeceased
11 the decedent for all purposes of intestate succession, and the heirs of the
12 decedent are determined accordingly.

13 **Section 27. Persons of the half-blood.** Persons of the half-blood inherit
14 the same share that they would inherit if they were of the whole blood.

15 **Section 28. Illegitimate children.** For all purposes of intestate suc-
16 cession, an illegitimate child, unless he has been adopted:

17 (1) Shall be treated as the legitimate child of his mother.

18 (2) Shall be treated as the legitimate child of the father if, during
19 the lifetime of the child:

20 (a) The paternity of the child is established under ORS 109.070; or

21 (b) The father has acknowledged himself to be the father in writing
22 signed by him.

23 **Section 29. Persons related to decedent through two lines.** A person
24 who is related to the decedent through two lines of relationship is entitled
25 to only a single share based on the relationship which would entitle him
26 to the larger share.

27 **Part 2. Advancements**

28 **Section 30. When gift is an advancement.** If a person dies intestate as
29 to all his estate, property which he gave in his lifetime to an heir shall be
30 treated as an advancement against the heir's share of the estate if de-
31 clared in writing by the decedent or acknowledged in writing by the heir
32 to be an advancement. For that purpose the property advanced shall be
33 valued as of the time the heir came into possession or enjoyment of the

1 property or as of the time of death of the decedent, whichever occurs
2 first.

3 **Section 31. Effect of advancement on distribution.** (1) If the value of
4 the advancement exceeds the heir's share of the estate, he shall be excluded
5 from any further share of the estate, but he shall not be required to re-
6 fund any part of the advancement. If the value of the advancement is
7 less than his share, the heir shall be entitled upon distribution of the
8 estate to such additional amount as will give him his share of the estate.

9 (2) The property advanced is not a part of the estate, but for the pur-
10 pose of determining the shares of the heirs the advancement shall be added
11 to the estate, the sum then divided among the heirs and the advancement
12 then deducted from the share of the heir to whom the advancement was
13 made.

14 **Section 32. Death of advancee before decedent.** If the recipient of the
15 property advanced fails to survive the decedent, the amount of the ad-
16 vancement shall be taken into account in computing the share of the issue
17 of the recipient, whether or not the issue take by representation.

18 **Part 3. Status of Adopted Persons for**

19 **Inheritance, Wills and Class Gifts**

20 **Section 33. Adopted child treated as natural child.** For all purposes of
21 intestate succession, an adopted child shall be treated as a natural child
22 of his adopting parents, and he shall cease to be treated as a child of his
23 natural parents, except:

24 (1) If a natural parent marries or remarries and the child is adopted
25 by the stepfather or stepmother, the child shall continue to be treated
26 as the child of the natural parent who is the spouse of the adopting parent.

27 (2) If a natural parent of a legitimate child dies, the other natural
28 parent remarries and the child is adopted by the stepfather or stepmother,
29 the child shall continue to be treated as the child of the deceased natural
30 parent for all purposes of intestate succession through the deceased
31 natural parent.

32 **Section 34. Effect of more than one adoption.** For all purposes of intes-
33 tate succession, a child who has been adopted more than once shall be
34 treated as a child of the parents who have most recently adopted him

1 and shall cease to be treated as a child of his previous adoptive parents.
2 He shall be treated as the child of his natural parents only to the extent
3 provided in section 33 of this Act.

4 **Section 35. Gifts in wills, deeds and trusts to accord with law of intes-**
5 **tate succession.** Unless a contrary intent is indicated by the instrument,
6 a gift by will, deed or other instrument to an individual or member
7 of a class described generically in relation to a particular person as child,
8 children, lawful issue, grandchildren, descendants, heirs, heirs of the body,
9 next of kin, distributees, relatives, nieces, nephews or the like shall in-
10 clude any person who would be treated as so related for purposes of in-
11 testate succession, except that for the purpose of construction of an instru-
12 ment, an adopted person must have been adopted as a minor or after
13 having been a member of the household of the adopting parent while a
14 minor.

15

Part 4. Wills

16 **Section 36. Who may make a will.** Any person who is 18 years of age
17 or older or who has been lawfully married, and who is of sound mind, may
18 make a will.

19 **Section 37. Execution of a will.** A will shall be in writing and shall be
20 executed with the following formalities:

21 (1) The testator, in the presence of each of the witnesses, shall:

22 (a) Sign the will; or

23 (b) Direct one of the witnesses or some other person to sign thereon
24 the name of the testator; or

25 (c) Acknowledge the signature previously made on the will by him or
26 at his direction.

27 (2) Any person who signs the name of the testator as provided in
28 paragraph (b) of subsection (1) of this section shall sign his own name
29 on the will and write on the will that he signed the name of the testator
30 at the direction of the testator.

31 (3) At least two witnesses shall each:

32 (a) See the testator sign the will; or

33 (b) Hear the testator acknowledge the signature on the will; and

1 (c) Attest the will by signing his name to it in the presence of the
2 testator and at his request.

3 **Section 38. Witness as beneficiary.** An interested witness is one to
4 whom is devised a personal and beneficial interest in the estate. A will
5 attested by an interested witness is not thereby invalidated. If an inter-
6 ested witness attests a will and the will is not attested also by two dis-
7 interested witnesses, the interested witness may take under the will only
8 so much of the provision made for him therein as in the aggregate equals
9 in value, on the date of death of the testator, the part of the estate of the
10 testator that would have passed to him had the testator died intestate.

11 **Section 39. Validity of execution of a will.** A will is lawfully executed
12 if it is in writing, signed by or at the direction of the testator and otherwise
13 executed in accordance with the law of:

14 (1) This state at the time of execution or at the time of death of the
15 testator; or

16 (2) The domicile of the testator at the time of execution or at the time
17 of his death; or

18 (3) The place of execution at the time of execution.

19 **Section 40. Testamentary additions to trusts.** (1) A devise may be made
20 by a will to the trustee or trustees of a trust, regardless of the existence,
21 size or character of the corpus of the trust, if:

22 (a) The trust is established or will be established by the testator, or
23 by the testator and some other person or persons, or by some other person
24 or persons; and

25 (b) The trust is identified in the testator's will; and

26 (c) The terms of the trust are set forth in a written instrument, other
27 than a will, executed before or concurrently with the execution of the
28 testator's will, or in the valid last will of a person who has predeceased
29 the testator.

30 (2) The trust may be a funded or unfunded life insurance trust,
31 although the trustor has reserved any or all of the rights of ownership of
32 the insurance contracts.

33 (3) The devise shall not be invalid because the trust:

34 (a) Is amendable or revocable, or both; or

1 (b) Was amended after the execution of the testator's will or after
2 the death of the testator.

3 (4) Unless the testator's will provides otherwise, the property so de-
4 vised:

5 (a) Shall not be considered to be held under a testamentary trust of
6 the testator, but shall become a part of the trust to which it is given; and

7 (b) Shall be administered and disposed of in accordance with the pro-
8 visions of the instrument or will setting forth the terms of the trust, in-
9 cluding any amendments thereto made before the death of the testator,
10 regardless of whether made before or after the execution of the testator's
11 will, and, if the testator's will so provides, including any amendments to
12 the trust made after the death of the testator.

13 (5) A revocation or termination of the trust before the death of the
14 testator shall cause the devise to lapse.

15 (6) This section shall not be construed as providing an exclusive
16 method for making devises to the trustee or trustees of a trust established
17 otherwise than by the will of the testator making the devise.

18 (7) This section shall be so construed as to effectuate its general pur-
19 pose to make uniform the law of those states which enact the same or
20 similar provisions.

21 **Section 41. Manner of revocation or alteration exclusive.** A will may be
22 revoked or altered only as provided in sections 42 to 45 of this Act.

23 **Section 42. Express revocation or alteration.** (1) A will may be revoked
24 or altered by another will.

25 (2) A will may be revoked by being burned, torn, canceled, obliterated
26 or destroyed, with the intent and purpose of the testator of revoking the
27 will, by the testator, or by another person at the direction of the testator
28 and in the presence of the testator. The injury or destruction by a person
29 other than the testator at the direction and in the presence of the testator
30 shall be proved by a least two witnesses.

31 **Section 43. Revival of revoked or invalid will.** If a will or a part thereof
32 has been revoked or is invalid, it can be revived only by a re-execution
33 of the will or by the execution of another will in which the revoked or
34 invalid will or part thereof is incorporated by reference.

1 **Section 44. Revocation by marriage.** A will is revoked by the sub-
2 sequent marriage of the testator if the testator is survived by his spouse,
3 unless:

4 (1) The will evidences an intent that it not be revoked by the sub-
5 sequent marriage or was drafted under circumstances indicating that it
6 was in contemplation of the marriage; or

7 (2) The testator and his spouse entered into a contract before the
8 marriage that either makes provision for the spouse or provides that the
9 spouse is to have no rights in the estate of the testator.

10 **Section 45. Revocation by divorce or annulment.** Unless a will evidences
11 a different intent of the testator, the divorce or annulment of the marriage
12 of the testator after the execution of the will revokes all provisions in
13 the will in favor of the former spouse of the testator and any provision
14 therein naming the former spouse as executor, and the effect of the will
15 is the same as though the former spouse did not survive the testator.

16 **Section 46. Contract of sale of property devised not a revocation.** An
17 executory contract of sale made by a testator to convey property devised
18 in a will previously made, is not a revocation of the previous devise, either
19 in law or equity; but the property shall pass by the devise, subject to the
20 same remedies on the agreement, for specific performance or otherwise,
21 against devisees as might be had against the heirs of the testator if the
22 property had descended to them.

23 **Section 47. Encumbrance or disposition of property after making will.**
24 An encumbrance or disposition of property by a testator after he makes
25 his will does not affect the operation of the will upon a remaining interest
26 therein that is subject to the disposal of the testator at the time of his
27 death.

28 **Section 48. Devise of life estate.** A devise of property to any person for
29 the term of the life of the person, and after his death to his children or
30 heirs, vests an estate or interest for life only in the devisee and remainder
31 in the children or heirs.

32 **Section 49. Devise passes all interest of testator.** A devise of property
33 passes all of the interest of the testator therein at the time of his death,
34 unless the will evidences the intent of the testator to devise a lesser interest.

1 **Section 50. Property acquired after making will.** Any property acquired
2 by the testator after the making of his will passes thereby, and in like
3 manner as if title thereto were vested in him at the time of making the
4 will, unless the intent expressed in the will is clear and explicit to the
5 contrary.

6 **Section 51. Effect of direction to pay debts, charges, taxes or adminis-**
7 **tration expenses.** A mere testamentary direction to pay debts, charges,
8 taxes or expenses of administration shall not be considered a direction for
9 exoneration from encumbrances or against apportionment of estate taxes.

10 **Section 52. Non-ademption of specific devises in certain cases.** (1) In
11 the situations and under the circumstances provided in and governed by
12 this section, specific devises will not fail or be extinguished by the destruc-
13 tion, damage, sale, condemnation or change in form of the property
14 specifically devised. This section is inapplicable if the intent that the
15 devise fail under the particular circumstances appears in the will or if
16 the testator during his lifetime gives property to the specific devisee with
17 the intent of satisfying the specific devise.

18 (2) Whenever the subject of a specific devise is property only part
19 of which is destroyed, damaged, sold or condemned, the specific devise
20 of any remaining interest in the property owned by the testator at the
21 time of his death is not affected by this section; but this section applies to
22 the part which would have been adeemed under the common law by the
23 destruction, damage, sale or condemnation.

24 (3) If insured property that is the subject of a specific devise is
25 destroyed or damaged, the specific devisee has the right to receive, reduced
26 by any amount expended or incurred by the testator in restoration or repair
27 of the property:

28 (a) Any insurance proceeds paid to the personal representative after
29 the death of the testator, with the incidents of the specific devise; and

30 (b) A general pecuniary legacy equivalent to any insurance proceeds
31 paid to the testator within six months before his death.

32 (4) If property that is the subject of a specific devise is sold by the
33 testator, the specific devisee has the right to receive:

34 (a) Any balance of the purchase price unpaid at the time of the

1 death of the testator, including any security interest in the property and
2 interest accruing before the death, if part of the estate, with the incidents
3 of the specific devise; and

4 (b) A general pecuniary legacy equivalent to the amount of the pur-
5 chase price paid to the testator within six months before his death. Ac-
6 ceptance of a promissory note of the purchaser or a third party is not
7 considered payment, but payment on the note is payment on the purchase
8 price. Sale by an agent of the testator or by a trustee under a revocable
9 living trust created by the testator, the principal of which is to be paid
10 to the personal representative or estate of the testator on his death, is a
11 sale by the testator for purposes of this section.

12 (5) If property that is the subject of a specific devise is taken by
13 condemnation before the death of the testator, the specific devisee has
14 the right to receive:

15 (a) Any amount of the condemnation award unpaid at the time of
16 the death, with the incidents of the specific devise; and

17 (b) A general pecuniary legacy equivalent to the amount of an award
18 paid to the testator within six months before his death. In the event of an
19 appeal in a condemnation proceeding, the award, for purposes of this
20 section, is limited to the amount established on the appeal.

21 (6) If property that is the subject of a specific devise is sold by a
22 guardian or conservator of the testator, or insurance proceeds or a con-
23 demnation award are paid to a guardian or conservator of the testator,
24 the specific devisee has the right to receive a general pecuniary legacy
25 equivalent to the proceeds of the sale, the insurance proceeds or the con-
26 demnation award, reduced by any amount expended or incurred in res-
27 toration or repair of the property. This subsection does not apply if the
28 testator, after the sale, receipt of insurance proceeds or award, is adju-
29 dicated competent and survives such adjudication by six months.

30 (7) If securities are specifically devised, and after the execution of the
31 will other securities in the same or another entity are distributed to the
32 testator by reason of his ownership of the specifically devised securities
33 and as a result of a partial liquidation, stock dividend, stock split, merger,
34 consolidation, reorganization, recapitalization, redemption, exchange or

1 any other similar transaction, and if the other securities are part of the
2 estate of the testator at his death, the specific devise is considered to in-
3 clude the additional or substituted securities. As used in this subsection,
4 "securities" means the same as defined in subsection (11) of ORS 59.015.

5 (8) The amount a specific devisee receives as provided in this section
6 is reduced by any expenses of the sale or of collection of proceeds of in-
7 surance, sale or condemnation award and by any amount by which the
8 income tax of the decedent or his estate is increased by reason of items
9 provided for in this section. Expenses include legal fees paid or incurred.

10 **Section 53. When estate passes to issue of devisee; anti-lapse.** When
11 property is devised to any person who is related by blood or adoption to
12 the testator and who dies before the testator leaving lineal descendants,
13 the descendants take by representation the property the devisee would
14 have taken if he had survived the testator, unless otherwise provided in
15 the will of the testator.

16 **Section 54. Children born or adopted after execution of will; pretermi-**
17 **ted children.** (1) As used in this section, "pretermitted child" means a
18 child of a testator who is born or adopted after the execution of the will
19 of the testator, who is neither provided for in the will nor in any way
20 mentioned in the will and who survives the testator.

21 (2) If a testator has one or more children living when he executes
22 his will and no provision is made in the will for any such living child, a
23 pretermitted child shall not take a share of the estate of the testator
24 disposed of by the will.

25 (3) If a testator has one or more children living when he executes his
26 will and provision is made in the will for one or more of such living
27 children, a pretermitted child is entitled to share in the estate of the
28 testator disposed of by the will as follows:

29 (a) The pretermitted child may share only in the portion of the estate
30 devised to the living children by the will.

31 (b) The share of each pretermitted child shall be the total value of the
32 portion of the estate devised to the living children by the will divided by
33 the number of pretermitted children plus the number of living children for
34 whom provision, other than nominal provision, is made in the will.

1 (c) To the extent feasible, the interest of a pretermitted child in the
2 estate shall be of the same character, whether equitable or legal, as the
3 interest the testator gave to the living children by the will.

4 (4) If a testator has no child living when he executes his will, a preter-
5 mitted child shall take a share of the estate as though the testator had died
6 intestate.

7 (5) A pretermitted child may recover the share of the estate to which
8 he is entitled, as provided in this section, either from the other children
9 under subsection (3) of this section or from the testamentary beneficiaries
10 under subsection (4) of this section, ratably, out of the portions of the estate
11 passing to those persons under the will. In abating the interests of those
12 beneficiaries, the character of the testamentary plan adopted by the testator
13 shall be preserved so far as possible.

14 **Section 55. Persons not entitled to estate of testator.** Except as other-
15 wise expressly provided by law, a person, including a child of the testator
16 and a descendant of that child, shall not take or be entitled to take any
17 portion of the estate of a testator disposed of by his will other than as
18 provided in the will.

19 **Section 56. Delivery of will by custodian; liability.** (1) A person having
20 custody of a will, other than an executor named therein, shall deliver the
21 will, within 30 days after the date of receiving information that the testator
22 is dead, to a court having jurisdiction of the estate of the testator or to an
23 executor named in the will.

24 (2) If it appears to a court having jurisdiction of the estate of a dece-
25 dent that a person has custody of a will made by the decedent, the court
26 may issue an order requiring that person to deliver the will to the court.

27 (3) A person having custody of a will who fails to deliver the will as
28 provided in this section is liable to any person injured by that failure for
29 damages sustained thereby.

30 **Section 57. Disposition of wills deposited with county clerk.** So far as
31 he is able, the county clerk of each county shall deliver to the testator, or
32 to the person to whom the will is to be delivered after the death of the
33 testator, each will deposited in his office for safekeeping pursuant to ORS

1 114.410. Any will he has been unable to so deliver before January 1, 2010,
2 may be destroyed by the county clerk.

3 **Part 5. Effect of Homicide on Intestate Succession, Wills, Joint Assets,**
4 **Life Insurance and Beneficiary Designations**

5 **Section 58. Definitions.** As used in sections 58 to 68 of this Act:

6 (1) "Decedent" means a person whose life is taken by a slayer.

7 (2) "Slayer" means a person who, with felonious intent, takes or pro-
8 cures the taking of the life of another.

9 **Section 59. Slayer considered to predecease decedent.** Property that
10 would have passed from the decedent or his estate to the slayer by intestate
11 succession, by will or by trust shall pass and be vested as if the slayer had
12 predeceased the decedent.

13 **Section 60. Property owned by slayer and decedent.** If the slayer and
14 the decedent owned property as tenants by the entirety or with a right of
15 survivorship, upon the death of the decedent an undivided one-half interest
16 shall remain in the slayer for his lifetime and, subject thereto, the property
17 shall pass to and be vested in the heirs or devisees of the decedent other
18 than the slayer.

19 **Section 61. Property owned by slayer, decedent and others.** If the
20 slayer, the decedent and another or others owned property with a right of
21 survivorship, upon the death of the decedent the interest of the slayer shall
22 remain as an undivided interest in the slayer for his lifetime and, subject
23 thereto, the property shall pass to and be vested in the other surviving
24 owner or owners.

25 **Section 62. Reversions, vested remainders, contingent remainders and**
26 **future interests.** (1) Property in which the slayer owns a reversion or
27 vested remainder subject to an estate for the lifetime of decedent shall
28 pass to the heirs or devisees of the decedent for a period of time equal to
29 the normal life expectancy of a person of the sex and age of the decedent
30 at the time of his death. If the particular estate is owned by a third person
31 for the lifetime of the decedent, it shall continue in such person for a period
32 of time equal to the normal life expectancy of a person of the sex and age
33 of the decedent at the time of his death.

1 (2) As to a contingent remainder or executory or other future interest
2 owned by the slayer subject to become vested in him or increased in any
3 way for him upon the condition of the death of the decedent:

4 (a) If the interest would not have become vested or increased if he had
5 predeceased the decedent, the slayer shall be considered to have so pre-
6 deceased the decedent; and

7 (b) In any case, the interest shall not be so vested or increased during
8 a period of time equal to the normal life expectancy of a person of the sex
9 and age of the decedent at the time of his death.

10 **Section 63. Property appointed; powers of revocation or appointment.**

11 (1) Property appointed by the will of the decedent to or for the benefit of
12 the slayer shall be distributed as if the slayer had predeceased the decedent.

13 (2) Property owned either presently or in remainder by the slayer,
14 subject to be divested by the exercise by the decedent of a power of revo-
15 cation or a general power of appointment, shall pass to and be vested in
16 the heirs or devisees of the decedent other than the slayer. Property so
17 owned by the slayer, subject to be divested by the exercise by the decedent
18 of a power of appointment to a particular person or persons or to a class of
19 persons, shall pass to such person or persons or in equal shares to the
20 members of such class of persons to the exclusion of the slayer.

21 **Section 64. Proceeds of insurance on life and other benefit plans of**
22 **decedent.** Proceeds payable to or for the benefit of the slayer as beneficiary
23 or assignee of the decedent of the following interests shall be paid to the
24 secondary beneficiary, or if there is no secondary beneficiary, to the per-
25 sonal representative of the decedent's estate.

26 (1) A policy or certificate of insurance on the life of the decedent.

27 (2) A certificate of membership in any benevolent association or organi-
28 zation on the life of the decedent.

29 (3) Rights of the decedent as survivor of a joint life policy.

30 (4) Proceeds under any pension, profit-sharing or other plan.

31 **Section 65. Proceeds of insurance on life of slayer.** If the decedent is
32 beneficiary or assignee of any policy or certificate of insurance on the life

1 of the slayer, the proceeds shall be paid to the personal representative of
2 the decedent's estate unless:

3 (1) The policy or certificate names some person other than the slayer or
4 his personal representative as the secondary beneficiary.

5 (2) The slayer, by naming a new beneficiary or assignee, performs an
6 act which would have deprived the decedent of his interest if the decedent
7 had been living.

8 **Section 66. Payment by insurance company, bank, trustee or obligor;**
9 **no additional liability.** Any insurance company making payment according
10 to the terms of its policy, or any bank, trustee or other person performing
11 an obligation to the slayer shall not be subjected to additional liability
12 because of sections 58 to 68 of this Act if the payment or performance is
13 made without written notice by a claimant of a claim arising under those
14 sections. Upon receipt of written notice the person to whom it is directed
15 may withhold any disposition of the property pending determination of his
16 duties.

17 **Section 67. Rights of persons without notice dealing with slayer.** Sec-
18 tions 58 to 68 of this Act do not affect the rights of any person who for
19 value and without notice purchases or agrees to purchase property that the
20 slayer would have acquired except for those sections, but all proceeds
21 received by the slayer from the sale shall be held by him in trust for the
22 persons entitled to the property as provided in those sections. The slayer
23 shall be liable for any portion of the proceeds of the sale that he may have
24 expended and for the difference, if any, between the amount received
25 from the sale and the actual value of the property.

26 **Section 68. Record of conviction as evidence.** The record of the convic-
27 tion of a slayer for having participated in the death of a decedent is ad-
28 missible in evidence in any action arising under sections 58 to 68 of this Act.

29 **Part 6. Uniform Simultaneous Death Act**

30 **Section 69. ORS 112.010 is amended to read:**

31 **112.010. Disposition of property upon simultaneous death, generally.**
32 Where the title to property or the devolution thereof depends upon pri-
33 ority of death and there is no sufficient evidence that the persons have
34 died otherwise than simultaneously, the property of each person shall be

1 disposed of as if he had survived, except as provided otherwise in ~~[this~~
2 ~~chapter]~~ sections 69 to 76 of this 1969 Act.

3 Section 70. ORS 112.020 is amended to read:

4 112.020. **Beneficiaries designated to take successively.** ~~[Where two or~~
5 ~~more beneficiaries are designated to take successively by reason of survivorship~~
6 ~~under another person's disposition of property and there is no sufficient evi-~~
7 ~~dence that these beneficiaries have died otherwise than simultaneously, the~~
8 ~~property thus disposed of shall be divided into as many equal portions as there~~
9 ~~are successive beneficiaries and these portions shall be distributed respectively~~
10 ~~to those who would have taken in the event that each designated beneficiary~~
11 ~~had survived.]~~ *If property is so disposed of that the right of a beneficiary*
12 *to succeed to any interest therein is conditional upon his surviving another*
13 *person, and both persons die, and there is no sufficient evidence that the*
14 *two have died otherwise than simultaneously, the beneficiary shall be*
15 *deemed not to have survived. If there is no sufficient evidence that all of*
16 *two or more beneficiaries have died otherwise than simultaneously and*
17 *property has been disposed of in such a way that at the time of their*
18 *death each of such beneficiaries would have been entitled to the property*
19 *if he had survived the others, the property shall be divided into as many*
20 *equal portions as there were such beneficiaries and these portions shall be*
21 *distributed respectively to those who would have taken in the event that*
22 *each of such beneficiaries had survived.*

23 Section 71. ORS 112.030 is amended to read:

24 112.030. **Joint tenants or tenants by entirety.** (1) Where there is no
25 sufficient evidence that two joint tenants or tenants by the entirety have
26 died otherwise than simultaneously the property so held shall be dis-
27 tributed one-half as if one had survived and one-half as if the other had
28 survived. If there are more than two joint tenants and all of them have
29 so died the property thus distributed shall be in the proportion that one
30 bears to the whole number of joint tenants.

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

34 **Section 72. Community property.** Where a husband and wife had died,

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

5 Section 73. ORS 112.040 is amended to read:

6 112.040. **Insured and beneficiary.** Where the insured and the beneficiary
7 in a policy of life or accident insurance have died and there is no sufficient
8 evidence that they have died otherwise than simultaneously the proceeds
9 of the policy shall be distributed as if the insured had survived the bene-
10 ficiary, *except if the policy or any interest therein is community property*
11 *of the insured and his spouse, and there is no alternative beneficiary ex-*
12 *cept the estate or personal representatives of the insured, the proceeds*
13 *of such interest shall be distributed as community property under section*
14 *72 of this 1969 Act.*

15 Section 74. ORS 112.060 is amended to read:

16 112.060. **Law does not apply if decedent provides otherwise.** ~~{This chap-~~
17 ~~ter}~~ Sections 69 to 76 of this 1969 Act shall not apply in the case of wills,
18 living trusts, deeds, ~~{or}~~ contracts of insurance ~~{wherein}~~ or any other
19 situation where provision ~~{has been}~~ is made for distribution of property
20 different from the provisions of ~~{this chapter}~~ sections 69 to 76 of this 1969
21 Act, or where provision is made for a presumption as to survivorship which
22 results in a distribution of property different from that so provided.

23 Section 75. ORS 112.070 is amended to read:

24 112.070. **Construction and interpretation.** ~~{This chapter}~~ Sections 69 to
25 76 of this 1969 Act shall be so construed and interpreted as to effectuate
26 ~~{its}~~ their general purpose to make uniform the law in those states which
27 enact the Uniform Simultaneous Death Act.

28 Section 76. ORS 112.080 is amended to read:

29 112.080. **Citation of law.** ~~{This chapter}~~ Sections 69 to 76 of this 1969 Act
30 may be cited as the "Uniform Simultaneous Death Act."

31 **Part 7. Renunciation of Intestate Succession or Devise**

32 **Section 77. Renunciation of intestate succession or devise.** A person
33 may renounce intestate succession or a devise of property, wholly or par-
34 tially, by filing a signed declaration of such renunciation with the court

1 and serving a copy on the personal representative within four months
2 after the date of appointment of the personal representative. No interest
3 in the property so renounced is considered to have vested in the heir or
4 devisee and the renunciation is not considered a transfer by gift of the
5 property renounced, but the property so renounced passes as if the heir
6 or devisee had failed to survive the decedent, Creditors of the renouncing
7 heir or devisee, including judgment creditors, attachment and execution
8 creditors and tax lien claimants, have no interest in the property renounced.

9 **Part 8, Dower and Curtesy Abolished**

10 **Section 78. Dower and curtesy abolished.** Dower and curtesy, including
11 inchoate dower and curtesy, are abolished, but any right to or estate of
12 dower or curtesy of the surviving spouse of any person who died before the
13 effective date of this Act shall continue and be governed by the law in
14 effect immediately before that date.

15 Section 79. ORS 113.090 is amended to read:

16 113.090. **Statute of limitation for recovery of dower or curtesy.** No action
17 or suit shall be brought after 10 years from the death of a decedent to
18 recover or reduce to possession curtesy or dower by the surviving spouse
19 of ~~such~~ the decedent.

20 **ARTICLE III. INITIATION OF ESTATE PROCEEDINGS**

21 **Section 80. Special administrators.** (1) If, prior to appointment and
22 qualification of a personal representative, property of a decedent is in
23 danger of loss, injury or deterioration, or disposition of the remains of a
24 decedent is required, the court may appoint a special administrator to
25 take charge of the property or the remains. The petition for appointment
26 shall state the reasons for special administration and specify the property,
27 so far as known, requiring administration, and the danger to which it is
28 subject.

29 (2) The special administrator shall qualify by filing a bond in the
30 amount set by the court, conditioned upon the special administrator faith-
31 fully performing the duties of his trust.

32 (3) The special administrator may:

33 (a) Incur expenses for the funeral, burial or other disposition of the
34 remains of decedent in a manner suitable to his condition in life;

1 (b) Incur expenses for the protection of the property of the estate; and

2 (c) Sell perishable property of the estate, whether or not listed in the
3 petition, if necessary to prevent loss to the estate.

4 (4) The special administrator shall not approve or reject claims of
5 creditors or pay claims or expenses of administration or take possession
6 of assets of the estate other than those in danger of loss, injury or deterior-
7 ation pending the appointment of a personal representative.

