

Chapter 127

Conserving Property of Missing Persons

MISSING PERSONS GENERALLY

- | | | | |
|---------|--|---------|--|
| 127.010 | Petition that property of missing person requires attention | 127.140 | Accounting by trustee |
| 127.020 | Notice of hearing; publication | 127.150 | Return of missing person; accounting by trustee |
| 127.030 | Hearing by court; appointment of trustee of property | 127.160 | Delivery of property in possession of trustee |
| 127.040 | Qualification and bond of trustee | 127.170 | Appointment of successor trustee |
| 127.050 | Inventory and appraisal of property | 127.180 | Trustee's duties upon commencement of administration of estate of missing person as being that of a decedent |
| 127.060 | Duties and powers of trustee | 127.190 | Exhaustion of property; settlement of estate |
| 127.070 | Contract by missing person to convey realty; deed by trustee | | |
| 127.080 | Borrowing of money by trustee; security | | |
| 127.090 | Sale of corpus by order of court | | |
| 127.100 | Petition for sale of property; citation of interested persons | | |
| 127.110 | Order of sale; filing of additional undertaking by trustee | | |
| 127.120 | Notice of sale; mode of selling | | |
| 127.130 | Report of sales by trustee; confirmation; conveyance of property | | |

PERSONS MISSING DURING WAR

- | | |
|---------|--|
| 127.310 | Appointment of conservator to care for absentee's estate |
| 127.320 | Bond and reports of conservator; powers |
| 127.330 | Support for dependents |
| 127.340 | Appointment of attorney; fees |
| 127.350 | Termination of conservatorship; death of absentee |

CROSS REFERENCES

127.010
Estates of persons presumed dead, Ch. 120
Release of dower or courtesy right of persons adjudged to be missing persons, 113.680

127.040
Bonds and undertakings, deposits in lieu of, Ch. 22

127.070
Presumption that trustee under duty to execute deed has done so, 41.360(39)

127.130
Presumption that trustee under duty to execute deed has done so, 41.360(39)

127.310
Release of dower or curtesy right of persons adjudged to be missing persons, 113.680

127.320
Bonds and undertakings, deposits in lieu of, Ch. 22

MISSING PERSONS GENERALLY

127.010 Petition that property of missing person requires attention. Whenever any person, resident or nonresident of this state, who owns or is entitled to the possession of any real or personal property situate in this state, is missing or his whereabouts is unknown for 90 days, upon presentation of a verified petition of a member of his family, business associate or friend to the court having probate jurisdiction in the county of the residence of such missing person, or in the county in which the property, or the major portion thereof, of the missing person is situate, representing that his whereabouts has been for such time and still is unknown and that his property requires attention, supervision and care, the court shall appoint a day for hearing, not less than 15 days from the date of the order directing such hearing.

127.020 Notice of hearing; publication. Upon the filing of such petition, the clerk of the court shall cause to be published prior to the date of hearing in a newspaper published in the county, once a week for two successive weeks, a notice that such petition will be heard at the court room of the court at the time appointed by the court. The court may direct further notice of the application to be given in such manner and to such persons as it may deem proper. Proof of publication shall be filed with the clerk of the court.

127.030 Hearing by court; appointment of trustee of property. At the time designated for the hearing, or at any subsequent time to which the hearing may be postponed, the court shall hear the petition and the evidence offered in support of or in opposition thereto, and, if satisfied that the allegations thereof are true and that such person remains missing and his whereabouts unknown, shall appoint some suitable person to take charge and possession of all the property of the missing person, to manage and control it under the direction of the court.

127.040 Qualification and bond of trustee. (1) The trustee appointed pursuant to ORS 127.030 shall be a resident of the county in which the application is filed and shall have all the qualifications prescribed by law for an administrator or executor of an estate of a deceased person. The preference for the appointment shall be the same declared by law for administrators.

(2) Every trustee appointed under the provisions of ORS 127.010 to 127.190 shall give bond in a sum to be fixed by the court with either two or more competent personal sureties or a qualified corporate surety, conditioned that the trustee will at all times obey the orders of the court and faithfully account for all moneys and property of the trust.

127.050 Inventory and appraisal of property. The trustee shall, within 15 days after his appointment, or within such further time as the court may allow, make and file with the clerk of the court an inventory verified by his own oath of all the real and personal property, moneys, notes, choses in action and accounts owned by or due to the missing person, specifying each item separately, which shall come to his possession or knowledge, and shall cause all of such property to be separately appraised at its true cash value by three disinterested and competent persons, appointed by the court irrespective of the situs of the property, who shall each take and subscribe an oath to be filed with the inventory to the effect that he will impartially appraise the property of the missing person according to the best of his knowledge and ability.

127.060 Duties and powers of trustee. The trustee shall take possession of the property within this state of the missing person and shall collect and receive the rents, income and profits thereof and collect all debts, dues and credits owned by the missing person, and pay the expenses thereof out of the trust funds; pay all indebtedness of the missing person if and when authorized by the court; operate the property of the missing person if operation thereof is advisable, and pay all expenses of such operation; sell all or any portion of the property of the missing person, when authorized by the court, in the manner provided in ORS 127.090 to 127