8 (5) Upon the appointment and qualification of a personal representative
9 the powers of the special administrator shall cease and he shall make and
10 file his account and deliver to the personal representative the assets of
11 the estate in his possession. If the personal representative objects to the
12 account of the special administrator, the court shall hear the objections,
13 and, whether or not objections are made, shall examine the account.

14 (6) To the extent approved by the court, the compensation of the
15 special administrator and expenses properly incurred by him, including
16 a reasonable fee of his attorney, shall be paid as expenses of his adminis-
17 tration.

18 **Section 81. Venue.** (1) The venue for a proceeding seeking the appoint-
19 ment of a personal representative and for a proceeding to probate a will is:

20 (a) In the county where the decedent had his domicile or where he
21 had his place of abode at the time of his death;

22 (b) In any county where property of the decedent was located at the
23 time of his death or is located at the time the proceeding is commenced; or

24 (c) In the county in which the decedent died.

25 (2) Filing a proceeding in a county other than specified in subsection
26 (1) of this section does not constitute a jurisdictional defect.

27 **Section 82. Proceedings commenced in more than one county.** (1) If
28 proceedings seeking the appointment of a personal representative of the
29 same estate or proceedings to probate a will of the same decedent are
30 commenced in more than one county, they shall be stayed except in the
31 county where first commenced until final determination there of venue.
32 A proceeding is considered commenced by the filing of a petition. In
33 determining venue, if the court finds that transfer to another county

1 where a proceeding has been commenced is for the best interest of the
2 estate, it may in its discretion order such transfer.

3 (2) If the proper venue is determined to be in another county, the
4 clerk of the court shall transmit to the clerk of the court for the other
5 county a transcript of the proceeding with all the original papers filed
6 therein, and the court for the other county thereupon has exclusive juris-
7 diction of the proceeding to the same extent and with like effect as though
8 the proceeding were in the court on original jurisdiction.

9 **Section 83. Petition for appointment of personal representative and pro-**
10 **bate of will.** Any interested person may petition for the appointment of
11 a personal representative and for the probate of a will. The petition shall
12 include the following information, so far as known:

13 (1) The name, age, domicile, post-office address, date and place of
14 death, and Social Security account number or taxpayer identification
15 number of the decedent.

16 (2) Whether the decedent died testate or intestate,

17 (3) The facts relied upon to establish venue,

18 (4) The name and post-office address of the person nominated as per-
19 sonal representative and the facts that show he is qualified to act.

20 (5) The names, relationship to the decedent and post-office addresses
21 of persons who are or would be his heirs upon his death intestate, and the
22 ages of any who are minors,

23 (6) If the decedent died testate, the names and post-office addresses of
24 the devisees, and the ages of any who are minors.

25 (7) A statement of the extent and nature of assets of the estate, to
26 enable the court to set the amount of bond of the personal representative.

27 **Section 84. Information of escheat to Division of State Lands.** If it
28 appears from a petition for the appointment of a personal representative
29 that there is no known person to take by descent the net intestate estate,
30 the petitioner shall deliver or mail to the Director of the Division of State
31 Lands a copy of the petition, and shall file in the estate proceeding proof
32 by an affidavit of the delivery or mailing.

33 **Section 85. Testimony of attesting witnesses to will.** (1) Upon an ex
34 parte hearing of a petition for the probate of a will, an affidavit of an at-

1 testing witness may be used instead of the personal presence of the
2 witness in court. The witness may give evidence of the execution of the
3 will by attaching his affidavit to the will or to a photographic or other
4 facsimile copy of the will, and may identify the signature of the testator
5 and witnesses to the will by use of the will or the copy. The affidavit shall
6 be received in evidence by the court and have the same weight as to
7 matters contained in the affidavit as if the testimony were given by the
8 witness in open court. The affidavit of the attesting witness may be made
9 at the time of execution of the will or at any time thereafter.

10 (2) However, upon motion of any person interested in the estate filed
11 within 30 days after the order admitting the will to probate is made, the
12 court may require that the witness making the affidavit be brought
13 before the court. If the witness is outside the reach of a subpoena, the
14 court may order that the deposition of the witness be taken in the manner
15 provided by ORS chapter 45.

16 (3) If the evidence of none of the attesting witnesses is available, the
17 court may allow proof of the will by testimony or other evidence that the
18 signature of the testator or at least one of the witnesses is genuine.

19 (4) In the event of contest of the will or of probate thereof in solemn
20 form, proof of any facts shall be made in the same manner as in a suit
21 in equity.

22 **Section 86. Establishing foreign wills.** (1) The written will of a testator
23 who died domiciled outside this state, which upon probate may operate
24 upon property in this state, may be admitted to probate upon petition
25 therefor, by filing a certified copy of the will and a certified copy of the
26 order admitting the will to probate or evidencing its establishment in the
27 jurisdiction where the testator died domiciled.

28 (2) A will offered for probate under this section may be contested
29 for a cause which would be grounds for rejection of a will of a testator
30 who died domiciled in this state.

31 **Section 87. Contest of will.** When a will has been admitted to probate,
32 any interested person may, at any time within four months after the date
33 of the entry in the court journal of the order of court admitting the will
34 to probate, contest the probate of the will or the validity of the will.

1 **Section 88. Preference in appointing personal representative.** Upon the
2 filing of the petition, if there is no will or there is a will and it has been
3 proved, the court shall appoint a qualified person it finds suitable as
4 personal representative, giving preference in the following order:

5 (1) To the executor named in the will.

6 (2) To the surviving spouse of the decedent or his nominee.

7 (3) To the nearest of kin of the decedent or his nominee.

8 (4) To the Director of the Division of State Lands if it appears that
9 the decedent died wholly intestate and without heirs.

10 (5) To any other person.

11 **Section 89. Persons not qualified to act as personal representatives.** A
12 person is not qualified to act as personal representative who is:

13 (1) An incompetent.

14 (2) A minor.

15 (3) A person who has been convicted of a felony.

16 (4) A person suspended for misconduct or disbarred from the practice
17 of law, during the period of suspension or disbarment.

18 (5) A person who has resigned from the Oregon State Bar when
19 charges of professional misconduct are under investigation or when dis-
20 ciplinary proceedings are pending against him, until he is reinstated.

21 (6) A nonresident of this state, except that a nonresident named
22 executor in the will may qualify if he appoints an active member of the
23 Oregon State Bar as a resident agent to accept service of summons and
24 process in all actions affecting the estate and files the appointment in the
25 estate proceeding.

26 (7) A judge of the district court, circuit court, Oregon Tax Court or
27 Supreme Court of this state.

28 **Section 90. Necessity and amount of bond; bond notwithstanding will.**

29 (1) Unless a testator provides in his will that no bond shall be required
30 of the executor of his estate, or unless the personal representative is the
31 sole heir or devisee or is the Director of the Division of State Lands, the
32 personal representative shall not act nor shall letters be issued to him
33 until he files with the clerk of the court a bond. The bond shall be
34 executed by a surety company authorized to transact surety business in

1 this state, or by one or more sufficient personal sureties approved by the
2 court. A personal surety must be a resident of this state. The court
3 may, in its discretion, require a bond notwithstanding any provision in
4 a will that no bond is required. The bond shall be for the security and
5 benefit of all persons interested and shall be conditioned upon the personal
6 representative faithfully performing the duties of his trust.

7 (2) The amount of the bond set by the court shall be adequate to
8 protect interested persons, but in no event shall it be less than \$1,000.

9 In setting the amount of the bond the court shall consider:

10 (a) The nature, liquidity and apparent value of the assets of the estate.

11 (b) The anticipated income during administration.

12 (c) The probable indebtedness and taxes.

13 (3) Nothing in this section affects the provisions of ORS 709.230 and
14 709.240, relating to a trust company acting as personal representative.

15 **Section 91. Increasing, reducing or requiring new bond.** The court may
16 increase or reduce the amount of the bond of a personal representative,
17 or require a new bond, if it appears to the court that the bond was in-
18 adequate or excessive or a new bond is necessary. The surety on the bond
19 may be discharged from liability by an order made pursuant to ORS
20 33.510 and 33.520.

21 **Section 92. Letters testamentary or of administration.** (1) Letters testa-
22 mentary or letters of administration shall be issued to the personal repre-
23 sentative appointed by the court upon his filing with the clerk of the court
24 the bond, if any, required by the court.

25 (2) Letters testamentary may be in the following form:

26 _____

27 **LETTERS TESTAMENTARY**

28 No. _____

29 **THIS CERTIFIES** that the will of _____, deceased,
30 has been proved and _____ has (have) been appointed
31 and is (are) at the date hereof the duly appointed, qualified and acting

32 _____ of the will and
(Executor(s) or Administrator(s) with the Will Annexed)

33
34 estate of the decedent.

1 IN WITNESS WHEREOF, I, as Clerk of the Circuit Court of the
 2 State of Oregon for the County of _____, in which proceedings
 3 for administration upon the estate are pending, do hereto subscribe my
 4 name and affix the seal of the court this _____ day of _____,
 5 19_____.

6 _____ Clerk of the Court

7 By _____

8 Deputy

9 (Seal)

10 _____

11 (3) Letters of administration may be in the following form:

12 _____

13 LETTERS OF ADMINISTRATION

14 No. _____

15 THIS CERTIFIES that _____
 16 has (have) been appointed and is (are) at the date hereof the duly ap-
 17 pointed, qualified and acting administrator(s) of the estate of _____
 18 _____, deceased, and that no will of the decedent has
 19 been proved in this court.

20 IN WITNESS WHEREOF, I, as Clerk of the Circuit Court of the
 21 State of Oregon for the County of _____, in which pro-
 22 ceedings for administration upon the estate are pending, do hereto sub-
 23 scribe my name and affix the seal of the court this _____ day of
 24 _____, 19_____.

25 _____ Clerk of the Court

26 By _____

27 Deputy

28 (Seal)

29 _____

30 **Section 93. Designation of attorney to be filed.** If the personal repre-
 31 sentative has employed an attorney to represent him in the administration
 32 of the estate, he shall file in the estate proceeding the name and post-office
 33 address of the attorney unless that information appears in the petition or
 34 the order appointing the personal representative.

1 **Section 94. Information to devisees and heirs.** (1) Upon his appoint-
2 ment a personal representative shall deliver or mail to the devisees and
3 heirs named in the petition for appointment of personal representative,
4 at the addresses there shown, information that shall include:

5 (a) The title of the court in which the estate proceeding is pending
6 and the clerk's file number;

7 (b) The name of the decedent and the place and date of his death;

8 (c) Whether or not a will of the decedent has been admitted to probate;

9 (d) The name and address of the personal representative and his attor-
10 ney; and

11 (e) The date of the appointment of the personal representative.

12 (2) The failure of the personal representative to give information
13 under this section is a breach of his duty to the persons concerned, but
14 does not affect the validity of his appointment, duties or powers or the
15 exercise of his duties or powers.

16 (3) Within 30 days after the date of his appointment a personal repre-
17 sentative shall cause to be filed in the estate proceeding proof by an
18 affidavit of the delivery or mailing required by this section. The affidavit
19 shall include a copy of the information delivered or mailed and the
20 names of the persons to whom it was delivered or mailed.

21 **Section 95. Publication of notice to interested persons.** (1) Upon his
22 appointment a personal representative shall cause a notice to interested
23 persons to be published once in each of two consecutive weeks in:

24 (a) A newspaper published in the county in which the estate pro-
25 ceeding is pending; or

26 (b) If no newspaper is published in the county in which the estate
27 proceeding is pending, a newspaper designated by the court.

28 (2) The notice shall include:

29 (a) The title of the court in which the estate proceeding is pending;

30 (b) The name of the decedent;

31 (c) The name of the personal representative and the address at which
32 claims are to be presented;

33 (d) A statement requiring all persons having claims against the estate
34 to present them, within four months after the date of the first publication

1 of the notice, to the personal representative at the address designated in
2 the notice for the presentation of claims; and

3 (e) The date of the first publication of the notice.

4 (3) The failure of the personal representative to cause a notice to be
5 published under this section is a breach of his duty to the persons con-
6 cerned, but does not affect the validity of his appointment, duties or powers
7 or the exercise of his duties or powers.

8 (4) A personal representative shall file in the estate proceeding proof
9 by an affidavit of the publication of notice required by this section. The
10 affidavit shall include a copy of the published notice.

11 **Section 96. Inventory; filing; contents.** Within 60 days after the date
12 of his appointment, unless a longer time is granted by the court, a personal
13 representative shall file in the estate proceeding an inventory of all the
14 property of the estate that has come into his possession or knowledge. The
15 inventory shall show the estimates by the personal representative of the
16 respective true cash values as of the date of the death of the decedent of
17 the properties described in the inventory.

18 **Section 97. Property discovered after inventory filed.** Whenever any
19 property of the estate not included in the inventory comes into the posses-
20 sion or knowledge of the personal representative, he shall either file in the
21 estate proceeding a supplemental inventory within 30 days after the date
22 of receiving possession or knowledge, or include the property in his next
23 accounting.

24 **Section 98. Appraisal; employment and appointment of appraisers.**

25 (1) The personal representative may employ a qualified and disinterested
26 appraiser to assist him in the appraisal of any property of the estate the
27 value of which may be subject to reasonable doubt. Different persons may
28 be employed to appraise different kinds of property.

29 (2) The court in its discretion may direct that all or any part of the
30 property of the estate be appraised by one or more appraisers appointed by
31 the court.

32 (3) Property for which appraisal is required shall be appraised at its
33 true cash value as of the date of the death of the decedent. Each appraise-
34 ment shall be in writing and shall be signed by the appraiser making it.

1 (4) Each appraiser is entitled to be paid a reasonable fee from the
2 estate for his services and to be reimbursed from the estate for his necessary
3 expenses.

4 **Section 99. Removal of personal representative.** (1) When a personal
5 representative ceases to be qualified as provided in section 89 of this Act,
6 or becomes incapable of discharging his duties, the court shall remove him.

7 (2) When a personal representative has been unfaithful to or neglectful
8 of his trust, the court may remove him.

9 (3) When grounds of removal of a personal representative appear to
10 exist, the court, on its own motion or on the petition of any interested
11 person, shall order the personal representative to appear and show cause
12 why he should not be removed. A copy of the order to show cause and of
13 the petition, if any, shall be served upon the personal representative and
14 upon his surety as provided in section 13 of this Act.

15 **Section 100. Powers of surviving personal representative.** (1) Every
16 power exercisable by co-personal representatives may be exercised by the
17 survivors or survivor of them when the appointment of one is terminated,
18 unless the will provides otherwise.

19 (2) Where one of two or more persons nominated as co-executors is not
20 appointed, those appointed may exercise all the powers incident to the
21 office, unless the will provides otherwise.

22 **Section 101. Appointment of successor personal representative.** (1)
23 When a personal representative dies, is removed by the court, or resigns
24 and his resignation is accepted by the court, the court may appoint, and, if
25 he was the sole or the last surviving personal representative and adminis-
26 tration is not completed, the court shall appoint another personal repre-
27 sentative in his place.

28 (2) If, after a will has been proven and letters testamentary or of ad-
29 ministration with the will annexed have been issued, the will is set aside,
30 declared void or inoperative, the letters testamentary or of administration
31 with the will annexed shall be revoked and letters of administration issued.

32 (3) If, after administration has been granted, a will of the decedent is
33 found and proven, the letters of administration shall be revoked and

1 letters testamentary or of administration with the will annexed shall be
2 issued.

3 (4) When a successor personal representative is appointed, he has all the
4 rights and powers of his predecessor or of the executor named in the will,
5 except that he shall not exercise powers given in the will which by its
6 terms are personal to the personal representative named therein.

7 **Section 102. Notice to interested persons by successor personal repre-**
8 **sentative.** (1) If the personal representative dies, is removed by the court
9 or resigns after the notice to interested persons required by section 95 of
10 this Act has been published but before the time for presenting claims
11 required by the notice has expired, the successor personal representative
12 shall cause notice to interested persons to be published as if he were the
13 original personal representative. The republished notice shall state that the
14 original personal representative died, was removed by the court or resigned,
15 the date of death, removal or resignation and the date of appointment of
16 the new personal representative.

17 (2) The period of time between the death, removal or resignation and
18 the date of the first republication of the notice under subsection (1) of this
19 section shall be added to the period required for presentation of claims
20 by the original notice.

21 (3) No notice by the successor personal representative shall be required
22 under subsection (1) of this section if the period for filing claims expired
23 prior to the death, removal or resignation of the original personal repre-
24 sentative.

25 **ARTICLE IV. ADMINISTRATION OF ESTATES GENERALLY**

26 **Part 1. Support of Spouse and Children**

27 **Section 103. Occupancy of family abode by spouse and children.** The
28 spouse and any dependent child of a decedent may continue to occupy
29 the principal place of abode of the decedent until one year after his death
30 or, if his estate therein is an estate of leasehold or an estate for the lifetime
31 of another, until one year after his death or the earlier termination of his
32 estate. During that occupancy:

33 (1) The occupants shall not commit or permit waste to the abode,

1 or cause or permit mechanics' or materialmen's or other liens to attach
2 thereto.

3 (2) The occupants shall keep the abode insured, to the extent of the
4 fair market value of the improvements, against fire and other hazards
5 within the extended coverage provided by fire insurance policies. In the
6 event of loss or damage from those hazards, to the extent of the proceeds
7 of the insurance, they shall restore the abode to its former condition.

8 (3) The occupants shall pay taxes and improvement liens on the
9 abode as payment thereof becomes due.

10 (4) The abode is exempt from execution to the extent that it was
11 exempt when the decedent was living.

12 **Section 104. Support of spouse and children.** The court by order shall
13 make necessary and reasonable provision from the estate of a decedent
14 for the support of the spouse and any dependent child of the decedent
15 upon:

16 (1) Petition therefor by or on behalf of the spouse or any dependent
17 child;

18 (2) Service of the petition and notice of hearing thereon to the per-
19 sonal representative, unless the petitioner is the personal representative;

20 (3) Notice to persons whose distributive shares of the estate may be
21 diminished by the granting of the petition, unless the court by order
22 directs otherwise; and

23 (4) Hearing.

24 **Section 105. Petition for support and answer.** (1) The petition for sup-
25 port under section 104 of this Act shall include a description of property,
26 other than property of the estate, available for the support of the spouse
27 and children, and an estimate of the expenses anticipated for their sup-
28 port. If the petitioner is the personal representative, the petition shall also
29 include, so far as known, a statement of the nature and estimated value
30 of the property of the estate and of the nature and estimated amount of
31 claims, taxes and expenses of administration.

32 (2) If the personal representative is not the petitioner, he shall answer
33 the petition for support. The answer shall include, so far as known, a
34 statement of the nature and estimated value of the property of the estate

1 and of the nature and estimated amount of claims, taxes and expenses
2 of administration.

3 **Section 106. Temporary support.** Pending hearing upon the petition
4 under section 104 of this Act, temporary support may be allowed by
5 order of the court in an amount and of a nature the court considers reason-
6 ably necessary for the welfare of the surviving spouse and any dependent
7 child of the decedent.

8 **Section 107. Modification or termination of support.** Provision for sup-
9 port under section 104 of this Act ordered by the court may be modified
10 or terminated by the court by further order.

11 **Section 108. Nature of support.** (1) Provision for support under section
12 104 of this Act ordered by the court may consist of any one or more of
13 the following:

14 (a) Transfer of title to personal property.

15 (b) Transfer of title to real property.

16 (c) Periodic payment of moneys during administration of the estate,
17 but the payments may not continue for more than two years after the
18 date of death of the decedent.

19 (2) The court, in determining provision for support, shall take into
20 consideration the solvency of the estate, property available for support
21 other than property of the estate, and property of the estate inherited
22 by or devised to the spouse and children.

23 **Section 109. Limitations on support.** If it appears to the court that after
24 provision for support under section 104 of this Act is made the estate will
25 be insolvent, the provision for support ordered by the court shall not
26 exceed one-half of the estimated value of the property of the estate, and
27 any periodic payment of moneys so ordered shall not continue for more
28 than one year after the date of death of the decedent.

29 **Section 110. Priority of support; treated as administration expense.**
30 Subject to the limitations imposed by section 109 of this Act, provision for
31 support under section 104 of this Act ordered by the court has priority
32 over claims and expenses of administration. The provision shall not be
33 charged against the distributive share of the person receiving support,
34 but shall be treated as an expense of administration.

1 **Section 111. Small estates; setting apart whole estate; termination of**
2 **administration.** If it appears, after the expiration of four months after the
3 date of the first publication of notice to interested persons, that reasonable
4 provision for support of the spouse and any dependent child of the de-
5 cedent warrants that the whole of the estate, after payment of claims,
6 taxes and expenses of administration, be set apart for such support, the
7 court may so order. There shall be no further proceeding in the adminis-
8 tration of the estate, and the estate shall summarily be closed.

9 **Part 2. Elective Share of Surviving Spouse**

10 **Section 112. Right to elective share; effect of election.** (1) If a decedent
11 is domiciled in this state at the time of his death and dies testate, the sur-
12 viving spouse of the decedent has a right to elect to take the share provided
13 by this section. The elective share consists of one-fourth of the value of
14 the net estate of the decedent, but the elective share shall be reduced by
15 the value of the following property given to the surviving spouse under the
16 will of the decedent:

17 (a) Property given outright;

18 (b) The present value of legal life estates; and

19 (c) The present value of the right of the surviving spouse to income
20 or an annuity, or a right of withdrawal, from any property transferred
21 in trust by the will that is capable of valuation with reasonable certainty
22 without regard to the powers forfeited under subsection (2) of this section.

23 (2) Except as to property applied under subsection (1) of this section to
24 reduce the elective share, an election to take under this section forfeits
25 any other right to take under the will and under the law of intestate suc-
26 cession. If the will would otherwise create a power of appointment in the
27 surviving spouse, the spouse by electing to take under this section retains
28 the power only if it is not a general power of appointment as defined in
29 subsection (5) of ORS 118.010 and the testator has not provided otherwise,
30 but the spouse forfeits any general power of appointment. A power to pay
31 more than the income or annuity or withdrawals, the value of which
32 reduced the elective share under paragraph (c) of subsection (1) of this
33 section, or to apply additional principal or income in behalf of the electing
34 spouse, may not be exercised in favor of the electing spouse.

1 (3) The right to elect may be barred under section 113 of this Act, the
2 share limited by section 114 of this Act or the right denied or the share
3 reduced under section 115 of this Act.

4 **Section 113. Election barred by agreement.** The right of the surviving
5 spouse to elect under section 112 of this Act may be barred by the terms of
6 a written agreement signed by both spouses. The agreement may be entered
7 into before or after marriage.

8 **Section 114. Elective share limited by total property received.** (1) The
9 surviving spouse may not receive by election under section 112 of this Act
10 any amount which, together with any of the following property received
11 by him, exceeds one-half of the total of the following property, such
12 property to be reduced by the amount of the federal estate tax payable
13 by reason of the property:

14 (a) The property passing under the will;

15 (b) Joint annuities furnished by the decedent;

16 (c) Proceeds of insurance on the life of the decedent, whether or not he
17 had any of the incidents of ownership at his death;

18 (d) Transfers by the decedent within three years before the date of his
19 death, to the extent the decedent did not receive full consideration in
20 money or money's worth;

21 (e) Transfers by the decedent during his lifetime as to which he
22 retained power, alone or in conjunction with any other person, to alter,
23 amend, revoke or terminate or to designate a beneficiary;

24 (f) Payments from the employer of the decedent or from a plan
25 created by the employer or under a contract between the decedent and his
26 employer, excluding workmen's compensation and social security payments;

27 (g) Property appointed by the decedent by will or by deed executed
28 within three years before the date of his death, whether the power is
29 general or special, but only if the property is effectively appointed in favor
30 of the surviving spouse; and

31 (h) Property in the joint names of the decedent and one or more other
32 persons, except such proportion as is attributable to consideration furnished
33 by persons other than the decedent.

1 (2) For the purpose of subsection (1) of this section, the surviving
2 spouse is considered to receive:

3 (a) Any property as to which the spouse is given all the income and a
4 general power to appoint the principal.

5 (b) Life insurance proceeds settled by the decedent on option, if the
6 spouse is entitled to the interest and has a general power to appoint the
7 proceeds or to withdraw proceeds, or if the spouse is entitled to an annuity
8 for life or instalments of the entire principal and interest for any period
9 equal to or less than normal life expectancy of the spouse.

10 (3) As used in subsection (1) of this section, "property in the joint
11 names" means all property held or owned under any form of ownership
12 with right of survivorship, including cotenancy with remainder to the
13 survivor; stocks, bonds or bank accounts in the name of two or more persons
14 payable to the survivor; United States Government bonds in co-ownership
15 form or payable on death to a designated person; and shares in credit unions
16 or savings and loan associations payable on death to a designated person or
17 in joint form.

18 **Section 115. Denial of election or share reduction when decedent and**
19 **surviving spouse living apart.** If the decedent and the surviving spouse
20 were living apart at the time of the death of the decedent, whether or not
21 there was a decree for legal separation, the court in its discretion may deny
22 any right to elect against the will, may reduce the elective share of the
23 spouse to such amount as the court determines reasonable and proper or
24 may grant the full elective share in accordance with the circumstances
25 of the particular case. The court, in deciding what elective share, if any,
26 should be granted, shall consider the length of the marriage, whether the
27 marriage was a first or subsequent marriage for either or both of the
28 spouses, the contribution of the surviving spouse to the property of the
29 decedent in the form of services or transfers of property, the length and
30 cause of the separation and any other relevant circumstances.

31 **Section 116. What constitutes election.** The surviving spouse is con-
32 sidered to have elected to take under the will unless, within 90 days after
33 the date of the admission of the will to probate or 30 days after the date of
34 the filing of the inventory, whichever is later, he serves on the personal

1 representative or his attorney and files in the estate proceeding a statement
2 that he elects to take under section 112 of this Act instead of under the will.
3 The surviving spouse may bar any right to take under section 112 of this
4 Act by filing in the estate proceeding a writing, signed by the spouse, elect-
5 ing to take under the will.

6 **Section 117. Election by guardian of surviving spouse.** An election
7 under section 112 of this Act may be filed on behalf of an incompetent sur-
8 viving spouse by a guardian of the spouse. A guardian may elect against
9 the will only if additional assets are needed for the reasonable support
10 of the surviving spouse, taking into account the probable needs of the
11 spouse, the provisions of the will, any non-probate property arrangements
12 made by the decedent for the support of the spouse and any other assets,
13 whether or not owned by the spouse, available for such support. The
14 election is subject to the approval of the court, with or without notice to
15 other interested persons.

16 **Section 118. Payment of elective share.** Estate property shall be ap-
17 plied in satisfaction of the elective share in the following order, unless
18 the will provides otherwise:

19 (1) Any intestate property;

20 (2) After the intestate property is exhausted, each devisee shall con-
21 tribute ratably to the elective share out of the portion of the estate passing
22 to him under the will, except that in abating the interests of the devisees
23 the character of the testamentary plan adopted by the testator shall be
24 preserved so far as possible.

25 **Part 3. Title and Possession of Property**

26 **Section 119. No distinction between real and personal property.** Sec-
27 tions 1 to 212 of this Act apply without distinction between real and per-
28 sonal property.

29 **Section 120. Devolution of and title to property.** (1) Upon the death
30 of a decedent, title to his property vests:

31 (a) In the absence of testamentary disposition, in his heirs, subject to
32 support of spouse and children, rights of creditors, administration and sale
33 by the personal representative; or

34 (b) In the persons to whom it is devised by his will, subject to support

1 of spouse and children, rights of creditors, right of the surviving spouse
2 to elect against the will, administration and sale by the personal repre-
3 sentative.

4 (2) The power of a person to leave property by will, and the rights
5 of creditors, devisees and heirs to his property, are subject to the restric-
6 tions and limitations expressed or implicit in sections 1 to 212 of this Act
7 to facilitate the prompt settlement of estates.

8 **Section 121. Possession and control of decedent's estate.** A personal
9 representative has a right to and shall take possession and control of the
10 estate of the decedent, but he is not required to take possession of or be
11 accountable for property in the possession of an heir or devisee unless in
12 his opinion possession by the personal representative is reasonably re-
13 quired for purposes of administration.

14 **Part 4. Duties and Powers of Personal Representatives**

15 **Section 122. Commencement of duties and powers of personal repre-**
16 **sentative; prior acts.** The duties and powers of a personal representative
17 commence upon the issuance of his letters. The powers of a personal
18 representative relate back in time to give his acts occurring prior to ap-
19 pointment the same effect as those occurring thereafter. A personal repre-
20 sentative may ratify and accept acts on behalf of the estate done by others
21 where those acts would have been proper for a personal representative.

22 **Section 123. General duties of personal representative.** A personal rep-
23 resentative is a fiduciary who is under a general duty to and shall collect
24 the income from property of the estate in his possession and preserve,
25 settle and distribute the estate in accordance with the terms of the will
26 and sections 1 to 212 of this Act, as expeditiously and with as little sacri-
27 fice of value as is reasonable under the circumstances.

28 **Section 124. Personal representative to proceed without court order;**
29 **application for authority, approval or instructions.** A personal represent-
30 ative shall proceed with the administration, settlement and distribution
31 of the estate without adjudication, order or direction of the court, except
32 as otherwise provided in sections 1 to 212 of this Act. However, a personal
33 representative or any interested person may apply to the court for au-

1 thority, approval or instructions on any matter concerning the admin-
2 istration, settlement or distribution of the estate, and the court, without
3 hearing or upon such hearing as it may prescribe, shall instruct the per-
4 sonal representative or rule on the matter as may be appropriate.

5 **Section 125. Naming or appointment of personal representative does**
6 **not discharge claim against him.** The naming or appointment of any person
7 as personal representative does not discharge any claim which the decedent
8 had against that person. The claim shall be included in the inventory. If
9 the person agrees to act as personal representative, he is liable for the
10 claim as for so much money in his hands at the time the claim became
11 due and payable; otherwise he is liable for the claim as any other debtor
12 of the decedent.

13 **Section 126. Discharge or devise in will of claim of testator.** The dis-
14 charge or devise in a will of a claim of the testator against a personal repre-
15 sentative or against any other person is of no effect as against creditors of
16 the decedent. The claim shall be included in the inventory and for purposes
17 of administration shall be regarded and treated as a specific devise of the
18 amount of the claim.

19 **Section 127. Transactions authorized for personal representative.** Ex-
20 cept as restricted or otherwise provided by the will or by court order, a
21 personal representative, acting reasonably for the benefit of interested
22 persons, is authorized to:

23 (1) Direct and authorize disposition of the remains of the decedent
24 pursuant to ORS 97.130 and incur expenses for the funeral, burial or other
25 disposition of the remains in a manner suitable to the condition in life of
26 decedent.

27 (2) Retain assets owned by the decedent pending distribution or
28 liquidation.

29 (3) Receive assets from fiduciaries or other sources.

30 (4) Complete, compromise or refuse performance of contracts of the
31 decedent that continue as obligations of the estate, as he may determine
32 under the circumstances. In performing enforceable contracts by the

1 decedent to convey or lease real property, the personal representative,
2 among other courses of action, may:

3 (a) Execute and deliver a deed upon satisfaction of any sum remaining
4 unpaid or upon receipt of the note of the purchaser adequately secured; or

5 (b) Deliver a deed in escrow with directions that the proceeds, when
6 paid in accordance with the escrow agreement, be paid to the successors
7 of the decedent, as designated in the escrow agreement.

8 (5) Satisfy written pledges of the decedent for contributions, whether
9 or not the pledges constituted binding obligations of the decedent or were
10 properly presented as claims.

11 (6) Deposit funds not needed to meet currently payable debts and
12 expenses, and not immediately distributable, in bank or savings and loan
13 accounts, or invest the funds in short-term United States Government
14 obligations.

15 (7) Abandon burdensome property when it is valueless, or is so encum-
16 bered or is in a condition that it is of no benefit to the estate.

17 (8) Vote stocks or other securities in person or by general or limited
18 proxy.

19 (9) Pay calls, assessments and other sums chargeable or accruing
20 against or on account of securities.

21 (10) Sell or exercise stock subscription or conversion rights.

22 (11) Consent, directly or through a committee or other agent, to the
23 reorganization, consolidation, merger, dissolution or liquidation of a cor-
24 poration or other business enterprise.

25 (12) Hold a security in the name of a nominee or in other form without
26 disclosure of the interest of the estate, but the personal representative is
27 liable for any act of the nominee in connection with the security so held.

28 (13) Insure the assets of the estate against damage and loss, and insure
29 himself against liability to third persons.

30 (14) Advance or borrow money with or without security.

31 (15) Compromise, extend, renew or otherwise modify an obligation
32 owing to the estate. If the personal representative holds a mortgage,
33 pledge, lien or other security interest, he may accept a conveyance or

1 transfer of the encumbered asset in lieu of foreclosure in full or partial
2 satisfaction of the indebtedness.

3 (16) Accept other real property in part payment of the purchase price
4 of real property sold by him.

5 (17) Pay taxes, assessments and expenses incident to the administration
6 of the estate.

7 (18) Employ qualified persons, including attorneys, accountants and
8 investment advisors, to advise and assist the personal representative and
9 to perform acts of administration, whether or not discretionary, on behalf
10 of the personal representative.

11 (19) Prosecute or defend actions, claims or proceedings in any jurisdic-
12 tion for the protection of the estate and of the personal representative in
13 the performance of his duties.

14 (20) Continue any business or venture in which the decedent was
15 engaged at the time of his death to preserve the value of the business or
16 venture.

17 (21) Incorporate or otherwise change the business form of any business
18 or venture in which the decedent was engaged at the time of his death.

19 (22) Discontinue and wind up any business or venture in which the
20 decedent was engaged at the time of his death.

21 (23) Provide for exoneration of the personal representative from per-
22 sonal liability in any contract entered into on behalf of the estate.

23 (24) Satisfy and settle claims and distribute the estate as provided in
24 sections 1 to 212 of this Act.

25 (25) Perform all other acts required or permitted by law or by the will
26 of decedent.

27 **Section 128. Right to perfect lien or security interest.** A personal rep-
28 resentative has the same rights to perfect a lien or security interest as the
29 decedent would have had if he were living.

30 **Section 129. Power to sell, mortgage, lease and deal with property.** (1)
31 A personal representative has power to sell, mortgage, lease or otherwise
32 deal with property of the estate without notice, hearing or court order.

1 (2) Exercise of the power of sale by the personal representative is
2 improper, except after notice, hearing and order of the court, if:

3 (a) The sale is in contravention of the provisions of the will; or

4 (b) The property is specifically devised and the will does not authorize
5 its sale; or

6 (c) A bond of the personal representative has been required and filed,
7 the sale price of the property to be sold exceeds \$5,000 and the bond of the
8 personal representative has not been increased by the amount of cash to be
9 realized on the sale, unless the court has directed otherwise.

10 **Section 130. Court order for sale, mortgage or lease.** Upon proof satis-
11 factory to the court by an interested person that a sale, mortgage or lease
12 of property of the estate is required for paying, support of spouse and
13 children, elective share of surviving spouse, claims or expenses of adminis-
14 tration, or for distribution, and that the personal representative has failed
15 or declined to act, the court may order the personal representative to make
16 the sale, mortgage or lease.

17 **Section 131. Title conveyed free of claims of creditors.** Property sold,
18 mortgaged or leased by a personal representative is subject to liens and
19 encumbrances against the decedent or his estate, but is not subject to rights
20 of creditors of the decedent or liens or encumbrances against his heirs
21 or devisees. The filing and allowance of a claim in an estate proceeding
22 does not make the claimant a secured creditor.

23 **Section 132. Sale or encumbrance to personal representative voidable;**
24 **exceptions.** (1) Any sale or encumbrance to the personal representative,
25 his spouse, agent or attorney, or any corporation or trust in which he has
26 more than a one-third beneficial interest, is voidable unless:

27 (a) The transaction was consented to by all interested persons affected
28 thereby; or

29 (b) The will expressly authorizes the transaction by the personal rep-
30 resentative with himself; or

31 (c) The transaction was made in compliance with another statute or
32 with a contract or other instrument executed by the decedent.

33 (2) The title of a purchaser for value without notice of the circum-
34 stances of the transaction with the personal representative is not affected

1 unless the purchaser should have known of the defect in the title of his
2 seller.

3 Section 133. ORS 116.835 is amended to read:

4 116.835. **Validation of certain sales.** The following are the subject of
5 validating Acts ~~[applicable to this chapter]~~:

6 (1) Certain sales of decedent's real property made prior to 1903 where
7 confirmation of sale was premature, *validated by page 133, section 2, Gen-
8 eral Laws of Oregon 1903.*

9 (2) Certain sales of decedent's property made prior to 1907 under
10 power in will, *validated by chapter 175, General Laws of Oregon 1907.*

11 (3) Certain sales of decedent's real property made prior to 1917 where
12 publication of the notice of sale was improper, *validated by section 2,
13 chapter 114, General Laws of Oregon 1917.*

14 (4) Certain sales by executors or administrators made prior to 1943,
15 *validated by chapter 26, Oregon Laws 1943.*

16 **Section 134. Nonliability of transfer agents.** A transfer agent or a
17 corporation transferring its own securities incurs no liability to any per-
18 son by making a transfer of securities in an estate as requested or di-
19 rected by a personal representative.

20 **Section 135. Persons dealing with personal representative; protection.**

21 A person dealing with or assisting a personal representative without actual
22 knowledge that the personal representative is improperly exercising his
23 power is protected as if the personal representative properly exercised
24 the power. The person is not bound to inquire whether the personal repre-
25 sentative is properly exercising his power, and is not bound to inquire
26 concerning the provisions of any will or any order of court that may affect
27 the propriety of the acts of the personal representative. No provision in
28 any will or order of court purporting to limit the power of a personal rep-
29 resentative is effective except as to persons with actual knowledge thereof.
30 A person is not bound to see to the proper application of estate assets
31 paid or delivered to a personal representative. The protection expressed
32 in this section extends to a person dealing with or assisting a personal
33 representative appointed under section 88 of this Act without actual knowl-
34 edge that the personal representative was not qualified as provided in

1 section 89 of this Act or that the appointment of the personal representa-
2 tive involved procedural irregularity.

3 **Section 136. Improper exercise of power; breach of fiduciary duty.** If
4 the exercise of power by a personal representative in the administration
5 of an estate is improper, he is liable for breach of his fiduciary duty to in-
6 terested persons for resulting damage or loss to the same extent as a trustee
7 of an express trust. Exercise of power in violation of a court order is a
8 breach of duty. Exercise of power contrary to the provisions of the will
9 may be a breach of duty.

10 **Section 137. Personal liability of personal representative.** (1) The per-
11 sonal liability of a personal representative to third parties, as distinguished
12 from his fiduciary accountability to the estate, arising from the administra-
13 tion of the estate is that of an agent for a disclosed principal.

14 (2) A personal representative is not personally liable on contracts
15 properly entered into in his fiduciary capacity in the course of administra-
16 tion of the estate unless he expressly agrees to be personally liable.

17 (3) A personal representative is not personally liable for obligations
18 arising from possession or control of property of the estate or for torts
19 committed in the course of administration of the estate unless he is per-
20 sonally at fault.

21 (4) Claims based upon contracts, obligations and torts of the types
22 described in subsections (2) and (3) of this section may be allowed against
23 the estate whether or not the personal representative is personally liable
24 therefor.

25 **Section 138. Co-personal representatives; when joint action required.**

26 (1) When two or more persons are appointed co-personal representatives,
27 the concurrence of all is required on all acts connected with the adminis-
28 tration and distribution of the estate, except:

29 (a) Any co-personal representative may receive and receipt for property
30 due the estate.

31 (b) When the concurrence of all cannot readily be obtained in the time
32 reasonably available for emergency action.

33 (c) Where any others have delegated their power to act.

1 (d) Where the will provides otherwise.

2 (e) Where the court otherwise directs.

3 (2) Persons dealing with a co-personal representative who are actually
4 unaware that another has been appointed to serve with him are as fully
5 protected as if the person with whom they dealt had been the sole personal
6 representative.

7 **Section 139. Discovery of property, writings and information.** (1) The
8 court may order any person to appear and give testimony as provided in
9 ORS chapter 45 if it appears probable:

10 (a) That he has concealed, secreted or disposed of any property of the
11 estate of a decedent;

12 (b) That he has been intrusted with property of the estate of a decedent
13 and fails to account therefor to the personal representative.

14 (c) That he has concealed, secreted or disposed of any writing, in-
15 strument or document pertaining to the estate;

16 (d) That he has knowledge or information that is necessary to the ad-
17 ministration of the estate; or

18 (e) That, as an officer or agent of a corporation, he has refused to
19 allow examination of the books and records of the corporation that the
20 decedent had the right to examine.

21 (2) If the person cited as provided in subsection (1) of this section
22 fails to appear or to answer questions asked of him as authorized by the
23 order of the court, he is in contempt and may be punished as for other
24 contempts.

25 **Section 140. Power to avoid transfers.** The property liable for the pay-
26 ment of expenses of administration, funeral expenses, claims and taxes
27 include property transferred by him with intent to defraud his creditors
28 or transferred by any means which is in law void or voidable as against
29 his creditors. The right to recover that property so far as necessary for
30 the payment of those expenses, claims and taxes is in the personal rep-
31 resentative, who shall take necessary steps to recover it. That property
32 constitutes general assets for the payment of creditors.

1 **ARTICLE V. CLAIMS; ACTIONS AND SUITS**

2 **Part 1. Claims Against Estates**

3 **Section 141. Presentation of claims; time limitations.** (1) Claims against
4 the estate of a decedent, other than claims of the personal representative
5 as creditor of the decedent, shall be presented to the personal represent-
6 ative.

7 (2) Claims presented within four months after the date of the first
8 publication of notice to interested persons shall be paid, as provided in
9 section 151 of this Act, before claims presented after the four-month
10 period.

11 (3) Claims not presented before the expiration of 12 months after the
12 date of the first publication of notice to interested persons, or before the
13 date the personal representative files his final account, whichever occurs
14 first, are barred from payment.

15 (4) If a claim is presented after the expiration of the 12-month period,
16 but before the final account is filed, the claim is not barred if the court
17 finds that the late presentment was caused by mistake, inadvertence, sur-
18 prise or excusable neglect.

19 **Section 142. Form and verification of claims.** Each claim presented
20 shall:

21 (1) Be in writing.

22 (2) Describe the nature and the amount thereof, if ascertainable.

23 (3) State the names and addresses of the claimant and, if any, his
24 attorney.

25 (4) Be accompanied by the affidavit of the claimant or someone on
26 his behalf who has personal knowledge of the fact, stating that the amount
27 claimed is justly due, or if not due, when it will or may become due; that
28 no payments have been made which are not credited; and that there is
29 no just offset thereto, to the knowledge of the affiant, except as stated.

30 **Section 143. Waiver of presentment, defect or insufficiency.** The pre-
31 sentment of a claim and any defect of form or insufficiency of a claim
32 presented may be waived by the personal representative or by the court.

33 **Section 144. Written evidence of claim.** When it appears that there is
34 written evidence of a claim that has been presented to the personal rep-

1 representative, the claimant, upon demand by the personal representative,
2 shall produce the evidence or account for its nonproduction.

3 **Section 145. Claims on debts due.** If a claim on a debt due is presented
4 and allowed, allowance shall be in the amount of the debt remaining
5 unpaid on the date of allowance.

6 **Section 146. Claims on secured debts due.** (1) A claim on a debt due
7 for which the creditor holds security may be presented as a claim on an
8 unsecured debt due, or the creditor may elect to rely entirely on the
9 security without presentation of the claim.

10 (2) If the claim is presented, it shall describe the security. If the
11 security is an encumbrance that is recorded, it is sufficient to describe
12 the encumbrance by reference to the volume, page, date and place of re-
13 cording.

14 (3) If the claim is presented and allowed, allowance shall be in the
15 amount of the debt remaining unpaid on the date of allowance.

16 (4) If the creditor surrenders the security, payment shall be on the
17 basis of the amount allowed.

18 (5) If the creditor does not surrender the security, payment shall be
19 on the basis of:

20 (a) If the creditor exhausts the security before receiving payment, the
21 amount allowed, less the amount realized on exhausting the security; or

22 (b) If the creditor does not exhaust the security before receiving pay-
23 ment or does not have the right to exhaust the security, the amount
24 allowed, less the value of the security determined by agreement or as the
25 court may order.

26 (6) The creditor shall not exercise remedies reserved under his security
27 until at least 30 days after the date the claim is presented and after notice
28 to the personal representative of his intention to exercise his remedy, but
29 the court, on cause shown, may shorten the period.

30 (7) The personal representative may convey the secured property to
31 the creditor in consideration of the release of the security and satisfaction
32 or partial satisfaction of the claim.

33 **Section 147. Claims on debts not due.** A claim on a debt not due,
34 whether or not the creditor holds security therefor, may be presented as

1 a claim on a debt due. If the claim is allowed, allowance shall be in an
2 amount equal to the value of the debt on the date of allowance. The
3 creditor, after allowance of the claim, may withdraw the claim without
4 prejudice to his other remedies. Payment on the basis of the amount
5 allowed discharges the debt and the security, if any, held by the creditor
6 therefor.

7 **Section 148. Claims on contingent and unliquidated debts.** (1) A claim
8 on a contingent or unliquidated debt shall be presented as any other claim.

9 (2) If the debt becomes absolute or liquidated before distribution of
10 the estate, the claim shall be paid in the same manner as a claim on an
11 absolute or liquidated debt.

12 (3) If the debt does not become absolute or liquidated before distri-
13 bution of the estate, the court shall provide for payment of the claim by
14 any of the following methods:

15 (a) The creditor and personal representative may determine, by agree-
16 ment, arbitration or compromise, the value of the debt, and upon approval
17 thereof by the court, the claim may be allowed and paid in the same
18 manner as a claim on an absolute or liquidated debt.

19 (b) The court may order the personal representative to make distri-
20 bution of the estate, but to retain sufficient funds to pay the claim if and
21 when the debt becomes absolute or liquidated. The estate may not be
22 kept open for this purpose more than two years after distribution of the
23 remainder of the estate. If the debt does not become absolute or liquidated
24 within that time, the funds retained, after payment therefrom of any
25 expenses accruing during that time, shall be distributed to the distributees.

26 (c) The court may order the personal representative to make distri-
27 bution of the estate as though the claim did not exist.

28 (d) If after distribution under paragraphs (b) or (c) of this subsection
29 the debt becomes absolute or liquidated, the distributees are liable to the
30 creditor to the extent of the estate received by them. Payment of the debt
31 may be arranged by creating a trust, giving a mortgage, securing a bond
32 from a distributee or by such other method as the court may order.

33 **Section 149. Compromise of claims.** The personal representative may
34 compromise a claim against the estate of a decedent.

1 **Section 150. Claims of personal representative.** A claim of a personal
2 representative shall be filed with the clerk of the court within the time
3 required by law for presentment of claims. Upon application by the per-
4 sonal representative or by any interested person the claim may be con-
5 sidered by the court on the hearing of the final account of the personal
6 representative.

7 **Section 151. Payment of claims.** Upon the expiration of four months
8 after the date of the first publication of notice to interested persons, the
9 personal representative shall, after making provision for support of spouse
10 and children ordered by the court, for expenses of administration and for
11 claims already presented which have not been allowed or allowance of
12 which has been appealed, proceed to pay the claims presented within four
13 months after the date of the first publication of notice to interested per-
14 sons and allowed against the estate, in the order of priority prescribed by
15 section 152 of this Act. After payment of those claims, claims presented
16 after the four-month period shall be paid in the same order.

17 **Section 152. Order of payment of expenses and claims.** (1) If the ap-
18 plicable assets of the estate are insufficient to pay all expenses and claims
19 in full, the personal representative shall make payment in the following
20 order:

21 (a) Support of spouse and children, subject to the limitations imposed
22 by section 109 of this Act.

23 (b) Expenses of administration.

24 (c) Expenses of a plain and decent funeral and disposition of the
25 remains of the decedent.

26 (d) Debts and taxes with preference under federal law.

27 (e) Reasonable and necessary medical and hospital expenses of the last
28 illness of the decedent, including compensation of persons attending him.

29 (f) Taxes with preference under the laws of this state that are due and
30 payable while possession is retained by the personal representative.

31 (g) Debts owed employes of the decedent for labor performed within 90
32 days immediately preceding the date of death of the decedent.

33 (h) The claim of the State Public Welfare Commission for the net
34 amount of public assistance, as defined in ORS 411.010, paid to or for the

1 decedent, and the claim of the Oregon State Board of Control for care and
2 maintenance of any decedent who was at a state institution to the extent
3 provided in ORS 179.610 to 179.770.

4 (i) All other claims against the estate.

5 (2) If the applicable assets of the estate are insufficient to pay in full
6 all expenses or claims of any one class specified in subsection (1) of this
7 section, each expense or claim of that class shall be paid only in proportion
8 to the amount thereof.

9 **Section 153. Allowance and disallowance of claims.** (1) A claim pre-
10 sented to the personal representative shall be considered allowed as pre-
11 sented unless within 60 days after the date of presentment of the claim the
12 personal representative mails or delivers a notice of disallowance of the
13 claim in whole or in part to the claimant and, if any, his attorney. The
14 personal representative shall file in the estate proceeding the claim as
15 presented and a copy of the notice of disallowance.

16 (2) A notice of disallowance of a claim shall inform the claimant that
17 the claim has been disallowed in whole or in part and, to the extent dis-
18 allowed, will be barred unless the claimant proceeds as provided in section
19 154 of this Act.

20 (3) The personal representative may rescind his previous allowance
21 of an unpaid claim, if the claim was allowed because of error, misinforma-
22 tion or excusable neglect. Not less than 30 days before the date of the filing
23 of the final account the personal representative shall give notice of rescis-
24 sion of his previous allowance of a claim to the claimant and, if any, his
25 attorney in the same manner and containing the same information as a
26 notice of disallowance.

27 **Section 154. Procedure by claimant on disallowance of claim.** (1) If the
28 personal representative disallows a claim in whole or in part, the claimant,
29 within 30 days after the date of mailing or delivery of the notice of dis-
30 allowance, may either:

31 (a) File in the estate proceeding a request for summary determination
32 of the claim by the probate court, with proof of service of a copy of the
33 request upon the personal representative or his attorney; or

34 (b) Commence a separate action or suit against the personal representa-

1 tive on the claim in any court of competent jurisdiction. The action or suit
2 shall proceed and be tried as any other action or suit.

3 (2) If the claimant fails to request a summary determination or fails to
4 commence a separate action or suit as provided in subsection (1) of this
5 section, the claim, to the extent disallowed by the personal representative,
6 is barred.

7 **Section 155. Separate action or suit required by personal represent-**
8 **ative.** If the claimant files a request for summary determination of the
9 claim as provided in section 154 of this Act, the personal representative,
10 within 30 days after the date of service of a copy of the request upon the
11 personal representative or his attorney, may notify the claimant in writing
12 that if he desires to prove the claim he must commence a separate action or
13 suit against the personal representative on the claim within 60 days after
14 the date of receipt of such notice. If the claimant fails to commence a
15 separate action or suit within 60 days after the date of receipt of the notice,
16 the claim, to the extent disallowed by the personal representative, is barred.

17 **Section 156. Summary determination procedure.** In a proceeding for
18 summary determination by the probate court of a claim disallowed in whole
19 or in part by the personal representative:

20 (1) The personal representative shall move or plead to the claim as
21 though the claim were a complaint filed in an action or suit.

22 (2) The court shall hear the matter without a jury, after notice to the
23 claimant and personal representative. Upon the hearing the court shall
24 determine the claim in a summary manner and shall make an order allow-
25 ing or disallowing the claim in whole or in part.

26 (3) No appeal may be taken from the order of the court made upon the
27 summary determination.

28 **Section 157. Interested persons heard in summary determination or**
29 **separate action or suit.** Any interested person may be heard in a proceed-
30 ing for summary determination by the probate court of a claim, and may
31 intervene in a separate action or suit against the personal representative
32 on the claim.

33 **Section 158. Creditor may obtain order for payment.** A creditor whose
34 claim has been allowed or established by summary determination or

1 separate action or suit, and who has not received payment within six
2 months after the date of the first publication of notice to interested persons,
3 may apply to the court for an order directing the personal representative
4 to pay the claim to the extent that funds of the estate are available for
5 that payment.

6 **Section 159. Proof for court allowance of disallowed claim.** A claim
7 that has been disallowed by the personal representative may not be allowed
8 by any court except upon some competent, satisfactory evidence other than
9 the testimony of the claimant.

10 **Section 160. Waiver of statute of limitations.** A claim barred by the
11 statute of limitations may not be allowed by the personal representative or
12 by any court except upon the written direction or consent of those inter-
13 ested persons who would be adversely affected by allowance of the claim.

14 **Section 161. Extension of statute of limitations.** If a claim is not barred
15 by the statute of limitations on the date of death of the decedent, the claim
16 is not barred by the statute of limitations thereafter until at least one year
17 after the date of death.

18 **Part 2. Discharge of Encumbrances**

19 **Section 162. Discharge of encumbrances.** (1) As used in this section:

20 (a) "Voluntary encumbrance" means any mortgage, trust deed, security
21 agreement, pledge or public improvement assessment lien, or any lien
22 arising from labor or services performed or materials supplied or
23 furnished, or any combination thereof, upon or in respect of property.

24 (b) "Involuntary encumbrance" means any encumbrance upon prop-
25 erty other than a voluntary encumbrance.

26 (2) If property upon which an encumbrance exists on the date of the
27 death of the testator is specifically devised, the devisee takes it subject
28 to the encumbrance, and the personal representative is not required to
29 make any payment on account of the obligation secured by the encum-
30 brance, whether or not the testator was personally liable on the obligation
31 secured by the encumbrance, except as provided otherwise in the will or
32 in subsection (3) or (4) of this section.

33 (3) Unless the will provides otherwise, the devisee of specifically de-
34 vised property may require that an encumbrance thereon be fully or

1 partially discharged out of other assets of the estate not specifically de-
2 vised, if

3 (a) The encumbrance is an involuntary encumbrance; or

4 (b) The encumbrance is a voluntary encumbrance and

5 (A) The will specifically directs full or partial discharge of the en-
6 cumbrance out of other assets; or

7 (B) The personal representative receives rents or profits, or both, from
8 the property and the devisee requests that he apply all or part of the
9 rents or profits, or both, in full or partial discharge of the obligation
10 secured by the encumbrance, in which event the personal representative
11 shall apply the rents or profits, or both, upon principal or interest, or both,
12 owing upon the obligation, as requested; or

13 (C) Any beneficiary under the will requests, in a writing signed by
14 the beneficiary and delivered to the personal representative, that the
15 obligation secured by the encumbrance be fully or partially discharged
16 out of property, or the proceeds of the sale thereof, which otherwise would
17 pass to the beneficiary.

18 (4) If a claim based upon an obligation secured by a voluntary en-
19 cumbrance upon specifically devised property is presented and paid, or if
20 specifically devised real property subject to a voluntary encumbrance is
21 redeemed, and the devisee is not entitled to exoneration pursuant to sub-
22 section (3) of this section, the personal representative has a lien upon the
23 property in the amount paid, and the lien shall be administered upon as
24 an asset of the estate.

25 (5) If property is specifically devised by a will executed before the
26 effective date of this section, and if an encumbrance upon that property
27 exists on the date of the death of the testator, the rights of the devisee of
28 that property in respect of exoneration thereof out of other assets of the
29 estate shall be determined in accordance with the law in effect on the date
30 the will was executed.

31 **Section 163. Power to redeem estate property.** Unless otherwise pro-
32 vided by the will, the personal representative may redeem property of the
33 estate sold on foreclosure of mortgage or upon execution if it appears that

1 the redemption would be for the benefit of the estate and would not be
2 prejudicial to creditors.

3 **Section 164. Encumbered assets; powers of personal representative.**

4 When any assets of the estate are encumbered by an involuntary or volun-
5 tary encumbrance, the personal representative may pay the encumbrance
6 or any part thereof, renew or extend any obligation secured by the encum-
7 brance or convey or transfer the assets to the creditor in satisfaction of his
8 lien, in whole or in part, whether or not the holder of the encumbrance has
9 filed a claim, if it appears to be for the best interest of the estate. Payment
10 of an encumbrance shall not increase the share of the distributee entitled
11 to the encumbered assets unless the distributee is entitled to exoneration
12 under subsection (3) of section 162 of this Act.

13 **Part 3. Actions and Suits**

14 Section 165. ORS 121.020 is amended to read:

15 121.020. **Survival of causes of action.** All causes of action *or suit*, by
16 one person against another, ~~[whether arising on contract or otherwise,]~~ sur-
17 vive to the personal ~~[representatives]~~ *representative* of the former and
18 against the personal ~~[representatives]~~ *representative* of the latter. ~~[The~~
19 ~~executors or administrators may maintain an action thereon against the party~~
20 ~~against whom the cause of action accrued, or after his death against his personal~~
21 ~~representatives.]~~

22 **Section 166. Continuation of action or suit without claim presentation.**

23 An action or suit against a decedent commenced before and pending on
24 the date of his death may be continued as provided in paragraph (b) of
25 subsection (2) of ORS 13.080 without presentation of a claim against the
26 estate of the decedent.

27 Section 167. ORS 121.090 is amended to read:

28 121.090. **Action not to be commenced until claim presented and dis-**
29 **allowed; liability on claim presented after four months from notice.** ~~[An]~~
30 ~~No action against [an executor or administrator]~~ *a personal representative*
31 shall ~~[not]~~ be commenced until the claim of the plaintiff has been ~~[duly]~~
32 presented to the ~~[executor or administrator]~~ *personal representative*, and by
33 him ~~[rejected]~~ *disallowed*. If the claim is presented after the expiration of
34 ~~[the period of six]~~ *four months* ~~[from and]~~ after the date of the ~~[published]~~

1 ~~notice of his appointment]~~ *first publication of notice to interested persons,*
2 ~~the [executor or administrator]~~ *personal representative, in an action there-*
3 *for, is liable only to the extent of the assets in his hands at the time the*
4 *summons is served upon him and allocable to the payment of [such] the*
5 *claim [under and] pursuant to [the provisions of ORS 116.510] sections 151*
6 *and 152 of this 1969 Act.*

7 **ARTICLE VI. ACCOUNTING, DISTRIBUTION AND CLOSING**

8 **Part 1. Allocation of Income**

9 **Section 168. Allocation of income.** Unless the will of the decedent
10 otherwise provides, income from the assets of the estate of a testate dece-
11 dent received after the death of the decedent and before final distribution,
12 including income realized from property that is sold or otherwise expended
13 for the purpose of discharging expenses of administration, claims and
14 inheritance and estate taxes, shall be determined in accordance with the
15 rules applicable to a trustee under ORS 129.010 to 129.140 and distributed
16 as follows:

17 (1) To specific devisees, the income received from the property devised
18 to them respectively, less the taxes, ordinary repairs and other expenses
19 incurred in the management and operation of the property, any interest
20 paid during the period of administration on account of such property and
21 an appropriate portion of taxes imposed on income, excluding taxes on
22 capital gains, that are paid from the estate during the period of administra-
23 tion.

24 (2) To all other devisees, except devisees of pecuniary devises that are
25 not in trust and that do not qualify for the marital deduction provided for
26 in section 2056 of the Internal Revenue Code of 1954 (26 U.S.C. 2056), as
27 amended, the remaining income in proportion to their respective interests
28 in the assets of the estate that have not been distributed to them or ex-
29 pended for the payment of inheritance or estate taxes charged against their
30 particular shares of the estate, computed at the time of each such distribu-
31 tion on the basis of inventory values. As used in this subsection, "remaining
32 income" means the total income from all property that is not specifically
33 devised, less the taxes, ordinary repairs and other expenses incurred in
34 the management and operation of all such property from which the estate

1 is entitled to income, any interest paid during the period of administration
2 on account of such property, any interest paid on general pecuniary devises
3 and the taxes imposed on income, excluding taxes on capital gains, that are
4 paid from the estate during the period of administration and that are not
5 charged against the property specifically devised.

6 (3) Income received during the period of administration under this
7 section and distributed to a trustee shall be treated as income of the trust.

8

Part 2. Partial Distribution

9 **Section 169. Petition and order for partial distribution.** Upon petition
10 by the personal representative or other interested person, and after such
11 notice and hearing as the court may prescribe, the court may order the
12 personal representative to distribute, prior to final settlement, property of
13 the estate to the person or persons who would be entitled to the property
14 under the will or under intestate succession on final distribution, if the
15 court finds that:

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

18 (2) After the distribution sufficient assets will remain to pay support of
19 spouse and children, expenses of administration, unpaid claims and all
20 known unpaid creditors of the decedent or of the estate; and

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

23 **Section 170. Undertaking of distributee.** The court may require a bond
24 or other security for the protection of creditors and other interested persons
25 who might suffer loss or injury because of the distribution of property
26 under section 169 of this Act.

27 **Section 171. Discharge of personal representative.** The distribution of
28 property in accordance with the order of the court under section 169 of this
29 Act is a full discharge of the personal representative in respect to all
30 property embraced in the order.

31 **Section 172. Petition and order for refund by distributee.** If, after the
32 distribution of property under section 169 of this Act, it appears that all or
33 any part of the property distributed is required for the payment of claims
34 and expenses of administration, including determined and undetermined

1 state and federal tax liability, the personal representative shall petition the
2 court to order the return of the property. Notice of the hearing on the
3 petition shall be given as provided in section 13 of this Act. Upon the hear-
4 ing the court may order the distributee to return the property distributed
5 or any part thereof, or to pay its value as of the time of distribution, and
6 may specify the time within which the return or payment must be made.
7 If the property is not returned or the payment is not made within the time
8 ordered, the person failing to return the property or pay the value may be
9 adjudged in contempt of court and judgment may be entered against him
10 and his sureties, if any.

11 **Part 3. Accounting and Distribution**

12 **Section 173. Liability of personal representative.** A personal represent-
13 ative is liable for and chargeable in his accounts with:

14 (1) All of the estate of the decedent that comes into his possession at
15 any time, including the income therefrom.

16 (2) All property not a part of the estate if:

17 (a) He has commingled the property with the assets of the estate; or

18 (b) The property was received under a duty imposed on him by law in
19 the capacity of personal representative.

20 (3) Any loss to the estate arising from:

21 (a) Neglect or unreasonable delay in collecting the assets of the estate.

22 (b) Neglect in paying over money or delivering property of the estate.

23 (c) Failure to pay taxes as required by law or to close the estate within
24 a reasonable time.

25 (d) Embezzlement or commingling of the assets of the estate with other
26 property.

27 (e) Unauthorized self-dealing.

28 (f) Wrongful acts or omissions of his co-personal representatives that
29 he could have prevented by the exercise of ordinary care.

30 (g) Any other negligent or wilful act or nonfeasance in his administra-
31 tion of the estate by which loss to the estate arises.

1 **Section 174. Nonliability of personal representative.** A personal rep-
2 resentative is not liable for or chargeable in his accounts with:

3 (1) Debts due the decedent or other assets of the estate which remain
4 uncollected without his fault.

5 (2) Loss by the decrease in value or destruction of property of the
6 estate if the loss is caused without his fault.

7 **Section 175. Accounting by personal representative.** (1) A personal
8 representative shall make and file in the estate proceeding a verified
9 account of his administration:

10 (a) Unless the court orders otherwise, annually within 30 days after
11 the anniversary date of his appointment.

12 (b) Within 30 days after the date of his removal or resignation or the
13 revocation of his letters.

14 (c) When the estate is ready for final settlement and distribution.

15 (d) At such other times as the court may order.

16 (2) Each account shall include the following information:

17 (a) The period of time covered by the account.

18 (b) The total value of the property with which the personal representa-
19 tive is chargeable according to the inventory, or, if there was a prior
20 account, the amount of the balance of the prior account.

21 (c) All money and property received during the period covered by the
22 account.

23 (d) All disbursements made during the period covered by the account.
24 Vouchers for disbursements shall accompany the account, unless otherwise
25 provided by order or rule of the court.

26 (e) The money and property of the estate on hand.

27 (f) Such other information as the personal representative considers
28 necessary to show the condition of the affairs of the estate or as the court
29 may require.

30 (3) When the estate is ready for final settlement and distribution, the
31 account shall also include:

32 (a) A statement that all Oregon income, inheritance and personal
33 property taxes, if any, have been paid, or if not so paid, that payment of
34 those taxes has been secured by bond, deposit or otherwise.

1 (b) A petition for a decree authorizing the personal representative to
2 distribute the estate to the persons and in the portions specified therein.

3 (4) If the beneficiaries consent thereto in writing and all creditors of
4 the estate have been paid in full, the personal representative, in lieu of the
5 final account otherwise required by this section, may file as his final
6 account a verified statement that includes the following:

7 (a) The period of time covered by the account.

8 (b) A statement that all creditors have been paid in full.

9 (c) The statement and petition referred to in subsection (3) of this
10 section.

11 **Section 176. Notice for filing objections to final account and petition**
12 **for distribution.** (1) Upon filing the final account and petition for decree
13 of distribution, the personal representative shall fix a time for filing
14 objections thereto in a notice thereof. Not less than 20 days before the time
15 fixed in the notice, the personal representative shall cause a copy of the
16 notice to be mailed to:

17 (a) Each heir at his last-known address, if the decedent died intestate.

18 (b) Each devisee at his last-known address, if the decedent died testate.

19 (c) Each creditor who has not received payment in full and whose
20 claim has not otherwise been barred.

21 (d) Any other person known to the personal representative to have or
22 to claim an interest in the estate being distributed.

23 (2) The notice need not be mailed to the personal representative.

24 (3) Proof of the mailing to those persons entitled to notice shall be made
25 by affidavit and filed in the estate proceeding at or before approval of the
26 final account.

27 **Section 177. Objections to final account and petition.** Any person en-
28 titled to notice under section 176 of this Act may, within the time fixed
29 for the filing, file in the estate proceeding his objections to the final account
30 and petition for distribution, specifying the particulars of the objections.
31 Upon the filing of objections the court shall fix the time for hearing
32 thereon.

33 **Section 178. Decree of final distribution.** (1) If no objections to the final
34 account and petition for distribution are filed, or if objections are filed,

1 upon the hearing, the court shall give its decree of final distribution. In its
2 decree the court shall designate the persons in whom title to the estate
3 available for distribution is vested and the portion of the estate or property
4 to which each is entitled under the will, by agreement approved by the
5 court or pursuant to intestate succession. The decree shall also contain any
6 findings of the court in respect to:

7 (a) Advancements.

8 (b) Election against will by the surviving spouse.

9 (c) Renunciation.

10 (d) Lapse.

11 (e) Adjudicated controversies.

12 (f) Partial distribution, which shall be confirmed or modified.

13 (g) Retainer.

14 (h) Claims for which a special fund is set aside, and the amount set
15 aside.

16 (i) Contingent claims that have been allowed and are still unpaid.

17 (j) Approval of the final account in whole or in part.

18 (2) The personal representative is not entitled to approval of his final
19 account until Oregon income, inheritance and personal property taxes, if
20 any, have been paid and appropriate receipts, releases and clearances
21 therefor have been filed, or until payment of those taxes has been secured
22 by bond, deposit or otherwise.

23 (3) If, by agreement approved by the court, property is distributed to
24 persons in whom title is vested by the decree of final distribution otherwise
25 than as provided by the will or pursuant to intestate succession, the decree
26 operates as a transfer of the property between those persons.

27 (4) The decree of final distribution is a conclusive determination of the
28 persons who are the successors in interest to the estate and of the extent
29 and character of their interest therein, subject only to the right of appeal
30 and the power of the court to vacate the decree.

31 **Section 179. Effect of approval of final account.** To the extent that the
32 final account is approved, the personal representative and his surety,
33 subject to the right of appeal, to the power of the court to vacate its final
34 orders and to the provisions of section 188 of this Act, are relieved from

1 liability for the administration of his trust. The court may disapprove the
2 account in whole or in part, surcharge the personal representative for any
3 loss caused by any breach of duty and deny in whole or in part his right
4 to receive compensation.

5 **Section 180. Distribution; order in which assets appropriated; abate-**
6 **ment.** (1) If the will expresses an order of abatement, or the testamentary
7 plan or the express or implied purpose of the devise would be defeated by
8 the order of abatement stated in subsection (2) of this section, the shares
9 of the distributees abate as may be found necessary to give effect to the
10 intention of the testator.

11 (2) Except as provided in section 54 of this Act as to the shares of
12 pretermitted children, and in section 112 of this Act as to the share of the
13 surviving spouse who elects to take against the will, shares of distributees
14 abate without any preference or priority as between real and personal
15 property in the following order:

16 (a) Property not disposed of by the will.

17 (b) Residuary devises,

18 (c) General devises,

19 (d) Specific devises.

20 (3) A general devise charged on any specific property or fund is con-
21 sidered, for purposes of abatement, property specifically devised to the
22 extent of the value of the thing on which it is charged. Upon the failure
23 or insufficiency of the thing on which it is charged, it is considered a
24 general devise to the extent of the failure or insufficiency. Abatement
25 within each classification is in proportion to the amounts of property each
26 of the beneficiaries would have received had full distribution of the
27 property been made in accordance with the terms of the will.

28 (4) Persons to whom the will gives tangible personal property not used
29 in trade, agriculture or other business are not required to contribute from
30 that property unless the particular gift forms a substantial amount of the
31 total estate and the court specifically orders contribution because of the gift.

32 (5) When the subject matter of a preferred devise is sold or used inci-
33 dent to administration, abatement shall be achieved by appropriate adjust-
34 ments in, or contribution from, other interests in the remaining assets.

1 **Section 181. Interest on pecuniary devises.** General pecuniary devises
2 not entitled to a share of income under subsection (2) of section 168 of this
3 Act bear interest payable from the residuary estate at the rate of three
4 percent per annum for a period beginning one year after the first appoint-
5 ment of a personal representative until payment, unless a contrary intent
6 is evidenced in the will or unless otherwise ordered by the court.

7 **Section 182. Right of retainer.** The amount of the indebtedness of a
8 distributee to the estate if due, or its present worth if not due, shall be
9 offset against the interest of the distributee in the estate; but the distributee
10 has the benefit of any defense that would be available to him in a direct
11 proceeding for recovery of the debt. The right of offset and retainer is prior
12 and superior to the rights of judgment creditors, heirs or assignees of the
13 distributee.

14 **Section 183. Distribution to foreign personal representative.** When ad-
15 ministration of an estate in this state has been completed and the estate is
16 in a condition to be distributed, the court, upon application by the personal
17 representative, may authorize the delivery to the personal representative
18 of an estate of a decedent pending in a foreign jurisdiction of such property
19 as the court finds appropriate for the payment of debts, taxes or other
20 charges or for distribution to the beneficiaries of the estate in the foreign
21 jurisdiction.

22 Section 184. ORS 117.680 is amended to read:

23 117.680. **Compensation of personal representative.** (1) *Upon application*
24 *to the court a personal representative is entitled to receive compensation*
25 *for his services as provided in this section. If there is more than one*
26 *personal representative acting concurrently, the compensation shall not be*
27 *increased, but may be divided among them as they agree or as the court*
28 *may order. The compensation ~~provided by law for an executor or adminis-~~*
29 *trator* is a commission upon the whole estate, ~~accounted for by him,~~ as
30 follows:

31 (a) *Upon the property subject to the jurisdiction of the court, including*
32 *income and realized gains:*

33 ~~(a)~~ (A) Seven percent of any sum ~~up to~~ not exceeding \$1,000.

34 ~~(b)~~ (B) Four percent of all above \$1,000 and not exceeding \$10,000.

1 ~~[(e)]~~ (C) Three percent of all above \$10,000 and not exceeding \$50,000.

2 ~~[(d)]~~ (D) Two percent of all above \$50,000.

3 (b) *One percent of the property, exclusive of life insurance proceeds,*
4 *not subject to the jurisdiction of the court, but reportable for Oregon*
5 *inheritance tax or federal estate tax purposes.*

6 (2) In all cases, such further compensation as is just and reasonable
7 may be allowed by the court ~~[or judge thereof,]~~ for any extraordinary and
8 unusual services not ordinarily required of ~~[an executor or administrator]~~
9 *a personal representative* in the discharge of his trust.

10 (3) *When a decedent by his will has made special provision for the*
11 *compensation of a personal representative, the personal representative is*
12 *not entitled to any other compensation for his services, unless prior to*
13 *his appointment he signs and files with the clerk of the court a written*
14 *renunciation of the compensation provided by the will.*

15 **Section 185. Expenses of personal representative.** A personal represen-
16 tative shall be allowed in the settlement of his final account all necessary
17 expenses incurred in the care, management and settlement of the estate,
18 including reasonable fees of appraisers, attorneys and other qualified per-
19 sons employed by him. A personal representative who defends or prose-
20 cuts any proceeding in good faith and with just cause, whether successful
21 or not, is entitled to receive from the estate his necessary expenses and
22 disbursements, including reasonable attorney fees, in the proceeding.

23 **Section 186. Order of escheat.** If it appears to the court, at any time
24 after the expiration of four months after the date of the first publication
25 of notice to interested persons, that there is no known person to take by
26 descent the net intestate estate, the court shall order that the estate
27 escheat to the State of Oregon and that the whole of the estate, after
28 payment of claims, taxes and expenses of administration, be distributed
29 to the Division of State Lands. There shall be no further proceeding in
30 the administration of the estate, and the estate shall summarily be closed.

31 **Section 187. Disposition of unclaimed assets.** If a report filed in the
32 estate proceeding by the personal representative not less than 30 days
33 after the date of entry of the decree of distribution shows that payment
34 or delivery of property in his possession or under his control cannot be

1 made to a distributee entitled thereto, either because the distributee
2 refuses to accept the property or because he cannot be found, the court
3 may direct the personal representative to pay or deliver the property to
4 the Division of State Lands, to be placed in the escheat funds of the state.
5 The personal representative shall take the receipt of the Division of
6 State Lands stating from whom the property was received, a description
7 of the property and the name of the person entitled to the property. The
8 person entitled thereto may apply for and recover the property in the
9 manner provided for recovery of escheat funds.

10 **Section 188. Discharge of personal representative.** Upon the filing of
11 receipts or other evidence satisfactory to the court that distribution has
12 been made as ordered in the final decree, the court shall enter an order of
13 discharge. The discharge so entered operates as a release of the personal
14 representative from further duties and as a bar to any suit against the
15 personal representative and his surety. The court may, in its discretion
16 and upon such terms as may be just, within one year after entry of the
17 order of discharge, permit a suit to be brought against the personal repre-
18 sentative and his surety if the order of discharge was taken through the
19 mistake, inadvertance, surprise or excusable neglect of the claimant.

20 **Section 189. Recording of final decree and discharge order in other**
21 **counties.** If real property belonging to the estate is situated in a county
22 other than that in which the estate is being administered, the personal
23 representative shall cause to be recorded in the deed records of that
24 other county certified copies of the decree of final distribution and the
25 order discharging the personal representative.

26 **Section 190. Reopening estate of decedent.** Upon the petition of any in-
27 terested person, the court, with such notice as it may prescribe, may order
28 the estate of a decedent reopened if other property is discovered, if any
29 necessary act remains unperformed or for any other proper cause appear-
30 ing to the court. The court may reappoint the former personal repre-
31 sentative, or appoint another personal representative, to administer any
32 additional property or to perform such other acts as are considered
33 necessary. The provisions of law as to original administration apply, in
34 so far as applicable, to accomplish the purpose for which the estate is

1 reopened, but a claim that already is adjudicated or barred may not be
2 asserted in the reopened administration.

3 **Section 191. Reports by county clerks to Division of State Lands.** A
4 county clerk, upon request, shall furnish to the Director of the Division of
5 State Lands the titles of estates of decedents that have remained open for
6 more than three years and in which no heirs, or only persons whose right
7 to inherit the proceeds thereof is being contested, have appeared to claim
8 the estate.

9 Section 192. ORS 120.130 is amended to read:

10 120.130. **Recovery of escheated property.** (1) Within 10 years after
11 ~~[judgment in any proceeding in the circuit court escheating real property to~~
12 ~~the state, or after the order of the court having probate jurisdiction directing~~
13 ~~the conveyance of escheated real property to the state, and in all other cases~~
14 ~~within 10 years after payment of the proceeds of escheated personal property~~
15 ~~to the State Land Board,] the entry of a decree of final distribution designa-~~
16 ~~ting title to an estate available for distribution in the Division of State~~
17 ~~Lands or an order of escheat to the state, a claim may be made for the~~
18 property escheated, or the proceeds thereof, by or on behalf of a person
19 not ~~[a party or privy to such proceeding, nor]~~ having actual knowledge of
20 the ~~[making of such judgment] decree or order [or of such payment to the~~
21 ~~State Land Board].~~

22 (2) The claim shall be made by a petition filed ~~[in the court in which the~~
23 ~~escheat proceedings were held.] with the Director of the Division of State~~
24 ~~Lands. The claim is considered a contested case as provided in ORS~~
25 ~~183.310 and there is the right of judicial review as provided in ORS 183.480.~~
26 The petition shall be verified in the same manner as a complaint and
27 shall state:

28 (a) The age and place of residence of the claimant by whom or on
29 whose behalf the petition is filed;

30 (b) That the claimant lawfully is entitled to ~~[such] the property or~~
31 ~~proceeds, briefly describing the [same] property or proceeds;~~

32 (c) That at the time the property escheated to the state the claimant
33 had no knowledge or notice thereof;

34 (d) That the claimant claims the property or proceeds as an heir ~~for~~

1 next of kin,] or as [executor, administrator, guardian or conservator of either,]
2 the personal representative of an heir, setting forth the relationship of
3 the decedent [,] who at the time of his death was the owner [of same];

4 (e) That 10 years have not elapsed since the [making of the judgment or
5 order] entry of the decree escheating the property to the state [, or since
6 the payment of the proceeds of the escheated estate by the administrator
7 thereof to the State Land Board pursuant to the order of the court having
8 probate jurisdiction]; and

9 (f) If the petition is not filed by the claimant himself, the status of
10 the petitioner [, whether executor, administrator, conservator or guardian].

11 ~~[(3)]~~ The State Land Board shall be made a defendant in the proceeding,
12 and a copy of the petition must be served upon the clerk of the board at least
13 20 days before the hearing of the petition. The court must try the issue, as
14 issues are tried in civil actions, with the aid of a jury, if requested by either
15 party.]

16 ~~[(4)]~~ (3) If it is determined that the claimant is entitled to [such]
17 the property or the proceeds thereof, [the court must order the same to be
18 delivered] the Director of the Division of State Lands shall deliver the
19 property to the petitioner, subject to and charged with the inheritance tax
20 thereon, if any, and the costs and expenses of the state in connection there-
21 with. [The order for delivery shall be an order upon the State Land Board
22 to draw its warrant on the State Treasurer for the payment of the same, but
23 without interest or cost to the state, a certified copy of which order shall be
24 sufficient voucher for drawing such warrants.]

25 ~~[(5)]~~ (4) If the person whose property [or funds] escheated or reverted
26 to the state was at any time an inmate of a state institution in Oregon
27 for the [insane or feeble-minded] mentally ill or mentally deficient, the rea-
28 sonable unpaid cost, as determined by the Oregon State Board of Con-
29 trol, of the care and maintenance of the person while a ward of [such]
30 the institution, regardless of when the cost was incurred, may be deducted
31 from, or, if necessary, be offset in full against, the amount of the escheated
32 property. [or funds; and, for the purpose of collecting the charge, the State
33 Board of Control shall have the right to intervene and file an account in any

1 proceeding, whether in the circuit court or before the State Land Board for
2 the recovery of such property or funds.]

3 **Section 193. Payment of debt and delivery of property to foreign per-**
4 **sonal representative without local administration.** (1) Three months or
5 more after the death of a nonresident decedent, any person indebted to
6 the estate of the nonresident decedent or having possession of tangible
7 personal property or an instrument evidencing a debt, obligation, stock
8 or chose in action belonging to the estate of the nonresident decedent may
9 make payment of the indebtedness, in whole or in part, or deliver the
10 tangible personal property or the instrument evidencing the debt, obli-
11 gation, stock or chose in action to the foreign personal representative
12 of the nonresident decedent, upon an affidavit made by or on behalf of
13 the foreign personal representative stating:

14 (a) The date of the death of the nonresident decedent;

15 (b) That no local administration or application therefor is pending
16 in this state; and

17 (c) That the foreign personal representative is entitled to payment or
18 delivery.

19 (2) Payment or delivery made in good faith on the basis of the affi-
20 davit is a discharge of the debtor or person having possession of the per-
21 sonal property.

22 (3) Payment or delivery may not be made under this section if a resi-
23 dent creditor of the nonresident decedent has notified the debtor of the
24 nonresident decedent or the person having possession of the personal
25 property belonging to the nonresident decedent that the debt should not
26 be paid nor the property delivered to the foreign personal representa-
27 tive.

28 **Part 4. Apportionment of Estate Taxes**

29 **Section 194. Definitions.** As used in sections 194 to 202 of this Act:

30 (1) "Estate" means the gross estate of a decedent as determined for the
31 purpose of federal estate tax and the inheritance tax payable to this state
32 as provided in subsection (1) of ORS 118.100.

33 (2) "Person" means any individual, partnership, association, joint stock

1 company, corporation, government, political subdivision, governmental
2 agency or local governmental agency.

3 (3) "Person interested in the estate" means any person entitled to re-
4 ceive, or who has received, from a decedent or by reason of the death of a
5 decedent any property or interest therein included in the decedent's
6 estate. It includes a personal representative, guardian, conservator or
7 trustee.

8 (4) "State" means any state, territory or possession of the United
9 States, the District of Columbia or the Commonwealth of Puerto Rico.

10 (5) "Tax" means the federal estate tax and the inheritance tax pay-
11 able to this state as provided in subsection (1) of ORS 118.100, and in-
12 terest and penalties imposed in addition to the tax.

13 **Section 195. Apportionment among interested persons; valuations; testa-**
14 **mentary apportionment.** Unless the will otherwise provides, the tax shall
15 be apportioned among all persons interested in the estate. The appor-
16 tionment shall be made in the proportion that the value of the interest of
17 each person interested in the estate bears to the total value of the inter-
18 ests of all persons interested in the estate. The values used in determin-
19 ing the tax shall be used for that purpose. In the event the decedent's
20 will directs a method of apportionment of tax different from the method
21 described in sections 194 to 202 of this Act, the method described in the
22 will shall control.

23 **Section 196. Apportionment proceedings; equitable apportionment;**
24 **penalties and interest; court determination.** (1) The court in which the
25 administration of the estate is proceeding may on petition for the purpose
26 determine the apportionment of the tax.

27 (2) If the court finds that it is inequitable to apportion interest and
28 penalties in the manner provided in section 195 of this Act because of
29 special circumstances, it may direct apportionment thereof in the manner
30 it finds equitable.

31 (3) If the court finds that the assessment of penalties and interest as-
32 sessed in relation to the tax is due to delay caused by the negligence of
33 the personal representative, the court may charge him with the amount of
34 the assessed penalties and interest.

1 (4) In any suit or judicial proceeding to recover from any person in-
2 terested in the estate the amount of the tax apportioned to the person in
3 accordance with sections 194 to 202 of this Act, the determination of the
4 probate court in respect thereto is prima facie correct.

5 **Section 197. Withholding of tax; recovery from distributee; bond of**
6 **distributee.** (1) The personal representative or other person who is in
7 possession of the property of the decedent and who is required to pay the
8 tax may withhold from any property distributable to any person interested
9 in the estate, upon its distribution to him, the amount of tax attributable to
10 his interest. If the property in possession of the personal representative
11 or other person required to pay the tax and distributable to any person
12 interested in the estate is insufficient to satisfy the proportionate amount
13 of the tax determined to be due from the person, the personal representa-
14 tive or other person required to pay the tax may recover the deficiency
15 from the person interested in the estate. If the property is not in the
16 possession of the personal representative or the other person required
17 to pay the tax, the personal representative or the other person required
18 to pay the tax may recover from any person interested in the estate the
19 amount of the tax apportioned to the person in accordance with sections
20 194 to 202 of this Act.

21 (2) If property held by the personal representative is distributed prior
22 to final apportionment of the tax, the distributee shall provide a bond or
23 other security for the apportionment liability in the form and amount
24 prescribed by the personal representative.

25 **Section 198. Allowances for exemptions, deductions and credits.** (1) In
26 making an apportionment, allowances shall be made for any exemptions
27 granted, any classification made of persons interested in the estate and
28 any deductions and credits allowed by the law imposing the tax.

29 (2) Any exemption or deduction allowed by reason of the relationship
30 of any person to the decedent or by reason of the purposes of the gift in-
31 ures to the benefit of the person bearing that relationship or receiving the
32 gift; except that when an interest is subject to a prior present interest
33 which is not allowable as a deduction, the tax apportionable against the
34 present interest shall be paid from principal.

1 (3) Any deduction for property previously taxed and any credit for gift
2 taxes or death taxes of a foreign country paid by the decedent or his
3 estate inures to the proportionate benefit of all persons liable to appor-
4 tionment.

5 (4) Any credit for inheritance, succession or estate taxes or taxes in
6 the nature thereof in respect to property or interests includable in the
7 estate inures to the benefit of the persons or interests chargeable with
8 the payment thereof to the extent that, or in proportion as, the credit
9 reduces the tax.

10 (5) To the extent that property passing to or in trust for a surviving
11 spouse or any charitable, public or similar gift or bequest does not con-
12 stitute an allowable deduction for purposes of the tax solely by reason of
13 an inheritance tax or other death tax imposed upon and deductible from
14 the property, the property shall not be included in the computation pro-
15 vided for in section 195 of this Act, and to that extent no apportionment
16 shall be made against the property. This subsection does not apply to any
17 case where the result will be to deprive the estate of a deduction other-
18 wise allowable under section 2053 (d) of the Internal Revenue Code of
19 1954 (26 U.S.C. 2053 (d)), as amended, relating to deduction for state
20 death taxes on transfers for public, charitable or religious uses.

21 **Section 199. Income interests; life or temporary interests; charging**
22 **corpus.** No interest in income and no estate for years or for life or other
23 temporary interest in any property or fund is subject to apportionment as
24 between the temporary interest and the remainder. The tax on the tempo-
25 rary interest and the tax, if any, on the remainder is chargeable against
26 the corpus of the property or funds subject to the temporary interest and
27 remainder.

28 **Section 200. Proceedings for recovery of tax; liability of personal repre-**
29 **sentative; apportionment of amount not recovered.** Neither the personal
30 representative nor other person required to pay the tax is under any duty
31 to institute any suit or proceeding to recover from any person interested
32 in the estate the amount of the tax apportioned to that person until the
33 expiration of three months next following final determination of the tax.
34 A personal representative or other person required to pay the tax who

1 institutes the suit or proceeding within a reasonable time after the three-
2 month period is not subject to any liability or surcharge because any
3 portion of the tax apportioned to any person interested in the estate was
4 collectible at a time following the death of the decedent but thereafter
5 became uncollectible. If the personal representative or other person re-
6 quired to pay the tax cannot collect from any person interested in the
7 estate the amount of the tax apportioned to the person, the amount not
8 recoverable shall be equitably apportioned among the other persons in-
9 terested in the estate who are subject to apportionment,

10 **Section 201. Foreign personal representatives and estates.** A personal
11 representative acting in another state or a person required to pay the
12 tax who is domiciled in another state may institute an action in the courts
13 of this state and may recover a proportionate amount of the federal estate
14 tax, of an estate tax payable to another state or of a death duty due by
15 a decedent's estate to another state, from a person interested in the estate
16 who is either domiciled in this state or who owns property in this state
17 subject to attachment or execution. For the purposes of the action the
18 determination of apportionment by the court having jurisdiction of the
19 administration of the decedent's estate in the other state is prima facie
20 correct.

21 **Section 202. Construction.** Sections 194 to 202 of this Act embody the
22 Uniform Estate Tax Apportionment Act and shall be construed to ef-
23 fectuate its general purpose to make uniform the law of those states
24 which enact it.

25 **ARTICLE VII. ESTATES OF ABSENTEES**

26 **Section 203. Petition for administration of estate of absentee.** Adminis-
27 tration may be had upon the estate of an absentee. A petition for adminis-
28 tration shall state, in addition to the information required by section 83
29 of this Act:

30 (1) Whether the absentee, when last heard from, was a resident or
31 nonresident of this state.

32 (2) The address of the absentee at his last-known domicile.

33 (3) (a) That, to the best knowledge of the petitioner and after diligent
34 search, the whereabouts of the absentee is and has been unknown for a

1 period stated of not less than one year, and that the petitioner has reason
2 to believe and believes the absentee is dead; or

3 (b) That the death of the absentee at the time, location and in the
4 circumstances stated in the petition is probable, and that the fact of his
5 death is in doubt solely by reason of the failure to find or identify his
6 remains.

7 **Section 204. Setting date of hearing on petition; notice of hearing.** (1)

8 Upon the filing of a petition under section 203 of this Act, the clerk of the
9 court shall set a date for hearing not less than 30 days after the date of
10 filing the petition, unless the court sets an earlier date. A copy of the
11 notice of the hearing shall be sent:

12 (a) To the absentee at his last-known address by registered mail and
13 by postage prepaid letter to be forwarded through the United States
14 Social Security Administration to his last-known address available to that
15 agency.

16 (b) By ordinary mail to the devisees and heirs named in the petition.

17 (2) The court may order that additional notice of the hearing be
18 given by publication or by other means. Proof of mailing may be made
19 by the petitioner by affidavit.

20 **Section 205. Appointment of person to represent absentee; directing**
21 **search.** The court may appoint some disinterested person as guardian ad
22 litem to appear for the absentee at the hearing on the petition. The
23 court may direct the petitioner or the guardian ad litem to make search
24 for the absentee in any manner the court considers advisable, including
25 any or all of the following methods:

26 (1) By inserting in one or more suitable publications a notice request-
27 ing information from any person having knowledge of the whereabouts
28 of the absentee.

29 (2) By notifying officers of justice and public welfare agencies in
30 appropriate locations of the disappearance of the absentee.

31 (3) By engaging the services of an investigation agency.

32 **Section 206. Hearing on petition.** Upon the hearing on the petition the
33 court shall determine whether the absentee has died and if so, the date
34 of his death and whether he died testate or intestate. Upon finding that

1 the absentee has died, the court shall grant letters accordingly, or, in the
2 absence of that finding, may deny the petition. An appeal may be taken
3 from the order of the court.

4 **Section 207. Effect of finding of death.** The finding of the court that
5 the absentee has died is conclusive as to the estate of the absentee only if:

6 (1) Notice of the hearing on the petition was given as required by
7 section 204 of this Act; and

8 (2) The court finds that diligent search for the absentee was made.

9 **Section 208. Procedure for administering estate.** Upon the entry of the
10 order of the court finding that the absentee has died and granting letters,
11 administration of the estate of the absentee, whether testate or intestate,
12 shall proceed as provided for the estates of other decedents, except as
13 otherwise provided in sections 203 to 212 of this Act.

14 **Section 209. Revocation of letters; proceedings upon revocation.** Upon
15 proof that the absentee is alive, letters theretofore granted shall be re-
16 voked. Acts of the personal representative before revocation of letters are
17 valid for all purposes, but after revocation the personal representative
18 has no further power in the capacity of personal representative except
19 as provided in this section. The personal representative shall pay claims
20 allowed and proved, file an account of his administration for the period of
21 time before revocation of letters and transfer any property in his posses-
22 sion to the person for whose estate he acted or to the duly authorized
23 agent of that person.

24 **Section 210. Rights of absentee.** (1) If property of the absentee has
25 been sold by the personal representative, the absentee has no right, title
26 or interest in or to the property sold, but only to the proceeds realized
27 therefrom or so much thereof as may remain in the possession of the
28 personal representative upon the closing of the estate.

29 (2) The absentee, for a period of five years after distribution of the
30 estate, has a right to recover from the distributees any of the estate or
31 proceeds of the estate of the absentee that remain in their possession, but
32 there is no right of recovery from purchasers of property sold by the
33 distributees.

34 **Section 211. Substitution of parties.** After revocation of letters the

1 absentee may be substituted as plaintiff in actions brought by the personal
2 representative. The absentee may be substituted as defendant, upon his
3 application or application by the plaintiff, in actions brought against the
4 personal representative. If the absentee is substituted as defendant, he
5 shall not be compelled to go to trial less than three months after the date
6 of the substitution.

7 **Section 212. Costs, expenses and charges.** The costs, expenses and
8 charges attending the granting of letters and their revocation shall be
9 paid out of the estate of the absentee. If the petition for administration
10 is not granted, the petitioner shall pay the costs, expenses and charges.

11 **ARTICLE VIII. INHERITANCE TAX**

12 Section 213. ORS 118.010 is amended to read:

13 118.010. **Property, transfers and interests subject to tax.** (1) All prop-
14 erty, tangible or intangible, and any interest therein, within the juris-
15 diction of the state, whether belonging to the inhabitants of this state or
16 not, which passes or vests by ~~[dower, curtesy,]~~ survivorship, will or by
17 statutes of inheritance of this, or any other state, or by reversion, repay-
18 ment or settlement of any previously escheated estate or part thereof,
19 or by the exercise or nonexercise of a general power of appointment as
20 provided in subsection (5) of this section, or by deed, grant, bargain, sale
21 or gift, or as an advancement or division of his or her estate, made in con-
22 templation of the death of the grantor or bargainor or intended to take
23 effect in possession or enjoyment after the death of the grantor, bargainor
24 or donor to any person or persons, or to any body or bodies, politic or
25 corporate, in trust or otherwise, or by reason whereof any person or body
26 politic or corporate shall become beneficially entitled, in possession or ex-
27 pectation, to any property or income thereof, is subject to tax at the rate
28 specified in ORS 118.100, to be paid to the State Treasurer for the use
29 of the state.

30 (2) (a) Whenever property, other than real property held by the en-
31 tirety, is held in the joint names of two or more persons, or deposited in
32 banks or other institutions or depositories in the joint names of two or
33 more persons and payable to either or the survivor, upon the death of one
34 of such persons the right of the surviving joint tenant or tenants, person

1 or persons to the immediate ownership or possession and enjoyment of
2 such property shall be deemed a taxable transfer in the same manner as
3 though the whole property to which such transfer relates belonged
4 absolutely to the deceased joint tenant or depositor and had been devised
5 or bequeathed to the surviving joint tenant or tenants, person or persons,
6 excepting therefrom such parts thereof as may be shown to have originally
7 belonged to such surviving joint tenant or person, and never to have
8 been acquired from the decedent for less than a fair consideration in
9 money or money's worth, and if the property has been acquired from
10 decedent for less than such fair consideration, there shall be excepted
11 from the value of the property a portion equal to the amount of the con-
12 sideration so furnished.

13 (b) Upon the death of one of the tenants of real property held by the
14 entirety, the right of the surviving tenant to the immediate ownership or
15 possession and enjoyment of such property shall be deemed a taxable
16 transfer in the same manner as though one-half of the whole property
17 to which such transfer relates belonged absolutely to the deceased tenant
18 and had been devised or bequeathed to the surviving tenant.

19 (3) Any transfer of property made by a decedent by deed, grant, bar-
20 gain, sale or gift, within three years prior to the decedent's death without
21 a valuable and adequate consideration therefor, shall, unless shown to
22 the contrary, be deemed to have been made in contemplation of death
23 within the meaning of ORS 118.005 to 118.840; but no such transfer made
24 before such three-year period shall be treated as having been made in
25 contemplation of death if:

26 (a) No gift taxes were payable under ORS chapter 119 on such transfer;
27 or

28 (b) All gift taxes payable under ORS chapter 119 on such transfer
29 were paid when due.

30 (4) In the event of death of one of the tenants of property held by the
31 entirety, after sale thereof upon an executory or instalment contract, the
32 transfer of the decedent's interest in the unpaid balance owing upon such
33 contract at the time of death shall be deemed a taxable transfer in the
34 same manner as under paragraph (b) of subsection (2) of this section.

1 (5) When, after August 3, 1955, property passes or vests subject to a
2 general power of appointment, for the purposes of the taxes imposed by
3 ORS 118.005 to 118.840 by reason of the death of the donor, the donee is
4 deemed to have acquired the full taxable interest from the donor. For
5 the purposes of the taxes imposed by ORS 118.005 to 118.840 by reason of
6 the death of the donee of such a general power, an appointee, or benefi-
7 ciary who takes where the power of appointment is not exercised is deemed
8 to have acquired from the donee the full taxable interest of the property
9 which passes or vests by reason of the exercise or nonexercise of the
10 power by the donee. A general power of appointment is one which the
11 donee may exercise in favor of himself, his estate, his creditors or the
12 creditors of his estate, during lifetime or at death, and includes one under
13 which the donee may convey or transfer ownership of the property to
14 whomever he may choose. A power to consume, invade, or appropriate
15 property for the benefit of the donee which is limited by an ascertainable
16 standard relating to the health, education, support, or maintenance of the
17 donee shall not be deemed a general power of appointment.

18 Section 214. ORS 118.230 is amended to read:

19 **118.230. Lien of tax; liability for payment; limitation.** (1) Every tax
20 imposed by ORS 118.005 to 118.840 is a lien upon the property embraced in
21 any inheritance, devise, bequest, legacy or gift until paid, and the person
22 to whom such property is transferred, and the administrators, executors
23 and trustees of every estate embracing such property are personally liable
24 for such tax until its payment, to the extent of the value of such property.

25 (2) However, in all estates, excepting those of nonresident deceased, if
26 all inheritance taxes are not sued for within six years after the amount
27 of such taxes is determined by the ~~[probate court and the notice of such~~
28 ~~determination has been served upon the]~~ State Treasurer, as provided in
29 ~~[ORS 118.600]~~ section 221 of this 1969 Act, they are conclusively presumed
30 to be paid and cease to be a lien against the estate, or any part thereof,
31 except that as to property not previously reported to the State Treasurer,
32 the time limitation shall run only from the time of the reporting thereof.
33 In estates of nonresident deceased, such limitation period shall not apply
34 until one year has elapsed after official notice of the death of the non-

1 resident deceased, with description and probable value of the estate, has
2 been filed with the State Treasurer.

3 Section 215. ORS 118.280 is amended to read:

4 **118.280. Power to sell for payment of tax; tax lien transferred to pro-**
5 **ceeds when property of estate sold or mortgaged.** (1) Every executor,
6 administrator or trustee has power to sell as much of the property em-
7 braced in any inheritance, devise, bequest or legacy, as will enable him
8 to pay the tax imposed by ORS 118.005 to 118.840, in the same manner as he
9 is authorized to do for the payment of the debts of a decedent.

10 (2) Any part of the gross estate sold ~~{pursuant to an order of the court~~
11 ~~or by virtue of a power conferred by will}~~ for the payment of claims against
12 the estate and expenses of administration, for the payment of the tax
13 imposed by ORS 118.005 to 118.840, or for purposes of distribution, shall
14 be divested of the lien of such tax, and such lien shall be transferred to
15 the proceeds of such sale. A mortgage on property executed ~~{pursuant to~~
16 ~~an order of court or by virtue of a power conferred by will}~~ for payment of
17 claims against the estate and expenses of administration and for payment
18 of the tax imposed by ORS 118.005 to 118.840 shall constitute a lien upon
19 said property prior and superior to the inheritance tax lien, which in-
20 heritance tax lien shall attach to the proceeds of such mortgage.

21 Section 216. ORS 118.300 is amended to read:

22 **118.300. Deferred payment; bond.** Any person or corporation bene-
23 ficially interested in any property chargeable with a tax under ORS 118.010,
24 and executors, administrators and trustees thereof, may elect, within six
25 months from the death of the decedent, not to pay such tax until the
26 person or persons beneficially interested therein shall come into actual
27 possession or enjoyment thereof. If it is personal property, the person
28 or persons so electing shall give a bond to the state in ~~{the penalty of three~~
29 ~~times}~~ double the amount of ~~{such}~~ the tax, with such sureties as the
30 ~~{probate judge of the proper county}~~ State Treasurer may approve, condi-
31 tioned for the payment of such tax and interest thereon, at such time
32 and period as the person or persons beneficially interested therein may
33 come into actual possession or enjoyment of such property, which bond
34 shall be executed and filed, and a full return of such property ~~{upon oath}~~

1 made to the ~~{probate court}~~ *State Treasurer* within six months from the
2 date of transfer thereof, as in this section provided. Such bond must
3 be renewed every five years.

4 Section 217. ORS 118.350 is amended to read:

5 118.350. **Compromise and compounding tax; proceedings in case of**
6 **actions or suits involving title to real property.** (1) Whenever an estate,
7 devise, legacy or beneficial interest therein, charged or sought to be charged
8 with the inheritance tax is of such nature or is so disposed that the liabil-
9 ity of the same is doubtful, or the value thereof cannot with reasonable
10 certainty be ascertained under the provisions of law, the State Treasurer
11 may, with the written approval of the Attorney General setting forth the
12 reasons therefor, compromise with the beneficiaries or representatives of
13 such ~~{estates}~~ *estate*, and compound the tax thereon. ~~{; but the settlement~~
14 ~~must be approved by the court having jurisdiction of the estate, and after such~~
15 ~~approval}~~ The payment of the amount of the taxes so agreed upon shall
16 discharge the lien against the property of the estate.

17 (2) In any suit or action ~~{in the circuit court of the state}~~ involving the
18 title to real property ~~{only}~~, in which it appears, by the pleadings or other-
19 wise, that an inheritance tax is or might be payable to the State of Oregon
20 by reason of the death of any person whose estate has not been adminis-
21 tered in Oregon, ~~{such circuit}~~ *the court* shall direct that a copy of the
22 pleadings in such cause be served upon the State Treasurer, such service
23 to be made as summons is served in any cause in the circuit court of this
24 state. Thereupon further proceedings in the cause shall be suspended
25 until the State Treasurer has had an opportunity to appear therein, such
26 appearance to be made within the time that is required by the service
27 of summons upon a private person or corporation. The State Treasurer
28 shall appear in the cause and present the claims of the state, if any, to
29 an inheritance tax, and it is the duty of the Attorney General of the state
30 to represent the state and the State Treasurer in such proceedings, and the
31 State Treasurer may, with written approval of the Attorney General
32 setting forth the reasons therefor, compromise and compound the tax
33 claimed to be due upon the passing of such real property. Such settle-
34 ment and compromise shall be entered of record in the journal of the pro-

1 ceedings of such court. Thereafter the payment of the amount of taxes so
 2 agreed upon shall discharge the inheritance tax lien against the prop-
 3 erty. If a compromise is not effected, the amount of tax, if any, due upon
 4 the passing of the real property shall be determined by the ~~feirent~~ court
 5 as are other questions involved in such litigation, and subject to the same
 6 right of appeal to the Supreme Court. The decree of the ~~feirent~~ court
 7 or of the Supreme Court, if there is an appeal, is conclusive as to the
 8 amount of taxes due upon the passing of the real property and payment
 9 thereof shall discharge the lien against the property.

10 Section 218. ORS 118.640 is amended to read:

11 118.640. Evaluating particular interests. (1) ~~Every inheritance, devise,~~
 12 ~~bequest, legacy or gift, upon which a tax is imposed under ORS 118.005 to~~
 13 ~~118.940, shall be appraised at its full and true value immediately upon the~~
 14 ~~death of the decedent, or as soon thereafter as may be practicable] The personal~~
 15 ~~representative of the estate of a decedent shall inventory the property~~
 16 ~~of the estate as provided in section 96 of this 1969 Act; [provided, that]~~
 17 ~~but when [such] an interest is contingent, defeasible or of such a nature~~
 18 ~~that its [full and] true cash value cannot sooner be ascertained, [at the~~
 19 ~~date of decedent's death] it shall be [appraised] determined at the time~~
 20 ~~when [such] the value first becomes ascertainable, at its [full and] true~~
 21 ~~cash value as of the date of decedent's death and without diminution for~~
 22 ~~or on account of any valuation made or tax paid theretofore upon the~~
 23 ~~particular estates upon which the devise, bequest, legacy or gift may have~~
 24 ~~been limited.~~

25 (2) Whenever a gift or devise of real property which is subject to
 26 inheritance tax passes to or vests in a husband and wife as tenants by the
 27 entirety, the inheritance tax thereon shall be determined in the same
 28 manner as though ~~each of such tenants by the entirety took an undivided~~
 29 ~~one-half of the property as tenants in common] the grantees or devisees took~~
 30 ~~undivided halves of the real property as tenants in common.~~

31 (3) Whenever ~~any] an estate or interest is so limited that it may be~~
 32 ~~divested by the act or omission of the devisee or legatee, [such] the estate~~
 33 ~~or interest shall be taxed as [if] though there were no possibility of such~~
 34 ~~divesting.~~

1 (4) The value of ~~every~~ a limited estate, income, interest or annuity
 2 dependent upon any life or lives in being shall be determined by the
 3 rules or standards of mortality and of value used by the "Actuaries' or
 4 Combined Experience Tables," except that the rate of interest on comput-
 5 ing the present value of all ~~such~~ limited estates, incomes, interests or
 6 annuities shall be four percent per year. The value of the interest or
 7 estate remaining after ~~such~~ the limited estate, income, interest or an-
 8 nuity shall be determined by deducting the amount found to be the value
 9 of ~~such~~ the limited estate, income, interest or annuity from the value
 10 of the entire property in which ~~such~~ the limited estate, income, interest
 11 or annuity exists.

12 Section 219. ORS 118.660 is amended to read:

13 **118.660. Delivery to State Treasurer of tax return and copy of inventory.**

14 (1) ~~Every~~ The executor, administrator or trustee of ~~any~~ an estate
 15 subject to an inheritance tax under the laws of this state, whether or
 16 not any such tax may be payable, ~~as soon as practicable after the appraise-~~
 17 ~~ment or reappraisal of the estate and~~ before the court authorizes any
 18 payment or distribution to the legatees or to any parties entitled to a
 19 ~~beneficiary~~ beneficial interest therein, shall deliver to the State Treas-
 20 urer a copy of each inventory ~~and appraisal~~ duly certified to be such
 21 by the clerk of the court, or by the executor, administrator or trustee per-
 22 sonally or by his attorney of record ~~, and shall file with the clerk proof~~
 23 ~~of such delivery~~.

24 (2) ~~Every such~~ The executor, administrator or trustee ~~or, if none is~~
 25 ~~appointed, an heir or other representative of the decedent,~~ shall, as soon
 26 as practicable, ~~make and~~ file with the State Treasurer a ~~schedule, list~~
 27 ~~or statement, verified by his oath and~~ return in a form to be prescribed
 28 by the State Treasurer, which ~~schedule~~ shall include a statement of the
 29 name, age and relationship to the deceased of each person entitled to any
 30 ~~beneficiary~~ beneficial interest in the estate, together with the ~~full and~~
 31 true cash value of ~~such~~ the interest, a list and description of all trans-
 32 fers of property, in trust or otherwise, made by the decedent in his life-
 33 time as a division or distribution of his estate in contemplation of death or
 34 intended to take effect at or after his death, ~~and~~ such other data as

1 the State Treasurer deems appropriate in the determination of inheritance
2 taxes and a computation of any tax payable. ~~If the estate of the decedent~~
3 ~~is subject to a tax, whether or not any such tax may be payable, but the~~
4 ~~estate will not be probated or administered, an heir of decedent, acceptable~~
5 ~~to the State Treasurer, shall file with the State Treasurer a like schedule, list~~
6 ~~or statement, containing also therein a description of the assets and the prop-~~
7 ~~erties of the estate, the full and true values thereof, and the items that may~~
8 ~~properly be deducted in the determination of inheritance taxes due therefrom~~
9 ~~as provided in ORS 118.070.]~~

10 **Section 220.** Section 221 of this Act is added to and made a part of
11 ORS 118.005 to 118.840.

12 **Section 221. Determination of tax by State Treasurer; notice.** The State
13 Treasurer shall determine the amount of the tax. If he determines that
14 there is a deficiency in the amount of the tax as computed in the return,
15 he shall give notice of the deficiency to the person who filed the return
16 and to the attorney for that person.

17 **Section 222.** ORS 118.700 is amended to read:

18 **118.700. Filing objection to determination of tax; redetermination by**
19 **court; appeal.** (1) Within 60 days after notice of the ~~assessment and~~ de-
20 termination by the ~~probate court~~ State Treasurer of any tax imposed by
21 ORS 118.005 to 118.840, or within such additional time thereafter as may
22 be fixed by written stipulation of the parties or as may be allowed by
23 the court, ~~the State Treasurer, or~~ any person interested therein ~~]~~ may
24 file with the court ~~objections~~ objection thereto in writing, and pray for
25 a ~~reassessment and~~ redetermination of ~~such~~ the tax.

26 (2) Upon ~~any~~ objection being so filed, the ~~probate~~ court shall appoint
27 a time for the hearing thereof, and cause notice of ~~such~~ the hearing to
28 be given by mail to the State Treasurer, and to all other parties inter-
29 ested, at least 10 days before the hearing ~~thereof~~. At the time appointed
30 in ~~such~~ the notice, the court shall proceed to hear ~~such~~ the objection
31 ~~]~~ and any evidence which may be offered in support thereof or opposi-
32 tion thereto. ~~All evidence heard on such reappraisement shall be reduced~~
33 ~~to writing and filed with the clerk of court. If, after such hearing, the court~~
34 ~~finds the amount at which the property is appraised is its full and true value,~~

1 and the appraisalment was made fairly and in good faith, it shall approve
 2 such appraisalment; but if it finds that the appraisalment was made at a greater
 3 or smaller sum than the full and true value of the property, or that the same
 4 was not made fairly or in good faith, it shall, by order, set aside the appraise-
 5 ment and determine such value.} If, upon the hearing, the court finds that
 6 the determination by the State Treasurer of any tax imposed by ORS
 7 118.005 to 118.840 was erroneous, the court shall, by order, redetermine the
 8 tax.

9 (3) The State Treasurer {,} or anyone interested in the {property ap-
 10 praised, may appeal to the circuit court from the judgment, order, and decree
 11 of the county court in the premises, and} determination of the tax may appeal
 12 to the Supreme Court from the order {, judgment, or decree} of the {circuit}
 13 court in the {same} manner {as is} provided by law {for appeals from the
 14 county and circuit courts}. All appeals taken from the {judgment or decree}
 15 order of the court shall be had and tried on appeal in the same manner
 16 and with like effect as appeals in suits in equity are heard and tried.

17 Section 223. ORS 118.990 is amended to read:

18 118.990. Penalties. {(1)} Any person in possession or control of any
 19 record, file or paper containing information relating to the estate of a
 20 deceased person or any interest therein and who fails, neglects or refuses
 21 to exhibit the same upon the written request of the State Treasurer or
 22 his representative, specifying and describing such instrument, shall be
 23 punished by imprisonment in the county jail not more than one year or
 24 by a fine not exceeding \$500.

25 {(2)} Violation of subsection (2) of ORS 118.650 is punishable, upon con-
 26 viction in any court having jurisdiction of misdemeanors, by a fine of not more
 27 than \$500, and imprisonment in the county jail not exceeding 90 days. In addi-
 28 tion thereto, the probate judge shall dismiss the appraiser from service.}

29 ARTICLE IX. GUARDIANSHIPS AND CONSERVATORSHIPS

30 Part 1. Guardianships

31 Section 224. ORS 126.006 is amended to read:

32 126.006. Definitions for ORS 126.006 to 126.565. As used in ORS 126.006
 33 to 126.565, unless the context requires otherwise:

34 (1) "Court" means any court having probate jurisdiction or a judge
 thereof.

1 (2) "Guardian" means any person appointed under ORS 126.006 to
2 126.565 as guardian of the person, guardian of the estate, or both, for any
3 other person.

4 (3) "Incompetent" includes any person who, by reason of mental illness,
5 mental deficiency, advanced age, disease, weakness of mind or any other
6 cause, is unable unassisted to properly manage and take care of himself
7 or his property.

8 (4) "Institution" includes any public or private institution located within
9 or outside this state.

10 (5) "Minor" means any person who has not arrived at the age of ma-
11 jority as provided in ORS 109.510 or 109.520.

12 (6) "*Missing person*" means any person whose whereabouts is unknown
13 and whose absence is unexplained or who is known to be unable to return
14 to his usual place of abode and is unable to manage his affairs during his
15 absence.

16 ~~+(6)+~~ (7) "Spendthrift" includes any person who, by excessive drink-
17 ing, idleness, gaming or debauchery of any kind, spends, wastes or lessens
18 his estate so as to expose or likely to expose himself or his family to want
19 or suffering, or to cause any public authority or agency to be charged
20 for any expense of the support of himself or his family.

21 ~~+(7)+~~ (8) "Ward" means any person for whom a guardian has been
22 appointed.

23 Section 225. ORS 126.106 is amended to read:

24 126.106. **Jurisdiction to appoint guardians.** Any court having probate
25 jurisdiction may appoint:

26 (1) Guardians of the person, guardians of the estate, or both, for resi-
27 dent incompetents or resident minors.

28 (2) Guardians of the person or guardians of the person and estate for
29 incompetents or minors who, although not residents of this state, are
30 physically present in this state and whose welfare requires such appoint-
31 ment.

32 (3) Guardians of the estate for resident spendthrifts.

33 (4) Guardians of the estate for nonresident incompetents, nonresident
34 minors or nonresident spendthrifts who have property within this state.

1 (5) *Guardians of the estate for missing persons who have property*
2 *within this state.*

3 Section 226. ORS 126.111 is amended to read:

4 126.111. **Venue for appointment of guardians.** The venue for the ap-
5 pointment of a guardian ~~[shall be]~~ is:

6 (1) *In the county where the proposed ward resides; ~~[or]~~*

7 (2) ~~[If the proposed ward does not reside in this state,]~~ *In any county in*
8 *which any property of the proposed ward is located ; ~~[,]~~ or*

9 (3) *In any county in which the proposed ward is physically present.*

10 Section 227. ORS 126.126 is amended to read:

11 126.126. **Petition for appointment of guardian.** Any person may file
12 with the clerk of the court a petition for the appointment of a guardian.
13 The petition shall include the following information, so far as known by
14 the petitioner:

15 (1) The name, age, residence and post-office address of the proposed
16 ward.

17 (2) Whether the proposed ward is an incompetent, minor, *missing*
18 *person* or spendthrift, and whether he is a resident or nonresident of this
19 state.

20 (3) Whether the appointment of a guardian of the person, guardian of
21 the estate, or both, is sought.

22 (4) The name, residence and post-office address of the proposed
23 guardian, and that the proposed guardian is qualified to serve as guardian.

24 (5) A general description and the probable value of the property of
25 the proposed ward and any income to which he is entitled. If any moneys
26 are paid or payable to the proposed ward by the United States through the
27 Veterans Administration, the petition shall so state.

28 (6) The name and address of any person or institution having the care,
29 custody or control of a proposed ward who is an incompetent or minor.

30 (7) The reasons why the appointment of a guardian is sought, the re-
31 lationship, if any, of the petitioner to the proposed ward and the interest,
32 if any, of the petitioner in the appointment.

33 Section 228. ORS 126.131 is amended to read:

34 126.131. **Issuance of citation.** (1) Except as otherwise provided in ORS

1 126.136, 126.141 and 126.146, the court, upon the filing of a petition under
2 ORS 126.126, shall order the issuance of a citation requiring the persons
3 or institutions referred to in subsection (2) of this section to appear and
4 show cause why a guardian should not be appointed for the proposed
5 ward.

6 (2) Citation issued under subsection (1) of this section shall be served:

7 (a) If the proposed ward is an incompetent, on any person or an of-
8 ficer of any institution having the care, custody or control of the incom-
9 petent, and on the incompetent.

10 (b) If the proposed ward is a minor, on any person or an officer of
11 any institution having the care, custody or control of the minor, and if
12 the minor is 14 years of age or older, on the minor.

13 (c) *If the proposed ward is a missing person, on the missing person and*
14 *on such other persons as the court may direct.*

15 ~~+(e)+~~ (d) If the proposed ward is a spendthrift, on the spendthrift.

16 ~~+(d)+~~ (e) If the proposed ward is receiving moneys paid or payable
17 by the United States through the Veterans Administration, on a representa-
18 tive of the Veterans Administration.

19 Section 229. ORS 126.146 is amended to read:

20 126.146. **Service of citation; appearance.** (1) The citation issued under
21 ORS 126.131 shall require the person or institution served to appear and
22 show cause *why a guardian should not be appointed for the proposed ward:*

23 (a) If served personally within the county in which the proceeding is
24 pending, within 10 days after the date of service.

25 (b) If served personally within any other county in this state, within
26 20 days after the date of service.

27 (c) If served by publication or if served personally outside this state
28 but within the United States, within four weeks after the date of first
29 publication or after the date of personal service.

30 (d) If served personally outside the United States, within six weeks
31 after the date of service.

32 (2) The citation shall be served and returned as summons is served
33 on a defendant and returned in a civil action. *If the proposed ward is*
34 *a missing person, citation shall be served on the missing person by publi-*

1 cation, by registered or certified mail to his last-known address and by
2 postage prepaid letter to be forwarded through the United States Social
3 Security Administration to his last-known address available to that agency.

4 (3) Service of citation is not necessary on a person or an officer of an
5 institution who has signed the petition, has signed a written waiver of
6 service of citation or makes a general appearance.

7 Section 230. ORS 126.151 is amended to read:

8 126.151. **Order of appointment.** If it appears to the court that the
9 allegations of the petition are sufficient and that a guardian should be ap-
10 pointed for the proposed ward, the court shall make an order appointing a
11 guardian. The order shall specify whether the guardian appointed is
12 guardian of the person, guardian of the estate, or both; whether the ward
13 is an incompetent, minor, *missing person* or spendthrift; and whether the
14 ward is a resident or nonresident of this state. The court by order shall
15 specify the amount of the bond to be executed and filed by the guardian.

16 Section 231. ORS 126.166 is amended to read:

17 126.166. **Preferences in appointing guardians.** The parents of a minor,
18 or either of them, if qualified and suitable, shall be preferred over all
19 others for appointment as guardian of the person for the minor. Subject
20 to this preference, the court shall appoint as guardian for an incompetent,
21 minor, *missing person* or spendthrift the qualified person most suitable
22 who is willing to serve, having due regard, among other factors, to:

23 (1) Any request for the appointment as guardian for an incompetent
24 contained in a written instrument executed by the incompetent while com-
25 petent.

26 (2) Any request for the appointment as guardian for a minor child con-
27 tained in a will or other written instrument executed by a parent of the
28 minor child.

29 (3) Any request for the appointment as guardian for a minor 14 years
30 of age or older made by the minor.

31 (4) The relationship by blood or marriage of the proposed guardian
32 to the proposed ward.

33 **Section 232.** Section 233 of this Act is added to and made a part of
34 ORS 126.006 to 126.565.

1 **Section 233. Term of bond; new bond; increasing or reducing bond.**

2 (1) The bond of a guardian continues in effect until his final account is
3 approved and an order of discharge is entered, but a surety may termi-
4 nate his obligation upon notice in writing to the guardian and the court
5 specifying a date, not less than 30 days after the date of the notice, on
6 which the termination becomes effective. Before the date so specified the
7 guardian shall execute and file in the guardianship proceeding a new
8 bond, with sufficient surety or sureties, in the same amount and upon
9 the same conditions. If the guardian fails to do so, his authority as guardian
10 shall cease on the effective date of termination of the obligation of the
11 surety on his bond, the letters of guardianship shall thereupon be canceled
12 and he shall make and file his final account.

13 (2) The court may at any time increase or reduce the amount of the
14 bond required of a guardian for the protection of the ward and the estate
15 of the ward, either upon its own motion or upon the motion of the guardian
16 or any interested person.

17 Section 234. ORS 126.186 is amended to read:

18 **126.186. Letters of guardianship.** When a guardian has filed a bond as
19 provided in ORS 126.171, and his name, residence and post-office address
20 as provided in ORS 126.181, the court shall cause to be issued letters
21 of guardianship to the guardian. Letters of guardianship may be in the
22 following form:

23 _____
24 State of Oregon)
25) ss.
26 County of _____)

27 TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

28 KNOW YE, That on _____, 19____, the _____
29 (month) (day)

30 Court, _____ County, State of Oregon, appointed

31 _____ guardian of the _____

32 (name of guardian) (person

33 _____ for _____,

34 or estate or person and estate) (name of ward)

1 a(n) _____,

2 (incompetent ~~for~~, minor, *missing person* or spendthrift)

3 that the named guardian has qualified and has the authority and shall

4 perform the duties of guardian of the _____

5 (person or estate or person and estate)

6 for the named ward as provided by law.

7 IN TESTIMONY WHEREOF, I have hereunto subscribed my name

8 and affixed the seal of the court at my office on _____,

9 (month) (day)

10 19__.

11 _____, Clerk of the Court

12 (Seal) By _____, Deputy

13 _____

14 Section 235. ORS 126.230 is amended to read:

15 126.230. **Inventory and appraisal of ward's property.** (1) Within 60
16 days after the date of his appointment, or, if necessary, such further time
17 as the court may allow, a guardian of the estate shall make and file in the
18 guardianship proceeding a verified inventory of all the property of the
19 ward which comes to his possession or knowledge.

20 (2) Whenever any property of the ward not mentioned in the inven-
21 tory comes to the possession or knowledge of a guardian of the estate,
22 he shall either make and file in the guardianship proceeding a verified
23 supplementary inventory within 30 days after the property comes to his
24 possession or knowledge, or include the property in his next accounting,
25 but the court may order which of the two methods the guardian shall
26 follow.

27 (3) The court may order all or any part of the property of the ward
28 appraised as provided in ~~ORS 116.420 to 116.435~~ section 98 of this 1969 Act.

29 Section 236. ORS 126.245 is amended to read:

30 126.245. **Discovery of debts or property.** Upon the filing of a petition
31 in the guardianship proceeding by the guardian, the ward or any other
32 interested person, alleging that any person is indebted to the ward, or
33 has, or is suspected of having, concealed, embezzled, converted or disposed
34 of any property of the ward, or has possession or knowledge of any such

1 property or of any writing relating to such property, the court may require
2 such person to appear and answer under oath concerning the matter, and
3 proceed as provided in ~~{ORS 116.310 and 116.315}~~ section 139 of this 1969
4 Act.

5 Section 237. ORS 126.265 is amended to read:

6 126.265. **Borrowing money for ward.** A guardian of the estate, with
7 prior approval of the court by order, may borrow money for the account
8 of the ward and may mortgage or pledge any property of the ward as
9 security therefor. If the court determines that the borrowing is necessary
10 or proper, the court shall make an order approving the borrowing. The
11 order approving the borrowing may authorize one or more separate loans
12 thereunder. The order shall prescribe the maximum amount of, the
13 maximum rate of interest on and the date of final maturity of the loan or
14 loans, and shall describe the property, if any, to be mortgaged or pledged
15 to secure the loan or loans. Any part of any such loan at any time not
16 fully secured is a general charge upon the estate of the ward , *but one*
17 *who acquires an interest in any of the property of the estate for value*
18 *and without actual knowledge of the charge takes free from it.* ~~{This~~
19 ~~section does not affect the application of ORS 126.406 to 126.495, so far as~~
20 ~~they relate to mortgages; but, so far as possible, the proceedings with respect~~
21 ~~to the loan or loans may be combined with the proceedings, if any, with respect~~
22 ~~to mortgages as security therefor.}~~

23 Section 238. ORS 126.295 is amended to read:

24 126.295. **Gifts from ward's estate; expenditures for ward's relatives.** A
25 guardian of the estate, with prior approval of the court by order, may, from
26 the estate of the ward which is not necessary for the proper care, main-
27 tenance, education and support of the ward and of persons to whom the
28 ward owes a legal duty of support:

29 (1) Make reasonable gifts , *on behalf of the ward*, to charitable or
30 religious institutions ~~{on behalf of the ward}~~ *or to persons who are or have*
31 *been related to the ward by blood or marriage. If the court determines*
32 *that a gift made under this subsection shall be treated as an advancement,*
33 *the court shall so provide in the order authorizing the gift.*

1 (2) Provide for or contribute to the care, maintenance, education or
2 support of persons who are or have been related to the ward by blood or
3 marriage.

4 (3) Pay or contribute to the payment of reasonable expenses of remedial
5 care and treatment for, and reasonable funeral and burial expenses of,
6 persons who are or have been related to the ward by blood or marriage.

7 Section 239. ORS 126.338 is amended to read:

8 **126.338. Distribution of copies of accounts; court settlement of accounts.**

9 (1) Before filing any account other than his final account, a guardian of
10 the estate shall cause a copy of the account to be mailed or delivered:

11 (a) If the ward has been committed or admitted to, and not discharged
12 from, a state institution listed in ORS 426.010, 427.010 or 428.420, to the
13 Secretary of the Oregon State Board of Control and to the superintendent
14 of the institution who has presented a written request for a copy to the
15 guardian and filed a copy of the request in the guardianship proceeding
16 before the filing of the account.

17 (b) If there is a guardian of the person for the ward other than the
18 guardian of the estate, to the guardian of the person.

19 (c) If the ward is a minor 14 years of age or older or a spendthrift,
20 to the ward.

21 (d) If the ward is a minor, *a missing person* or an incompetent, to the
22 ward's spouse who is not under legal disability and to those of the ward's
23 children, parents, brothers or sisters who are not under legal disability
24 and have presented a written request for a copy to the guardian and filed
25 a copy of the request in the guardianship proceeding before the filing of
26 the account.

27 (2) A guardian of the estate shall file with each account other than his
28 final account his affidavit or other proof satisfactory to the court that
29 copies of the account have been mailed or delivered as provided in sub-
30 section (1) of this section, showing the names of the persons to whom,
31 and the addresses to or at which, the copies were mailed or delivered.

32 (3) A guardian of the estate shall cause a copy of his final account
33 to be mailed or delivered to a ward not under legal disability, to each
34 person to whom copies of other accounts are required to be mailed or de-

1 livered as provided in subsection (1) of this section, to the executor or
2 administrator of a deceased ward's estate and to a successor guardian.
3 Within 10 days after the date of the mailing or delivery, any such person
4 may make and file in the guardianship proceeding written objections to
5 the final account.

6 (4) The court, before settlement of any account, may provide for in-
7 spection of the balance of the property of the ward on hand. The court
8 shall settle each account filed by a guardian of the estate by allowing
9 or disallowing, either in whole or in part, or surcharging such account;
10 but without prejudice to objections thereto at the time and in the manner
11 that objections may be made to a final account.

12 Section 240. ORS 126.406 is amended to read:

13 126.406. **Sale or lease of ward's property; purposes.** A guardian of the
14 estate, with prior approval of the court by order, may sell ~~or mortgage~~ or
15 lease any of the property of the ward:

16 (1) For the purpose of paying claims against the ward, the guardian-
17 ship estate or the guardian of the estate as such.

18 (2) For the purpose of providing for the proper care, maintenance,
19 education and support of the ward and of any person to whom the ward
20 owes a legal duty of support.

21 (3) For the purpose of investing the proceeds.

22 (4) For any other purpose that is in the best interests of the ward.

23 Section 241. ORS 126.411 is amended to read:

24 126.411. **Petition for sale or lease.** A guardian of the estate may file
25 in the guardianship proceeding a petition for the sale ~~or mortgage~~ or lease
26 of any property of the ward. The petition shall include the following in-
27 formation, so far as known by the petitioner:

28 (1) The name, age, residence and post-office address of the ward.

29 (2) Whether the ward is an incompetent, minor, *missing person* or
30 spendthrift.

31 (3) The name and address of any person or institution having the
32 care, custody or control of a ward who is an incompetent or minor.

33 (4) A general description and the probable value of all the property
34 of the ward that has come to the possession or knowledge of the guardian

1 and not theretofore disposed of, and of all the property to which the
2 ward may be entitled upon any distribution of any estate or of any trust.

3 (5) The income being received from the property to be sold ~~+~~ ~~mort-~~
4 ~~gaged,~~ or leased, from all other property of the ward and from all other
5 sources, and the application of such income.

6 (6) Such other information concerning the guardianship estate and
7 the condition of the ward as is necessary to enable the court to be fully
8 informed.

9 (7) The purpose of the proposed sale ~~+~~ ~~mortgage~~ or lease, a general
10 description of the requirements for such purpose and the aggregate
11 amount needed therefor.

12 (8) A specific description of the property to be sold ~~+~~ ~~mortgaged~~
13 or leased.

14 Section 242. ORS 126.416 is amended to read:

15 126.416. **Sale or lease of personal property.** Except as provided in ORS
16 126.471, if the court, upon the filing of a petition under ORS 126.411 for
17 the sale ~~+~~ ~~mortgage~~ or lease of personal property, determines that the
18 sale ~~+~~ ~~mortgage~~ or lease is necessary or proper for any purpose re-
19 ferred to in ORS 126.406, the court shall order the sale ~~+~~ ~~mortgage~~ or
20 lease to be made subject to such terms and conditions as the court may
21 consider necessary or proper. The court may, in its discretion, order a
22 hearing upon such petition and with such notice as the court may order
23 or without notice. If the proceeds of the sale ~~for mortgage~~ exceed \$1,000,
24 the guardian, within 15 days after the date of the sale ~~for mortgage~~, shall
25 make and file in the guardianship proceeding a return of his proceedings
26 concerning the sale ~~for mortgage~~, but such sale ~~for mortgage~~ need not
27 be confirmed by the court.

28 Section 243. ORS 126.426 is amended to read:

29 126.426. **Sale or lease for more than five years of real property; issuance**
30 **of citation.** (1) Except as otherwise provided in ORS 126.431 and 126.471,
31 the court, upon the filing of a petition under ORS 126.411 for the sale
32 ~~for mortgage~~ of real property, or the lease of real property for a term
33 exceeding five years, shall order the issuance of a citation requiring the
34 persons or institutions referred to in subsection (2) of this section to

1 appear and show cause why an order for the sale ~~of mortgage~~ or lease
2 should not be made.

3 (2) Citation issued under subsection (1) of this section shall be served:

4 (a) If the ward is an incompetent, on any person or an officer of any
5 institution having the care, custody or control of the incompetent, and
6 on the incompetent.

7 (b) If the ward is a minor, on any person or an officer of any institu-
8 tion having the care, custody or control of the minor, and if the minor is
9 14 years of age or older, on the minor.

10 (c) If the ward is an incompetent or minor in the care, custody or con-
11 trol of any institution, on any person paying or liable for the care and
12 maintenance of the incompetent or minor at the institution.

13 (d) *If the ward is a missing person, on the missing person and on*
14 *such other persons as the court may direct.*

15 ~~+(d)~~ (e) If the ward is a spendthrift, on the spendthrift.

16 Section 244. ORS 126.431 is amended to read:

17 126.431. **Service of citation; appearance.** (1) The citation issued under
18 ORS 126.426 shall require the person or institution served to appear and
19 show cause *why an order for the sale or lease should not be made:*

20 (a) If served personally within the county in which the proceeding is
21 pending, within 10 days after the date of service.

22 (b) If served personally within any other county in this state, within
23 20 days after the date of service.

24 (c) If served by publication or if served personally outside this state
25 but within the United States, within four weeks after the date of first
26 publication or after the date of personal service.

27 (d) If served personally outside the United States, within six weeks
28 after the date of service.

29 (2) The citation shall be served and returned as summons is served
30 on a defendant and returned in a civil action. *If the ward is a missing*
31 *person, citation shall be served on the missing person by publication, by*
32 *registered or certified mail to his last-known address and by postage pre-*
33 *paid letter to be forwarded through the United States Social Security*
34 *Administration to his last-known address available to that agency.*

1 (3) Service of citation is not necessary on a person or an officer of an
2 institution who has signed the petition, has signed a written waiver of
3 service of citation or makes a general appearance.

4 Section 245. ORS 126.436 is amended to read:

5 126.436. **Order for sale or lease; terms and conditions.** If it appears to
6 the court that the sale ~~[, mortgage]~~ or lease referred to in ORS 126.426 is
7 necessary or proper for any purpose referred to in ORS 126.406, the court
8 shall order the sale ~~[, mortgage]~~ or lease to be made. A ~~[mortgage]~~ sale or
9 ~~[surface]~~ lease ordered shall be made subject to such terms and conditions
10 as the court may consider necessary or proper. ~~[An order authorizing the~~
11 ~~execution of a lease or other instrument for the purpose of exploring or~~
12 ~~prospecting for and extracting, removing and disposing of oil, gas and other~~
13 ~~hydrocarbons, and all other minerals or substances, similar or dissimilar, that~~
14 ~~may be produced from a well drilled by the lessee, shall require a minimum of~~
15 ~~one-eighth royalty and shall set forth the annual rental, if any rental is required~~
16 ~~to be paid, the period of the lease which shall be for a primary term of 10 years~~
17 ~~and so long thereafter as oil, gas, other hydrocarbons or other leased substances~~
18 ~~are produced in paying quantities from the leased premises or lands pooled or~~
19 ~~unitized therewith, or mining or drilling operations are conducted on the~~
20 ~~leased premises or lands pooled or unitized therewith, and may authorize such~~
21 ~~other terms and conditions as the court may consider necessary or proper in-~~
22 ~~cluding, without limitation, a provision empowering the lessee to enter into~~
23 ~~any agreement authorized by ORS chapter 520 with respect to the land covered~~
24 ~~by the lease, including provisions for pooling or unitization by the lessee. A~~
25 ~~sale ordered shall be made as provided in ORS 126.441 to 126.466, and subject~~
26 ~~to such additional terms and conditions as the court may consider necessary~~
27 ~~or proper.]~~

28 Section 246. ORS 126.441 is amended to read:

29 126.441. **Public or private sale of real property; sale on credit.** (1) The
30 order for the sale of real property under ORS 126.436 or 126.471 shall direct
31 that the sale be public or, if the court determines that it is in the best
32 interests of the ward, private. If public, the sale shall be made in the
33 same manner as like property is sold on execution, or, if the court de-

1 terminates that it is in the best interests of the ward, the court may order
2 the property to be sold on the premises or elsewhere.

3 ~~[(2) Except as otherwise provided in this subsection, before proceeding to
4 sell real property at private sale, the guardian shall cause a notice of the sale
5 to be published in a newspaper published in the county in which the property
6 is situated, or if no newspaper is published in such county, then in a newspaper
7 of general circulation therein, once a week for four successive weeks, or four
8 publishings in all. The notice shall include a description of the property, the
9 place where bids will be received, the terms and conditions of the sale and
10 that on and after a designated day certain, which day shall be not less than
11 one week after the date of last publication, the guardian will proceed to sell the
12 property. When the court determines from the inventory or otherwise that
13 the value of the property does not exceed \$1,000, the court may order the sale
14 without the publication of notice of the sale.]~~

15 ~~[(3)]~~ (2) When the sale of real property is upon credit, the guardian
16 may take the promissory note of the purchaser for the deferred balance of
17 the purchase money, with a mortgage upon the property to secure the
18 payment thereof, or the guardian may sell the property on contract of
19 sale, with title reserved until the deferred balance of the purchase price
20 and interest thereon, if any, are paid.

21 Section 247. ORS 126.456 is amended to read:

22 **126.456. Confirming or vacating sale of real property.** (1) Upon the
23 hearing under ORS 126.451 of objections to the sale of real property or in
24 the absence of objections, the court shall make an order confirming the
25 sale and directing the execution of a proper conveyance to the proper
26 person by the guardian, unless the court determines that:

27 (a) There was substantial irregularity in the sale;

28 (b) The sum bid for the property is unreasonably less than the value
29 of the property; or

30 (c) By reason of another bid, a net price can be obtained for the
31 property which exceeds by at least 10 percent the net price to be obtained
32 from the sale returned.

33 (2) If the court determines that there was substantial irregularity in

1 the sale, the court shall make an order vacating the sale and directing that
2 the property be resold as though no prior sale had been made.

3 (3) If the court determines that the sum bid for the property is un-
4 reasonably less than the value of the property, the court shall make an
5 order vacating the sale and directing that the property be resold ~~without~~
6 ~~further notice of sale, but~~ subject to confirmation as provided in this
7 section.

8 (4) If the court determines that, by reason of another bid, a net price
9 can be obtained for the property which exceeds by at least 10 percent the
10 net price to be obtained from the sale returned, the court shall make an
11 order vacating the sale, and either directing that the property be resold
12 to the higher bidder without further order ~~for notice of sale~~, or directing
13 that the property be resold ~~without further notice of sale, but~~ subject to
14 confirmation as provided in this section.

15 Section 248. ORS 126.461 is amended to read:

16 126.461. **Conveyance of real property; effect.** ~~A conveyance executed by~~
17 ~~the guardian under ORS 126.456 shall set forth the book and page of the~~
18 ~~journal of the court where the order for and the order confirming or directing~~
19 ~~the sale of the real property are entered.~~ The effect of ~~the~~ a conveyance
20 of real property by a guardian under ORS 126.456 shall be the same as
21 though made by the ward while not under legal disability.

22 Section 249. ORS 126.471 is amended to read:

23 126.471. **Sale or lease of property of spendthrift ward.** (1) If the court,
24 upon the filing of a petition under ORS 126.411 for the sale ~~or mortgage~~
25 or lease of any of the property of a ward who is a spendthrift, determines
26 that the ward is competent and consents to the sale ~~or mortgage~~ or lease
27 and that the sale ~~or mortgage~~ or lease is necessary or proper for any purpose
28 referred to in ORS 126.406, the court may order the sale ~~or mortgage~~ or
29 lease to be made subject to such terms and conditions as the court may
30 consider necessary, without the issuance of citation ~~or publication of notice~~
31 ~~of sale~~ or confirmation by the court. If the proceeds of the sale ~~or~~
32 ~~mortgage~~ exceed \$1,000, the guardian, within 15 days after the date of
33 the sale ~~or mortgage~~, shall make and file in the guardianship proceeding
34 a return of his proceedings concerning the sale ~~or mortgage~~.

1 (2) In the absence of a determination by the court that the ward who
2 is a spendthrift is competent and consents to the sale ~~[, mortgage]~~ or
3 lease of his property, such sale ~~[, mortgage]~~ or lease may be made only
4 as otherwise provided in ORS 126.406 to 126.495.

5 (3) ~~[A conveyance of real property executed by a guardian under sub-~~
6 ~~section (1) of this section shall set forth the book and page of the journal of~~
7 ~~the court where the order for the sale is entered.]~~ The effect of ~~[the]~~ a con-
8 veyance of *real property by a guardian under subsection (1) of this section*
9 shall be the same as though made by the ward while not under legal
10 disability.

11 (4) Within 60 days after the date of the order under subsection (1)
12 of this section for the sale of real property of the ward situated in any
13 county other than the county in which the order for the sale was made,
14 the guardian shall cause to be recorded in the record of deeds of such other
15 county a copy of the order for the sale certified by the clerk of the court.

16 Section 250. ORS 126.476 is amended to read:

17 **126.476. Exchange, partition, sale or surrender of ward's property.** (1) A
18 guardian of the estate, with prior approval of the court by order, may
19 accept an offer to exchange real or personal property, or both, of the
20 ward for real or personal property, or both, of another, or to effect a
21 voluntary partition of real or personal property, or both, in which the
22 ward owns an undivided interest, where it appears from the petition
23 therefor and the court determines that such exchange or partition is in
24 the best interests of the ward.

25 (2) A guardian of the estate, with prior approval of the court by order,
26 may accept an offer for the purchase or surrender of the interest or estate
27 of the ward in real or personal property, or both, where it appears from
28 the petition therefor and the court determines that:

29 (a) The interest or estate of the ward in such property is contingent
30 or dubious;

31 (b) The interest or estate of the ward in such property is a servitude
32 upon the property of the offeror;

33 (c) The interest or estate of the ward in such property is an undivided

1 interest in property in which the offeror owns or is offering to purchase
2 another or the other undivided interest or interests; or

3 (d) For any other reason, there is no market for the interest or estate
4 of the ward in such property except by such sale or surrender to the
5 offeror.

6 (3) A guardian of the estate may file in the guardianship proceeding
7 a petition for authority to accept an offer under subsection (1) or (2) of
8 this section. The petition shall include the following information, so far
9 as known by the petitioner:

10 (a) The name, age, residence and post-office address of the ward.

11 (b) Whether the ward is an incompetent, minor, *missing person* or
12 spendthrift.

13 (c) The name and address of any person or institution having the care,
14 custody or control of a ward who is an incompetent or minor.

15 (d) The name and address of the offeror.

16 (e) A specific description of the property, interest or estate to be
17 exchanged, partitioned, sold or surrendered, and the price or property
18 to be received therefor.

19 (f) Such other information as the petitioner may consider necessary
20 to enable the court to be fully informed in respect of the subject matter.

21 (4) If the property, interest or estate to be exchanged, partitioned,
22 sold or surrendered consists solely of personal property or an interest
23 or estate therein, the provisions of ORS 126.416 shall apply, except that
24 no return of his proceedings need be made and filed by the guardian.

25 (5) If the property, interest or estate to be exchanged, partitioned,
26 sold or surrendered consists in whole or in part of real property or an
27 interest or estate therein, the provisions of ORS 126.426 and 126.431 and
28 subsection (1) of ORS 126.471 shall apply, except that no return of his
29 proceedings need be made and filed by the guardian.

30 (6) Upon the entry of an order of the court authorizing acceptance
31 of an offer under subsection (1) or (2) of this section, the guardian may
32 execute such instruments as are appropriate to effect such exchange,
33 partition, sale or surrender. If the guardian executes a conveyance of real

1 property or an interest or estate therein, the provisions of ORS 126.461
2 and 126.466 and subsections (3) and (4) of ORS 126.471 shall apply.

3 (7) Except as otherwise provided in this section, the provisions of
4 ORS 126.406 to 126.471 do not apply to exchanges, partitions, sales or sur-
5 renders under this section.

6 Section 251. ORS 126.490 is amended to read:

7 126.490. **Collateral attack on sale, mortgage, lease or other disposition**
8 **of ward's property.** No proceedings for the sale, exchange, surrender,
9 partition, mortgage, pledge or lease ~~[(including a lease executed for the pur-~~
10 ~~poses of exploring or prospecting for and extracting, removing and disposing~~
11 ~~of oil, gas, other hydrocarbons and all other minerals or substances, similar~~
12 ~~or dissimilar, that may be produced from a well drilled pursuant to such~~
13 ~~lease)]~~ of any property of the ward by a guardian of the estate are
14 subject to collateral attack on account of any irregularity in the proceed-
15 ings if the court which ordered the sale, exchange, surrender, partition,
16 mortgage, pledge or lease had jurisdiction to do so.

17 Section 252. ORS 126.495 is amended to read:

18 126.495. **Transfer of ward's property not an ademption.** In case of the
19 sale or other transfer by a guardian of the estate of any real or personal
20 property specifically devised or bequeathed by ~~[the]~~ a ward ~~[,]~~ who was
21 competent to make a will at the time he executed the will but was not
22 competent to make a will at the time of the sale or transfer and never
23 regained such competency , *or specifically devised or bequeathed by a*
24 *ward who was a missing person subsequently found to be dead and who*
25 *did not make a valid will after the sale or transfer,* so that the devised
26 or bequeathed property is not contained in the estate of the ward at the
27 time of his death, the devisee or legatee may at his option take the value
28 of the property at the time of the death of the ward with the incidents of a
29 general devise or bequest, or the proceeds of such sale or other transfer
30 with the incidents of a specific devise or bequest.

31 Section 253. ORS 126.540 is amended to read:

32 126.540. **Discharge of guardian; exoneration of surety; vacating order.**
33 The court, *after hearing objections filed pursuant to ORS 126.338 to the*
34 *final account and upon settlement of the final account* ~~[of a guardian of~~
~~the estate]~~ and determination that property of the ward has been delivered

1 to the person lawfully entitled thereto, shall discharge the guardian and
2 exonerate the ~~[sureties]~~ surety on his bond. ~~[The discharge terminates the~~
3 ~~authority and duties of the guardian not previously terminated. The discharge~~
4 ~~and exoneration do not relieve the guardian or the sureties on his bond from~~
5 ~~liability for previous acts or omissions of the guardian.] The court may, in~~
6 ~~its discretion and upon such terms as may be just, at any time within~~
7 ~~one year after notice thereof, vacate the order discharging the guardian~~
8 ~~to permit recovery against the guardian and the surety on his bond, or~~
9 ~~either of them, when it appears that the failure of the claimant to object~~
10 ~~to the final account of the guardian resulted from the mistake, inadvert-~~
11 ~~ence, surprise or excusable neglect of the claimant.~~

12 **Part 2. Transactions Without Oregon Guardianship**

13 **Section 254.** Section 255 of this Act is added to and made a part of
14 ORS 126.006 to 126.565.

15 **Section 255. Money or tangible chattels to or for minor.** (1) Any
16 person under a duty to pay or deliver money or tangible chattels to a
17 minor may perform that duty, in amounts not exceeding \$5,000 in the
18 aggregate, by paying or delivering the money or chattels to:

19 (a) The minor, if he is 18 years of age or older;

20 (b) A parent or other relative of the minor with whom the minor
21 resides; or

22 (c) A guardian of the person for the minor.

23 (2) This section does not apply if the person making the payment or
24 delivery has actual knowledge that a guardian of the estate for the minor
25 has been appointed or that proceedings for the appointment of a guardian
26 of the estate for the minor are pending.

27 (3) A person, other than the minor, receiving delivery of tangible
28 chattels under subsection (1) of this section may sell them for cash without
29 order of court.

30 (4) Moneys received by a person, other than a minor, under subsection
31 (1) or (3) of this section may be applied by that person to the support
32 and education of the minor, excluding any compensation or other payments
33 to himself except by way of reimbursement for out-of-pocket expenses
34 for goods and services furnished by third persons that were necessary

1 for the support and education of the minor. Any money and any unsold
2 chattels in excess of sums required for the support and education of the
3 minor shall be preserved for the future support and education of the
4 minor and any balance not so used shall be turned over to the minor when
5 he arrives at the age of majority as provided in ORS 109.510 or 109.520.

6 (5) Persons owing money or property to minors who pay or deliver
7 it pursuant to paragraph (b) or (c) of subsection (1) of this section shall
8 not be responsible for the proper application thereof.

9 Section 256. ORS 126.555 is amended to read:

10 126.555. **Settling claims or receiving or selling property without guardi-**
11 **anship.** (1) *In addition to the authorization under section 255 of this 1969*
12 *Act for payment or delivery of money or tangible chattels to or for a*
13 *minor, where it appears that a guardian of the estate for a person under*
14 *legal disability has not been appointed, any court having probate juris-*
15 *isdiction, upon petition therefor and with such notice, or without notice, as*
16 *the court may order, and without the appointment of a guardian of the*
17 *estate for such person, may make an order authorizing a person designated*
18 *in the order to:*

19 (a) Settle any debt or other chose in action not exceeding \$1,000 due
20 to the person under legal disability and receive payment thereof;

21 (b) Receive property having a value not exceeding \$1,000 of the person
22 under legal disability; or

23 (c) Sell for cash with such notice, or without notice, as the court
24 may order, any of the real or personal property having a value not
25 exceeding \$1,000 of the person under legal disability and receive the pro-
26 ceeds thereof.

27 (2) The person designated in the order of the court under subsection
28 (1) of this section may give a release and discharge for any debt or other
29 chose in action so settled and paid or for any property so received, or
30 may execute such instruments as are appropriate to effect the conveyance
31 or transfer of any real or personal property so sold for cash. He shall
32 hold, invest or use all funds or other property so received as ordered by
33 the court.

34 **Section 257. When power of attorney not terminated by disability.** (1)

1 When a principal designates another his attorney in fact or agent by a
2 power of attorney in writing and the writing contains no words which
3 otherwise limit the period of time of its effectiveness, the powers of the
4 attorney in fact or agent shall be exercisable by him on behalf of the
5 principal notwithstanding later disability or incompetence of the principal
6 at law.

7 (2) All acts done by the attorney in fact or agent pursuant to the power
8 of attorney during any period of disability or incompetence of the prin-
9 cipal at law shall have the same effect and shall inure to the benefit of
10 and bind the principal as though the principal were not disabled or
11 incompetent.

12 (3) If a guardian of the estate or conservator of the estate is appointed
13 thereafter for the principal, the attorney in fact or agent, during the con-
14 tinuance of that appointment, shall account to the guardian or conservator
15 rather than to the principal. The guardian or conservator has the same
16 power that the principal would have, but for his disability or incompetence,
17 to revoke, suspend or terminate all or any part of the power of attorney.

18

Part 3. Conservatorships

19 **Section 258.** Sections 259 to 261 of this Act are added to and made a
20 part of ORS 126.606 to 126.675.

21 **Section 259. Continuing business of ward.** The court, by order, may
22 authorize a conservator to continue any business of the ward solely or
23 jointly with one or more of the ward's partners or joint venturers or
24 as a corporation of which the ward is or becomes a shareholder. The order
25 may be made upon the petition for the appointment of the conservator
26 and that he shall be so authorized or upon the petition of the conservator
27 and citation or consent as upon sale or lease of property of a spendthrift
28 for whom a guardian of the estate has been appointed.

29 **Section 260. Gifts from ward's estate; expenditures for ward's relatives.**

30 (1) The court, by order, may authorize a conservator to:

31 (a) Make reasonable gifts, on behalf of the ward, to charitable or
32 religious institutions or to persons who are or have been related to the
33 ward by blood or marriage. If the court determines that a gift made under

1 this paragraph shall be treated as an advancement, the court shall so
2 provide in the order authorizing the gift.

3 (b) Provide for or contribute to the care, maintenance, education or
4 support of persons who are or have been related to the ward by blood or
5 marriage.

6 (c) Pay or contribute to the payment of reasonable expenses of remedial
7 care and treatment for, and reasonable funeral and burial expenses of,
8 persons who are or have been related to the ward by blood or marriage.

9 (2) The order may be made upon the petition for the appointment of
10 the conservator and that he be so authorized or upon the petition of the
11 conservator and citation or consent as upon sale or lease of property of a
12 spendthrift for whom a guardian of the estate has been appointed.

13 **Section 261. Accounting by conservator.** (1) A conservator shall make
14 and file in the conservatorship proceeding a written verified account of
15 his administration at the times and of the kind required of a guardian of
16 the estate by ORS 126.336.

17 (2) Before filing any account other than his final account, a con-
18 servator shall cause a copy of the account to be mailed or delivered to the
19 ward. If the ward is incompetent, the conservator shall cause a copy of
20 the account to be mailed or delivered to the ward's spouse who is not
21 under legal disability and to those of the ward's children, parents, brothers
22 or sisters who are not under legal disability and have presented a written
23 request for a copy to the conservator and filed a copy of the request in
24 the conservatorship proceeding before the filing of the account. Proof by
25 affidavit of the mailing or delivery shall be filed with the account.

26 (3) A conservator shall cause a copy of his final account to be served
27 on the ward if living and competent; otherwise, on the guardian of the
28 estate for the ward or the executor or administrator of the deceased ward's
29 estate and on each person to whom copies of other accounts are required
30 to be mailed or delivered as provided in subsection (1) of this section.
31 Objections to the final account may be made within 30 days after the date
32 of the service.

33 Section 262. ORS 126.675 is amended to read:

34 126.675. **Orders of court in winding up conservatorship affairs; discharge**

1 **of conservator; exoneration of surety; vacating order.** (1) After the termi-
 2 nation of a conservatorship, the court may make orders *as provided in*
 3 *ORS 126.535.* ~~† the conservator shall be discharged and the sureties on his~~
 4 ~~bond exonerated and†~~

5 (2) *The court, after hearing objections made pursuant to section 261*
 6 *of this 1969 Act to the final account and upon settlement of the final ac-*
 7 *count and determination that property of the ward has been delivered to*
 8 *the person lawfully entitled thereto, shall discharge the conservator and*
 9 *exonerate the surety on his bond. The court may, in its discretion and*
 10 *upon such terms as may be just, at any time within one year after notice*
 11 *thereof, vacate the order discharging the conservator to permit recovery*
 12 *against the conservator and the surety on his bond, or either of them,*
 13 *when it appears that the failure of the claimant to object to the final*
 14 *account of the conservator resulted from the mistake, inadvertence, sur-*
 15 *prise or excusable neglect of the claimant.*

16 (3) A copy of the order discharging the conservator may be recorded
 17 as provided in ORS ~~†126.535 to†~~ 126.545.

18 **ARTICLE X. MISCELLANEOUS PROVISIONS**

19 **Part 1. Miscellaneous Amendments**

20 Section 263. ORS 3.101 is amended to read:

21 **3.101. District court judge acting as circuit court judge in certain cases;**
 22 **orders; effect.** (1) Whenever by reason of absence, illness or injury there
 23 is not within a county in which a district court organized under ORS
 24 46.025 is located, a judge of the circuit court able to preside over and
 25 conduct the business of the circuit court, any judge of the district court for
 26 the county may, within the county, exercise the powers and duties of
 27 judge of the circuit court for the county in so far as they pertain to:

28 (a) The commencement, trial and disposition of juvenile court matters
 29 and proceedings.

30 (b) Sanity inquests and the commitment of mentally diseased persons.

31 (c) The appointment of guardians ad litem for infants and others under
 32 legal disability.

33 (d) The granting of orders to make service of summons by publication.

34 (e) The granting of preliminary injunctions.

1 ~~[(2) A district court judge exercising the powers and duties of circuit court~~
2 ~~judge as provided in subsection (1) of this section also may, within the county,~~
3 ~~give and make any order, other than one setting apart exempt property or~~
4 ~~fixing a widow's allowance, that by law is ex parte in nature or is upon default~~
5 ~~of the appearance of, or expressly consented to in writing by, the adverse party~~
6 ~~or parties, in any matter, cause or proceeding in probate pending in the county.]~~
7 ~~[(3)]~~ (2) If the district court judge is not a party to, or directly in-
8 terested in, the suit, action or proceeding, and if the question or matter
9 passed upon by him has not been presented to, or passed upon by, any
10 circuit court judge, any decree, judgment or order given and made by a
11 district court judge pursuant to his powers and duties under this section,
12 when filed and entered in the suit, action or proceeding, has the same
13 effect as though given and made by a circuit court judge.

14 Section 264. ORS 3.130 is amended to read:

15 **3.130. Transfer of judicial jurisdiction of certain county courts to circuit**
16 **courts.** (1) All judicial jurisdiction, authority, powers, functions and duties
17 of the county courts and the judges thereof, except the jurisdiction,
18 authority, powers, functions and duties exercisable in the transaction of
19 county business, are transferred to the circuit courts and the judges thereof:

20 (a) In Clackamas, Columbia, Coos, Douglas, Jackson, Josephine,
21 Klamath, Lake, Lane, Marion and Tillamook Counties.

22 (b) In any county for which a county charter providing for such
23 transfer is adopted under ORS 203.710 to 203.790, to the extent that the
24 judicial jurisdiction, authority, powers, functions and duties were not
25 previously transferred as provided by law.

26 ~~[(2) All judicial jurisdiction, authority, powers, functions and duties of~~
27 ~~the county court and the judge thereof, except probate jurisdiction, authority,~~
28 ~~powers, functions and duties and the jurisdiction, authority, powers, functions~~
29 ~~and duties exercisable in the transaction of county business, are transferred~~
30 ~~to the circuit court and the judges thereof in Coos County.]~~

31 ~~[(3)]~~ (2) All matters, causes and proceedings relating to judicial juris-
32 diction, authority, powers, functions and duties transferred to the circuit
33 courts and the judges thereof under this section, and pending in a county

1 court on the effective date of the transfer, are transferred to the circuit
2 court for the county.

3 Section 265. ORS 5.080 is amended to read:

4 **5.080. County judge as interested party.** *Except as otherwise provided*
5 *in section 8 of this 1969 Act*, any judicial proceedings commenced in the
6 county court in which the county judge is a party or directly interested,
7 may be certified to the circuit court for the county in which the pro-
8 ceedings are pending, ~~[If the matter is one in probate, then all the original~~
9 ~~papers and proceedings shall be certified to the circuit court, and the judge~~
10 ~~of that court shall proceed in the manner in which the county judge would~~
11 ~~be required to proceed had the matter remained in the county court. If] and~~
12 ~~the matter [is other than a probate matter, it] shall be proceeded with in~~
13 ~~[this] the circuit court as upon appeal from the county court to the circuit~~
14 court.

15 Section 266. ORS 5.100 is amended to read:

16 **5.100. Order of docketing and disposal of county court business; records.**
17 (1) The business of the county court at each term shall be docketed and
18 disposed of in the following order:

19 (a) ~~[The business pertaining to a court of probate as specified in ORS~~
20 ~~5.040] Judicial business.~~

21 (b) County business.

22 (2) The proceedings and records of the court pertaining to the respective
23 classifications of business specified in this section shall be kept in separate
24 books.

25 Section 267. ORS 7.230 is amended to read:

26 **7.230. Probate and juvenile court records to be kept separate.** In so far
27 as may be practicable and convenient the records and proceedings per-
28 taining to probate and juvenile matters shall be kept separate from the
29 other records and proceedings of the circuit courts ~~[described in ORS 3.130].~~

30 Section 268. ORS 12.190 is amended to read:

31 **12.190. Effect of death on limitations.** (1) If a person entitled to bring
32 an action dies before the expiration of the time limited for its commence-
33 ment, ~~[and the cause of action survives,] an action may be commenced by~~

1 his personal ~~[representatives]~~ *representative* after the expiration of ~~[the]~~
2 *that* time, and within one year ~~[from]~~ *after* his death.

3 (2) If a person against whom an action may be brought dies before the
4 expiration of the time limited for its commencement, ~~[and the cause of]~~
5 ~~action survives,]~~ an action may be commenced against his personal ~~[repre-~~
6 ~~sentatives]~~ *representative* after the expiration of that time, and within
7 one year after *his death*. ~~[the issuing of letters testamentary or of adminis-~~
8 ~~tration; but no suit or action for collection of any claim against the estate~~
9 ~~of a decedent may be maintained, when no letters testamentary or of adminis-~~
10 ~~tration shall have been issued before the expiration of six years after the death~~
11 ~~of the decedent.]~~

12 Section 269. ORS 13.080 is amended to read:

13 **13.080. Nonabatement of action or suit by death, disability or transfer;**
14 **continuing proceedings.** (1) No action or suit shall abate by the death or
15 disability of a party, or by the transfer of any interest therein ~~[, if the]~~
16 ~~cause of action survives or continues].~~

17 (2) *In case of the death of a party, the court shall, on motion, allow*
18 *the action or suit to be continued:*

19 (a) *By his personal representative or successors in interest at any time*
20 *within one year after his death.*

21 (b) *Against his personal representative or successors in interest at any*
22 *time within four months after the date of the first publication of notice*
23 *to interested persons, but not more than one year after his death.*

24 (3) In case of the ~~[death or]~~ disability of a party, the court may, at any
25 time within one year thereafter, on motion, allow the action or suit to
26 be continued by ~~[or against]~~ his ~~[personal representatives]~~ *guardian or con-*
27 *servator or successors in interest.*

28 (4) *In case of the transfer of an interest in the action or suit, the court*
29 *may, on motion, allow the action or suit to be continued against the suc-*
30 *cessors in interest of the transferor.*

31 Section 270. ORS 23.260 is amended to read:

32 **23.260. Exemption inapplicable to mechanics' and purchase-money liens**
33 **and mortgages.** ORS 23.240 to 23.270~~[, 116.590 and 116.595]~~ do not apply
34 to mechanics' liens for work, labor or material done or furnished exclu-

1 sively for the improvement of the property claimed as a homestead, and
2 to purchase money liens and mortgages lawfully executed.

3 Section 271. ORS 41.520 is amended to read:

4 41.520. **Evidence to prove a will.** Evidence of a ~~{last}~~ will ~~{and testament,~~
5 ~~except when made pursuant to ORS 114.050, shall not be received, other than}~~
6 *shall be* the written instrument itself, or secondary evidence of ~~{its con-~~
7 ~~ents}~~ *the contents of the will*, in the cases prescribed by law.

8 Section 272. ORS 46.092 is amended to read:

9 46.092. **Transfer of certain judicial jurisdiction of certain county courts**
10 **to district courts.** ~~{(1)}~~ All judicial jurisdiction, authority, powers, functions
11 and duties of the county courts and the judges thereof, except juvenile
12 court jurisdiction, authority, powers, functions and duties and the juris-
13 diction, authority, powers, functions and duties exercisable in the trans-
14 action of county business, are transferred to the district courts and the
15 judges thereof:

16 ~~{(a)}~~ (1) In Benton, Clatsop, Curry, Deschutes, Hood River, Lincoln,
17 Linn, Polk, Umatilla, Wasco, Washington and Yamhill Counties.

18 ~~{(b)}~~ (2) In any county for which a county charter providing for such
19 transfer is adopted under ORS 203.710 to 203.790, to the extent that the
20 judicial jurisdiction, authority, powers, functions and duties were not
21 previously transferred as provided by law.

22 ~~{(2)}~~ All probate jurisdiction, authority, powers, functions and duties of
23 the county court and the judge thereof are transferred to the district court
24 and the judge thereof in Coos County.]

25 Section 273. ORS 91.020 is amended to read:

26 91.020. **Tenancies classified.** Tenancies are as follows: Tenancy at suf-
27 ferance, tenancy at will, tenancy for years, tenancy from year to year,
28 tenancy from month to month, ~~{tenancy by euryesy,}~~ tenancy by entirety
29 and tenancy for life. The times and conditions of the holdings shall deter-
30 mine the nature and character of the tenancy.

31 Section 274. ORS 91.030 is amended to read:

32 91.030. **Tenancy by entirety or for life.** A ~~{tenancy by euryesy, a}~~ tenancy
33 by entirety and a tenancy for life shall be such as now fixed and defined
34 by the laws of the State of Oregon.

1 Section 275. ORS 93.190 is amended to read:

2 **93.190. Trustees or personal representatives as joint tenants; filling**
3 **vacancies in office.** (1) Every conveyance, deed of trust, mortgage or
4 devise of an interest *in* or lien ~~in or~~ upon real or personal property to
5 two or more persons as trustees or ~~executors~~ *personal representatives*,
6 creates a joint tenancy in such interest or lien in the trustees or ~~executors~~
7 *personal representatives* unless it is expressly declared in the conveyance,
8 deed of trust, mortgage or devise that the trustees or ~~executors~~ *personal*
9 *representatives* shall take or hold the property as tenants in common or
10 otherwise.

11 (2) If the conveyance, deed of trust, mortgage or devise provides for
12 filling any vacancy in the office of trustee or ~~executor~~ *personal repre-*
13 *sentative*, it may be filled as therein provided , ~~excepting that~~ *but a*
14 court of competent jurisdiction may fill a vacancy in the trusteeship ac-
15 cording to the established rules and principles of equity. In whichever
16 way the vacancy is filled , the new trustee shall hold the property with
17 all powers, rights and duties of an original trustee unless otherwise di-
18 rected by conveyance, deed of trust, mortgage or devise, or order or de-
19 cree of the court. ~~No vacancy in an executorship shall be filled without an~~
20 ~~order therefor by a county court sitting in probate as in the case of an original~~
21 ~~appointment of an executor.]~~

22 Section 276. ORS 93.240 is amended to read:

23 **93.240. Rights to deferred instalments of purchase price where two or**
24 **more persons join as sellers in contract of sale of real property.** (1) Subject
25 to the provisions contained in this section, whenever two or more per-
26 sons join as sellers in the execution of a contract of sale of real property,
27 unless a contrary purpose is expressed in the contract, the right to receive
28 payment of deferred instalments of the purchase price shall be owned by
29 them in the same proportions, and with the same incidents, as title to
30 the real property was vested in them immediately preceding the execu-
31 tion of the contract of sale.

32 ~~[(2) If immediately preceding the execution of any such contract one or~~
33 ~~more of the sellers held no estate in the real property covered thereby other than~~
34 ~~an inchoate estate of or right to dower or curtesy, then, unless a contrary~~

1 pose is expressed in the contract, the joinder of such party or parties shall be
2 deemed to have been for the purpose of barring dower or curtesy only and,
3 except to the extent specifically prescribed therein, such person or persons
4 shall have no interest in or right to any portion of the unpaid balance of the
5 purchase price of said real property.]

6 ~~[(3)]~~ (2) If immediately prior to the execution of a contract of sale
7 of real property title to any interest in the property therein described
8 was vested in the sellers or some of the sellers as tenants by the entirety
9 or was otherwise subject to any right of survivorship, then, unless a con-
10 trary purpose is expressed in the contract, the right to receive payment
11 of deferred instalments of the purchase price of ~~[such]~~ *the* property shall
12 likewise be subject to like rights of survivorship.

13 ~~[(4)]~~ This section, being declaratory of existing law, applies to contracts of
14 sale of real property heretofore executed as well as to those hereafter executed.]

15 (3) Nothing contained in this section shall be deemed to modify or
16 amend the provisions of subsection (4) of ORS 118.010 relating to inherit-
17 ance taxes payable by reason of succession by survivorship as provided
18 by subsection ~~[(3)]~~ (2) of this section.

19 Section 277. ORS 93.420 is amended to read:

20 **93.420. Execution of deed where personal representative, guardian or**
21 **conservator is unable or refuses to act.** If any person is entitled to a deed
22 from ~~[an executor, administrator,]~~ *a personal representative*, guardian or
23 conservator who has died or resigned, has been discharged, disqualified
24 or removed or refuses to execute it, the deed may be executed by the
25 judge ~~[authorizing the sale,]~~ *before whom the proceeding is pending* or by
26 his successor.

27 Section 278. ORS 94.330 is amended to read:

28 **94.330. Registration of transfer or mortgage when interests are out-**
29 **standing.** No transfer or mortgage of any estate or interest in registered
30 land shall be registered until it is made to appear to the registrar that the
31 land has not been sold for any tax or assessment upon which a deed has
32 been given and the title is outstanding, or upon which a deed may there-
33 after be given ~~[, and that the dower, right of dower, and estate of homestead,~~
34 *if any, have been released or extinguished* or that the transfer or mortgage is

1 intended to be subject thereto, in which case it shall be stated in the certificate
2 of title].

3 Section 279. ORS 97.130 is amended to read:

4 97.130. **Right to control disposition of remains.** The right to control the
5 disposition of the remains of a decedent, unless other directions have been
6 given by him, vests in his surviving spouse, his surviving children, his
7 surviving parents and the person in the next degree of kindred to him,
8 in the order named. *If disposition of the remains has not been directed*
9 *and authorized within 10 days after the date of the death of the decedent,*
10 *a public health officer, the special administrator or the personal repre-*
11 *sentative of the estate of the decedent may direct and authorize disposition*
12 *of the remains.*

13 Section 280. ORS 116.115 is amended to read:

14 116.115. **Authority of personal representative when will includes gift**
15 **of body for scientific and medical purposes; nonliability for actions.** The
16 authority of a person named ~~executor~~ *personal representative* of a will
17 which includes a gift pursuant to ORS 97.132 extends to performing acts
18 necessary to carrying out the gift although ~~the~~ letters testamentary have
19 not been issued. A person named ~~executor~~ *personal representative* who
20 carries out the gift of the testator before issuance of letters testamentary
21 or under a will which is not admitted to probate shall not be liable to the
22 surviving spouse or next of kin for performing acts necessary to carry
23 out the gift of the testator.

24 Section 281. ORS 105.050 is amended to read:

25 105.050. **Cotenant shall prove ouster.** In an action ~~for the recovery of~~
26 ~~dower before admeasurement or~~ by a tenant in common of real property
27 against a cotenant, the plaintiff shall show, in addition to the evidence of
28 his right of possession, that the defendant either denied the plaintiff's
29 right or did some act amounting to a denial.

30 Section 282. ORS 105.340 is amended to read:

31 105.340. **Provision for future rights or interests.** In all cases of sales in
32 partition when it appears that ~~a married woman has an inchoate right of~~
33 ~~dower in any of the property sold, or that~~ any person has a vested or con-
34 tingent future right or estate ~~therein~~ *in any of the property sold, the*

1 court shall ascertain and settle the proportional value of the ~~finchote,~~
2 contingent or vested right or estate according to the principles of law
3 applicable to annuities and survivorship, and shall direct such proportion
4 of the proceeds of sale to be invested, secured or paid over in such manner
5 as to protect the rights and interests of the parties.

6 Section 283. ORS 107.100 is amended to read:

7 107.100. **Provisions of decree of divorce or annulment.** (1) Whenever
8 a marriage is declared void or dissolved, the court has power further to
9 decree as follows:

10 (a) For the future care and custody of the minor children of the
11 marriage as it may deem just and proper. In determining custody the
12 court shall consider the best interests of the child and the past conduct
13 and demonstrated moral standards of each of the parties. No preference
14 in custody shall be given to the mother over the father for the sole reason
15 that she is the mother.

16 (b) For the recovery from the party not allowed the care and custody
17 of such children, such amount of money, in gross or in instalments, or
18 both, as may be just and proper for such party to contribute toward the
19 nurture and education of such children.

20 (c) For the recovery from the party at fault or, under unusual cir-
21 cumstances in the discretion of the court, from the party not at fault, such
22 amount of money, in gross or in instalments, or both, as may be just and
23 proper for such party to contribute to the maintenance of the other; pro-
24 vided that in case recovery from the party not at fault is allowed, the
25 decree must contain special findings of the facts constituting the unusual
26 circumstances; provided, further, that the court may approve, ratify and
27 decree voluntary property settlement agreements that provide for con-
28 tribution by the prevailing party to the maintenance and support of the
29 party in fault. In case a divorce is granted under the provisions of sub-
30 section (7) of ORS 107.030, the court may require the prevailing party
31 to contribute to the support and maintenance of the mentally ill party
32 to such extent and in such manner as the court may determine to be just
33 and equitable.

34 (d) For the delivery to one party of such party's personal property in

1 the possession or control of the other at the time of giving the decree.

2 (e) For the appointment of one or more trustees to collect, receive,
3 expend, manage or invest, in such manner as the court directs, any sum of
4 money decreed for the maintenance of a party or the nurture and education
5 of minor children committed to such party's care and custody.

6 (f) To change the name of the wife.

7 (g) A judgment against one party in favor of the other for any sums
8 of money found to be then remaining unpaid upon any enforceable order
9 or orders theretofore duly made and entered in the proceedings pursuant
10 to any of the provisions of ORS 107.090, and for any such further sums as
11 additional attorney fees or additional costs and expenses of suit or defense
12 as the court finds reasonably and necessarily incurred by such party; or,
13 in the absence of any such order or orders pendente lite, a like judgment
14 for such amount of money as the court finds was reasonably necessary
15 to enable such party to prosecute or defend the suit, as the case may be.

16 ~~[(h) For the extinguishment and barring of dower and curtesy.]~~

17 (2) If an appeal is taken from a decree declaring a marriage void or
18 dissolved or from any part of a decree rendered in pursuance of the pro-
19 visions of ORS 107.010 to 107.100, the court making such decree shall
20 provide for the temporary support of the minor children of the parties
21 thereto, and may provide for the temporary support of the party found
22 not to be at fault. The order may be modified at any time by the court
23 making the decree appealed from, shall provide that the support money
24 be paid in monthly instalments, and shall further provide that it is to be
25 in effect only during the pendency of the appeal to the Supreme Court.
26 No appeal to the Supreme Court lies from any such temporary order.

27 (3) If an appeal is taken from the decree or other appealable order in
28 a suit for dissolution or annulment of the marriage contract, and the Su-
29 preme Court awards costs and disbursements to the prevailing party, it
30 may also award to that party, as part of the costs, such additional sum of
31 money as it may adjudge reasonable as an attorney fee on the appeal.

32 (4) Whenever a marriage is declared void or dissolved, the court
33 shall make such division or other disposition between the parties of the
34 real or personal property, or both, of either or both of the parties as may

1 be just and proper in all the circumstances, in addition to any further
2 relief decreed as provided for in subsection (1), (2) or (3) of this section.

3 (5) If, as a result of a suit for the dissolution or annulment of a mar-
4 riage, the parties to such suit become owners of an undivided interest in
5 any real or personal property, or both, either party may maintain supple-
6 mental proceedings by filing a petition in such suit for the partition of
7 such real or personal property, or both, within two years from the entry
8 of said decree, showing among other things that the original parties to
9 such decree and their joint or several creditors having a lien upon any
10 such real or personal property, if any there be, constitute the sole and
11 only necessary parties to such supplemental proceedings. The procedure
12 in the supplemental proceedings shall be, as far as applicable, the pro-
13 cedure provided for in ORS 105.205 to 105.405, for the partition of real
14 property, and the court granting such decree and the judges thereof shall
15 have in the first instance and retain jurisdiction in equity for such pur-
16 pose of partition as provided for in this subsection.

17 Section 284. ORS 107.110 is amended to read:

18 107.110. **Annulment or divorce decree ends marriage; when effective;**
19 **appeal; content of decree.** (1) A decree declaring a marriage void or
20 dissolved at the suit or claim of either party shall give the court jurisdic-
21 tion to award, to be effective immediately, the relief provided by ORS
22 107.100. ~~The decree shall revoke any will pursuant to the provisions of ORS~~
23 ~~114.130, but~~ The decree shall not be effective in so far as it affects the mari-
24 tal status of the parties until the expiration of 60 days from the date of the
25 decree or, if an appeal is taken, until the suit is determined on appeal,
26 whichever is later. However, the right of one party to cohabit with the
27 other shall cease on the date of the decree.

28 (2) In case either party dies within the 60-day period specified in sub-
29 section (1) of this section, the decree shall be considered to have entirely
30 terminated the marriage relationship immediately before such death, un-
31 less an appeal is pending.

32 (3) (a) The Supreme Court shall continue to have jurisdiction of such
33 an appeal pending at the time of death of either party, the estate of the
34 decedent being the nominal party therefor. The attorney of record on the

1 appeal, for the deceased party, may be allowed a reasonable attorney fee,
2 to be paid from the decedent's estate. However, costs on appeal may not
3 be awarded to either party.

4 (b) The Supreme Court shall have the power to determine finally all
5 matters presented on such appeal. Before making final disposition, the
6 Supreme Court may refer the proceeding back to the trial court for such
7 additional findings of fact as are required.

8 (4) The marriage relationship is terminated in all respects at the expira-
9 tion of the 60-day period specified in subsection (1) of this section or, if an
10 appeal is taken, when the suit is determined on appeal, whichever is later,
11 without any further action by either party. However, at any time within
12 the 60-day period or while an appeal is pending, the court may set aside
13 the decree upon the motion of both parties.

14 (5) A decree declaring a marriage void or dissolved shall include the
15 substance of subsections (1) to (4) of this section and shall specify the date
16 on which the decree becomes finally effective to terminate the marital
17 status of the parties.

18 Section 285. ORS 107.280 is amended to read:

19 107.280. **Decreeing disposition of property.** Whenever a decree of
20 permanent or unlimited separation from bed and board has been granted,
21 the party at whose prayer such decree was granted shall be awarded in
22 individual right such undivided or several interest in any right, interest or
23 estate in real or personal property owned by the other or owned by them
24 as tenants by the entirety at the time of such decree, as may be just and
25 proper in all circumstances, in addition to the decree of maintenance. ~~The~~
26 ~~court may, in making such award, decree that dower and curtesy, as well as~~
27 ~~homestead rights under ORS 116.010 and the election provided in ORS 113.050,~~
28 ~~are extinguished and barred.~~

29 Section 286. ORS 109.041 is amended to read:

30 109.041. **Effect of decree of adoption.** (1) The effect of a decree of
31 adoption ~~heretofore or hereafter granted by a court of this state~~ shall be
32 that the relationship, rights and obligations between an adopted person
33 ~~and his descendants~~ and

34 (a) His adoptive parents, ~~their descendants and kindred,~~ and

1 (b) His natural parents, ~~{their descendants and kindred}~~

2

3 shall be the same to all legal intents and purposes after the entry of such
4 decree as if the adopted person had been born in lawful wedlock to his
5 adoptive parents and had not been born to his natural parents.

6 (2) Where a person has been ~~{or shall be}~~ adopted ~~{in this state}~~ by his
7 stepparent, this section shall leave unchanged the relationship, rights and
8 obligations between such adopted person ~~{and his descendants}~~ and his
9 natural parent, who is the spouse of the person who adopted him ~~{, and the~~
10 ~~descendants and kindred of such natural parent}~~.

11 (3) *This section does not affect intestate succession upon the death of*
12 *natural or adoptive parents or adopted children.*

13 Section 287. ORS 109.326 is amended to read:

14 109.326. **Consent where parents not married to each other.** (1) The
15 consent of the mother of the child is sufficient, and for the purpose of
16 giving such consent the mother of the child shall be deemed to have arrived
17 at the age of majority and for all purposes relating to the adoption of the
18 child the father of the child shall be disregarded just as if he were dead,
19 when it is shown in the court in which the adoption proceedings are pending
20 that:

21 (a) The mother of the child was unmarried at the time of the conception
22 of the child to be adopted and remained unmarried at the time of the
23 birth of the child and was not married to the father of the child at the
24 time of her consent to the adoption or surrender of the child for the purpose
25 of adoption under ORS 418.270; or

26 (b) When the mother of the child was married at the time of the con-
27 ception or birth of the child, and it has been judicially determined that
28 her husband at such time or times was not the father of the child. Such
29 determination of nonpaternity may be made by any court having adoption
30 or juvenile court jurisdiction. The testimony or affidavit of the mother
31 or such husband shall constitute competent evidence before the court
32 making such determination. Before making such determination of non-
33 paternity, citation to show cause why such husband's parental rights should
34 not be terminated shall be served on him personally, if found in the state,

1 and if not found in the state, then a copy of the citation shall be published
2 or served in the manner provided by ORS ~~{116.750}~~ 15.110 to 15.140 for
3 the service of citation by publication or for personal service outside the
4 state; except that the citation so served by publication need not contain
5 the names of the adoptive parents.

6 (2) If the mother described in subsection (1) of this section is dead or
7 unknown, consent shall be obtained in the same manner as if such child
8 had no living parent.

9 Section 288. ORS 109.330 is amended to read:

10 109.330. **Notice to nonconsenting parent; notice where child has no**
11 **parent, guardian or next of kin.** (1) In the cases provided for in ORS
12 109.314, 109.322 and 109.324, where a parent does not consent to the adoption
13 of his child, the court shall order a copy of the petition therefor and
14 citation thereon to be served on him personally, if found in the state, and
15 if not found in the state, then a copy of the citation to be published or
16 served in the manner provided by ORS ~~{116.750}~~ 15.110 to 15.140 for the
17 service of citation by publication or for personal service outside the state,
18 and a copy of the citation to be deposited forthwith in the post office,
19 directed to such parent at his place of residence, unless it appears that such
20 residence is neither known to the petitioner nor can with reasonable dili-
21 gence be ascertained by him; except that the citation so served by publica-
22 tion need not contain the names of the adoptive parents.

23 (2) If the child has no living parent and no guardian or next of kin in
24 this state qualified to appear in its behalf, the court may order such notice,
25 if any, to be given as it deems necessary or proper.

26 Section 289. ORS 109.370 is amended to read:

27 109.370. **Appeal from decree on a petition for adoption.** ~~{Where a court~~
28 ~~other than the circuit court has probate jurisdiction,}~~ Any party to an adoption
29 proceeding *in the county court* may appeal to the circuit court from the
30 decree of the ~~{probate}~~ *county court* on a petition for the adoption of
31 another in like manner as appeals may be taken from the other decrees of
32 that court. If the appeal is by a child made the subject of such petition,
33 appearing by a next friend, no bond shall be required, or costs awarded
34 against such child or next friend.

1 Section 290. ORS 178.080 is amended to read:

2 178.080. **Collection of fines, penalties and forfeitures.** (1) The State
3 Treasurer, in his discretion, may appoint a collector to collect the amounts
4 of fines, penalties~~[,] and~~ forfeitures ~~[and escheats]~~ due or owing the State
5 of Oregon, and, in connection therewith, to make examinations of the
6 dockets of all courts other than of the Supreme Court. The collector may
7 examine all public records for gift tax and inheritance tax determinations
8 and evasions.

9 (2) The cost of all examinations, investigations and searches, and of all
10 traveling and other expenses in connection therewith, are to be appor-
11 tioned among the departments principally concerned therewith, pursuant
12 to agreements made between the State Treasurer and the departments;
13 but the entire cost so apportioned, exclusive of expenses involved in liti-
14 gated cases, shall not average more than \$300 per month for the state fiscal
15 year.

16 (3) The State Treasurer may institute legal proceedings in the name of
17 the State of Oregon, upon his relation or otherwise without joinder of any
18 other party, to effect collection of any fine, penalty~~[,] or~~ forfeiture ~~for~~
19 ~~escheat]~~ due the state and may charge the net cost of the proceedings to
20 the department in whose behalf suit or action was instituted.

21 (4) All judicial, municipal and county officers shall cooperate with the
22 State Treasurer with respect to the collections, searches and investigations
23 and shall furnish the State Treasurer with any information contained in
24 any of the records under their respective custodies relating thereto.

25 (5) The State Police Department shall cooperate in the investigation
26 of fines, penalties and forfeitures.

27 ~~[(6) All county clerks, upon request, shall furnish the State Treasurer with~~
28 ~~the titles of estates of deceased persons which have remained open for more than~~
29 ~~three years and in which no heirs, or only parties whose right to inherit the~~
30 ~~proceeds thereof is being contested, have appeared to claim the estates.]~~

31 **Section 291.** ORS 120.210, 120.220 and 120.230 are added to and made a
32 part of ORS chapter 179.

33 Section 292. ORS 120.210 is amended to read:

34 120.210. **Escheat of money or property deposited with institution on**

1 **death, escape or parole of inmate; notice and publication.** All money,
 2 certificates of deposit, securities, assets or other personal property which
 3 have been or shall be taken charge of by the officials of the state institu-
 4 tions listed in ORS 179.321, belonging to patients or inmates committed
 5 to any of such institutions and who die inmates thereof or escape or who
 6 are paroled therefrom, and which is not claimed by such person, or by the
 7 heirs or personal representative of such person within one year after such
 8 death, escape or parole, escheats to the state ~~for the benefit of the Common~~
 9 ~~School Fund~~, and without other or further proceeding shall be paid or
 10 turned over by the officials of the above institutions to the ~~State Land~~
 11 ~~Board, who~~ *Division of State Lands, which* shall issue therefor receipts
 12 in duplicate. One of the receipts shall be filed in the office of the Secretary
 13 of State. However, if such escheated money, certificates of deposit, se-
 14 curities or other personal property exceeds the sum of \$50, a notice of such
 15 escheated property shall be published under direction of the ~~State Land~~
 16 ~~Board~~ *Division of State Lands* in a newspaper of general circulation
 17 within the county in which such institution paying or turning over the same
 18 is situated, and also in a newspaper in the county from which the inmate
 19 was committed, once each week for not less than three consecutive weeks.
 20 The expense of such publication shall be paid out of the proceeds of the
 21 escheated property.

22 Section 293. ORS 120.220 is amended to read:

23 120.220. **Collection and disposition by Division of State Lands.** The
 24 money, certificates of deposit, securities or other personal property men-
 25 tioned in ORS 120.210 shall be collected or liquidated by the ~~State Land~~
 26 ~~Board~~ *Division of State Lands*, and the ~~board~~ *division* may sell, indorse
 27 and collect all such money, certificates of deposit, securities or other per-
 28 sonal property and place the proceeds thereof in the State Treasury ~~to the~~
 29 ~~credit of the Common School Fund~~.

30 Section 294. ORS 120.230 is amended to read:

31 120.230. **Owners' and representatives' right to reclaim property; limita-**
 32 **tion.** The money or the proceeds of ~~such~~ *the* certificates of deposit,
 33 securities or other personal property which ~~has~~ *have* escheated to the
 34 state under ~~the provisions of~~ ORS 120.210, may be reclaimed by the

1 original owner , or by his ~~for her~~ heirs~~]~~ or personal representatives, at
2 any time within 10 years after such escheat, in the same manner as property
3 belonging to estates of deceased persons which have escheated to the state.

4 Section 295. ORS 179.650 is amended to read:

5 **179.650. Appeal from order declaring financial ability; order effective**
6 **until modified.** (1) An appeal may be taken from the determination of
7 ~~the~~ a county court under ORS 179.640 to the circuit court , within 30 days
8 after the date of the entry thereof, and from the circuit court to the Su-
9 preme Court, in the ~~ordinary~~ manner ~~for taking appeals from orders of~~
10 ~~the probate court and, within 30 days from the entry of the order of the circuit~~
11 ~~court, to the Supreme Court] provided by ORS 5.120. An appeal may be~~
12 ~~taken from the determination of a circuit court under ORS 179.640 to the~~
13 ~~Supreme Court, within 30 days after the date of the entry thereof, in the~~
14 ~~manner provided by law for appeals from the circuit court.~~

15 (2) An order declaring the financial ability of the person at the state
16 institution, his estate or his responsible relatives to pay for care and main-
17 tenance of such person under ORS 179.640 shall remain in full force and
18 effect, unless modified by subsequent court or board orders.

19 Section 296. ORS 179.670 is amended to read:

20 **179.670. District attorney's duties in proceedings under ORS 179.640.**
21 (1) The district attorney, on request of the Board of Control or on request
22 of the probate court, shall appear in the probate court proceedings under
23 ORS 179.640 and present evidence with respect to the ability of the person
24 at the state institution or his estate or responsible relatives to pay the cost
25 of his care and maintenance in the state institution.

26 (2) If the Board of Control feels aggrieved by the order of the probate
27 court under ORS 179.640, the district attorney , on request of *and as directed*
28 *by the board* , shall appeal ~~such cause to the circuit court and the Supreme~~
29 ~~Court, or either, as directed] as provided in ORS 179.650.~~

30 Section 297. ORS 179.740 is amended to read:

31 **179.740. Collection of amounts due from estates.** (1) The board may
32 present and file a claim for any support money under subsection (3) of
33 ORS 179.620 in a proceeding upon the administration of the estate of any
34 deceased person who was at a state institution in like manner as other

1 claims of creditors are filed and with such priorities as are provided in
2 ~~ORS 117.110~~ section 152 of this 1969 Act.

3 (2) The board may petition any court of competent jurisdiction for
4 the issuance of letters of administration or testamentary in the estate of
5 any such person who was at a state institution who did not pay or for
6 whom was not paid the full amount of cost of his care and maintenance as
7 determined by ORS 179.701 and under the laws applicable to prior years.
8 However, the board shall not file a petition under this subsection until at
9 least 90 days after the death of the person who was at the state institution
10 and then only in the event that the person's estate is not otherwise being
11 probated.

12 (3) The board may compromise any claim against the estate of a de-
13 ceased person who was at a state institution during the pendency of the
14 probate proceeding by accepting other security therefor or in any other
15 manner deemed equitable. The board may waive payment of any such claim
16 in a case in which it finds that the enforcement thereof in whole or in part
17 would be inequitable.

18 (4) The recovery under subsections (1) to (3) of this section of any
19 claim against the estate of any deceased person who was at a state institu-
20 tion does not relieve any responsible relative from making payments
21 delinquent at the time of the person's release from or death in the institu-
22 tion in accordance with a determination of ability to pay under ORS 179.610
23 to 179.770 nor does it prevent the board from recovering such payments by
24 appropriate action. However, the board is not entitled under ORS 179.610
25 to 179.770 to recover amounts which exceed, in the aggregate, the total cost
26 of care and maintenance of the deceased person as computed under ORS
27 179.701 and under the laws applicable to prior years.

28 Section 298. ORS 419.488 is amended to read:

29 **419.488. Service of summons and process; travel expenses of person**
30 **summoned.** (1) Summons or other process issuing from the juvenile court
31 may be served without further indorsement in any county of the state by an
32 officer of the county in which the proceeding is pending, by an officer of
33 the county in which the person to be served is found or by any person
34 authorized by the court to serve the process. Except as otherwise provided

1 in ORS 419.472 to 419.587, the provisions of law applicable to summons in
2 civil cases apply to summons issued from juvenile court.

3 (2) If the parent, parents or guardian required to be summoned as
4 provided in subsection (4) of ORS 419.486 cannot be found within the state,
5 summons may be served on him or them in any of the following ways:

6 (a) If the address of the parent or guardian is known, by sending him a
7 copy of the summons by registered mail with a return receipt to be signed
8 by the addressee only.

9 (b) By personal service outside the state in the manner provided in
10 ~~subsection (3) of ORS 416.750~~ ORS 15.110.

11 (c) If, after reasonable inquiry, the whereabouts of the parent or guard-
12 ian cannot be ascertained, by publishing a summons in a newspaper having
13 general circulation in the county in which the proceeding is pending. In
14 lieu of the brief statement of facts required by subsection (2) of ORS
15 419.486, the published summons shall simply state that a proceeding con-
16 cerning the child is pending in the court and an order making an adjudica-
17 tion will be entered therein. The summons shall be published once a week
18 for a period of three weeks, making three publications in all. If the names
19 of one or both parents or the guardian are unknown, he or they may be
20 summoned as "The parent(s) or guardian of (naming or describing the
21 child), found (stating the address or place where the child was found)."

22 (3) Service as provided in this section shall vest the court with juris-
23 diction over the parents or guardian in the same manner and to the same
24 extent as if the person served were served personally within this state.

25 (4) The court may authorize payment of travel expenses of any person
26 summoned, as provided in ORS 139.140.

27 Section 299. ORS 427.085 is amended to read:

28 427.085. **Appeal from determination of mental deficiency.** Any proper
29 party who is dissatisfied with the determination of ~~the~~ a county court as
30 to mental deficiency as prescribed by ORS 427.059 may appeal to the circuit
31 court. Upon such appeal the circuit court shall appoint an examining board
32 to examine the person alleged to be mentally deficient. The board shall
33 consist of at least two physicians or one physician and one psychologist.
34 If the examining board certifies that the person is mentally deficient, the

1 certification and order of commitment, if any, of the *county* court shall
 2 be sustained. If the examining board does not certify that the person is
 3 mentally deficient, the circuit court may set aside the certification and
 4 order of commitment, if any, of the *county* court.

5 Section 300. ORS 697.165 is amended to read:

6 **697.165. License or certificate as personal privilege; procedure on death**
 7 **of licensee.** (1) Except as provided in subsection (2) of this section, any
 8 certificate or license granted under ORS 697.010 to 697.041, 697.061 to
 9 697.270, 697.290 and 697.440 to 697.470 shall be a personal privilege and shall
 10 not be assignable.

11 (2) Upon the death of any collection agency licensee, the Real Estate
 12 Division shall have the right to transfer the license of the decedent to the
 13 ~~executor or administrator~~ *personal representative* of his estate for the
 14 period of the unexpired term of the license and thereupon the court having
 15 jurisdiction of the probate of the estate of said decedent may authorize
 16 such ~~executor or administrator~~ *personal representative* to continue the
 17 collection agency business of the decedent pursuant to the provisions of
 18 ~~ORS 116.170 to 116.180~~ *section 127 of this 1969 Act*, and upon such other
 19 terms and conditions as the court may prescribe.

20 (3) The death of the operator of a corporate licensee shall in no way
 21 interfere with the continuation of the licensed business providing another
 22 licensed operator is placed in management control of the corporate licensee.

23 Section 301. ORS 697.695 is amended to read:

24 **697.695. Assignability of licenses; procedure on death of licensee.** (1)
 25 Except as provided in subsection (2) of this section, any license granted
 26 under ORS 697.610 to 697.655 and 697.660 to 697.785 is a personal privilege
 27 and shall not be assignable.

28 (2) Upon the death of any licensee the commissioner shall have the
 29 right to transfer the license of the decedent to the ~~executor or admin-~~
 30 ~~istrator~~ *personal representative* of his estate for the period of the unex-
 31 pired term of the license and thereupon the court having jurisdiction of
 32 the probate of the estate of said decedent may authorize such ~~executor~~
 33 ~~or administrator~~ *personal representative* to continue the business of debt
 34 consolidating formerly carried on by the decedent pursuant to the p

1 visions of ~~[ORS 116.170 to 116.180]~~ section 127 of this 1969 Act, and upon
2 such other terms and conditions as the court may prescribe.

3 Section 302. ORS 708.520 is amended to read:

4 708.520. **Disposition of deposit on death intestate of depositor.** (1) On
5 the death intestate of any depositor of any bank or trust company, such
6 bank or trust company may pay, if such depositor was married, to the sur-
7 viving spouse, or if there is no surviving spouse, to the surviving children
8 of lawful age, or if the depositor left no surviving spouse or children, to his
9 or her surviving parent or parents, or if there is no surviving spouse, sur-
10 viving child or surviving parent, to the depositor's surviving brothers
11 and sisters of lawful age, the moneys on deposit to the credit of the de-
12 ceased depositor in cases where the amount of deposit does not exceed
13 \$1,000, upon receipt of an affidavit from the surviving spouse, or if there
14 be no surviving spouse, from the surviving children of lawful age, or if the
15 depositor left no surviving spouse or children, an affidavit from his sur-
16 viving parent or parents, or if there be no surviving parent or parents, an
17 affidavit from such depositor's surviving brothers and sisters that the
18 depositor died intestate and had on deposit in all banks and trust com-
19 panies within the State of Oregon money not exceeding \$1,000.

20 (2) The affidavit shall show the relationship of the affiant or affiants
21 to the deceased depositor and shall embody a promise to pay the expenses
22 of last sickness and funeral expenses and just debts of the deceased out
23 of the deposit to the full extent thereof if necessary.

24 (3) The bank or trust company shall be obligated to determine the
25 relationship of the affiant or affiants to the deceased depositor.

26 (4) No probate proceeding is necessary to establish the right of the
27 surviving spouse or surviving children or surviving brothers and sisters
28 to withdraw the deposits upon the filing of an affidavit as in this section
29 provided. However, whenever an administrator is appointed in an estate
30 where a withdrawal of deposits has been had in compliance with the Bank
31 Act, the person so withdrawing the deposits shall account for them to the
32 administrator.

33 ~~[(5) The penalty provided in ORS 116.990 does not apply to transactions~~
34 ~~had under this section.]~~

1 **Part 2. Application of Act and Repeals**

2 **Section 303. Application of Act.** Except as specifically provided other-
3 wise in this Act, on the effective date of this Act:

4 (1) This Act applies to wills executed thereon or thereafter and pro-
5 ceedings concerning decedents dying thereon or thereafter. Wills executed
6 before the effective date shall be governed by the law then in effect, except
7 that such wills shall be considered lawfully executed if the application
8 of section 39 of this Act would make them so.

9 (2) The procedure prescribed by this Act applies to any proceedings
10 commenced thereon or thereafter regardless of the time of the death of
11 a decedent, and also as to any further procedure in proceedings then pend-
12 ing except to the extent that in the opinion of the court the former pro-
13 cedure should be made applicable in a particular case in the interest of
14 justice or because of infeasibility of application of the procedure pre-
15 scribed by this Act.

16 (3) A personal representative, guardian or conservator holding an ap-
17 pointment on that date shall continue to hold the appointment, but shall
18 have only the powers conferred and be subject to the duties imposed by
19 this Act with respect to any act occurring or done thereon or thereafter,
20 other than acts pursuant to powers or duties validly conferred or imposed
21 by a will executed before the effective date.

22 (4) An act done before the effective date in any proceeding and any
23 accrued right shall not be impaired by this Act. When a right is acquired,
24 extinguished or barred upon the expiration of a prescribed period of time
25 which has commenced to run by the provisions of any statute before the
26 effective date, those provisions shall remain in force with respect to that
27 right.

28 **Section 304. Status of headings and tables.** The article, part and section
29 headings or captions and the tables used in this bill are provided only for
30 the purposes of explaining and convenience in locating provisions of this
31 bill. They do not become part of the statutory law of this state. They do
32 not necessarily express any legislative intent in the enactment of this bill.

33 **Section 305. Repeals.** ORS 3.140, 3.180, 3.340, 5.040, 5.050, 5.070, 21.313,
34 93.170, 105.065, 111.010, 111.020, 111.030, 111.040, 111.050, 111.060, 111.0

1 111.110, 111.120, 111.130, 111.140, 111.150, 111.160, 111.170, 111.210, 111.212,
2 111.231, 112.050, 113.010, 113.020, 113.030, 113.040, 113.050, 113.060, 113.070,
3 113.080, 113.110, 113.120, 113.130, 113.140, 113.150, 113.160, 113.210, 113.220,
4 113.230, 113.240, 113.250, 113.260, 113.270, 113.280, 113.290, 113.410, 113.420,
5 113.430, 113.440, 113.450, 113.510, 113.520, 113.530, 113.540, 113.610, 113.620,
6 113.630, 113.640, 113.650, 113.660, 113.670, 113.680, 113.690, 114.010, 114.020,
7 114.030, 114.040, 114.050, 114.060, 114.070, 114.110, 114.120, 114.130, 114.140,
8 114.150, 114.210, 114.220, 114.230, 114.240, 114.250, 114.260, 114.270, 114.310,
9 114.320, 114.330, 114.340, 114.410, 114.420, 114.430, 114.440, 115.010, 115.020,
10 115.110, 115.120, 115.130, 115.140, 115.150, 115.160, 115.170, 115.180, 115.190,
11 115.200, 115.210, 115.220, 115.310, 115.320, 115.330, 115.340, 115.350, 115.410,
12 115.420, 115.430, 115.440, 115.450, 115.460, 115.470, 115.480, 115.490, 115.500,
13 115.510, 115.520, 115.990, 116.005, 116.010, 116.015, 116.020, 116.025, 116.105,
14 116.110, 116.120, 116.125, 116.130, 116.135, 116.140, 116.145, 116.150, 116.155,
15 116.160, 116.165, 116.170, 116.175, 116.180, 116.186, 116.190, 116.195, 116.305,
16 116.310, 116.315, 116.320, 116.325, 116.330, 116.335, 116.340, 116.405, 116.410,
17 116.415, 116.420, 116.425, 116.430, 116.435, 116.440, 116.445, 116.450, 116.455,
18 116.460, 116.465, 116.505, 116.510, 116.515, 116.520, 116.525, 116.530, 116.535,
19 116.540, 116.545, 116.550, 116.555, 116.560, 116.565, 116.570, 116.575, 116.580,
20 116.585, 116.590, 116.595, 116.705, 116.710, 116.715, 116.720, 116.725, 116.730,
21 116.735, 116.740, 116.745, 116.750, 116.755, 116.760, 116.765, 116.770, 116.775,
22 116.780, 116.785, 116.790, 116.795, 116.800, 116.805, 116.811, 116.815, 116.820,
23 116.825, 116.830, 116.840, 116.850, 116.860, 116.870, 116.880, 116.890, 116.900,
24 116.990, 117.010, 117.020, 117.030, 117.110, 117.120, 117.130, 117.140, 117.150,
25 117.160, 117.170, 117.180, 117.310, 117.315, 117.320, 117.330, 117.340, 117.350,
26 117.361, 117.370, 117.380, 117.390, 117.510, 117.520, 117.530, 117.540, 117.550,
27 117.560, 117.610, 117.612, 117.615, 117.620, 117.630, 117.640, 117.650, 117.660,
28 117.670, 117.690, 117.710, 118.420, 118.480, 118.500, 118.610, 118.620, 118.630,
29 118.650, 118.670, 118.680, 118.690, 120.010, 120.020, 120.030, 120.040, 120.050,
30 120.060, 120.070, 120.080, 120.090, 120.100, 120.110, 120.120, 120.140, 120.150,
31 120.310, 120.320, 120.330, 120.340, 120.350, 120.360, 120.370, 120.380, 120.390,
32 120.400, 121.030, 121.040, 121.050, 121.060, 121.070, 121.080, 121.100, 121.210,
33 121.220, 121.230, 121.240, 121.250, 121.260, 121.270, 121.280, 121.290, 121.300,
34 121.310, 121.320, 121.330, 121.340, 121.350, 121.360, 121.370, 126.011, 126.176,

1 126.300, 126.446, 126.611, 127.010, 127.020, 127.030, 127.040, 127.050, 127.060,
2 127.070, 127.080, 127.090, 127.100, 127.110, 127.120, 127.130, 127.140, 127.150,
3 127.160, 127.170, 127.180, 127.190, 127.310, 127.320, 127.330, 127.340, 127.350
4 and 722.385 are repealed.

5 **Section 306. Effective date.** This Act takes effect on July 1, 1970.



**TABLE SHOWING DISPOSITION
OF EXISTING STATUTE SECTIONS**

Column (1) lists every section of Oregon Revised Statutes that is included within or repealed by the bill proposing a new Oregon probate code. Column (2) indicates whether the ORS section listed is amended (A), or repealed (R). Column (3) indicates, in the case of an amended ORS section, the section of the bill that accomplishes the amendment; and, in the case of a repealed ORS section, the section of the bill that contains matter comparable to that found in the repealed ORS section.

(1)	(2)	(3)	(1)	(2)	(3)
3.101	A	263	113.030	R	112
3.130	A	264	113.040	R	116
3.140	R	5, 6	113.050	R	112
3.180	R	2	113.060	R	116
3.340	R	5, 6	113.070	R	103
5.040	R	5	113.080	R
5.050	R	8	113.090	A	79
5.070	R	113.110	R
5.080	A	265	113.120	R
5.100	A	266	113.130	R
7.230	A	267	113.140	R
12.190	A	268	113.150	R
13.080	A	269	113.160	R
21.313	R	113.210	R
23.260	A	270	113.220	R
41.520	A	271	113.230	R
46.092	A	272	113.240	R
91.020	A	273	113.250	R
91.030	A	274	113.260	R
93.170	R	113.270	R
93.190	A	275	113.280	R
93.240	A	276	113.290	R
93.420	A	277	113.410	R
94.330	A	278	113.420	R
97.130	A	279	113.430	R
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107.280	A	285	113.540	R
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**TABLE SHOWING SOURCE
FROM EXISTING STATUTE SECTIONS
OF BILL SECTIONS**

Column (1) lists every section of the bill proposing a new Oregon probate code. Column (2) indicates whether the bill section is new (N) or an amendment of an existing section of Oregon Revised Statutes (A). Column (3) indicates, in the case of a new section derived from or containing subject matter comparable to that found in an existing ORS section, the ORS section; and, in case of an amendment of an existing ORS section, the ORS section.

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3	N	-----	62	N	111.060
4	N	-----	63	N	111.060
5	N	3.140, 3.340, 5.040	64	N	111.060
6	N	3.140, 3.340, 117.510 to 117.560	65	N	111.060
7	N	5.120	66	N	111.060
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14	N	-----	73	A	112.040
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18	N	-----	77	N	-----
19	N	111.020, 111.030	78	N	-----
20	N	111.020, 111.030	79	A	113.090
21	N	111.020, 111.030	80	N	115.330
22	N	111.020, 111.030	81	N	115.140, 115.310
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267	A	7.230
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269	A	13.080
270	A	23.260
271	A	41.520
272	A	46.092
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274	A	91.030

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276	A	93.240
277	A	93.420
278	A	94.330
279	A	97.130
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281	A	105.050
282	A	105.340
283	A	107.100
284	A	107.110
285	A	107.280
286	A	109.041
287	A	109.326
288	A	109.330
289	A	109.370
290	A	178.080
291	N	.....
292	A	120.210
293	A	120.220
294	A	120.330
295	A	179.650
296	A	179.670
297	A	179.740
298	A	419.488
299	A	427.085
300	A	697.165
301	A	697.695
302	A	708.520
303	N	.....
304	N	.....
305	N	.....
306	N	.....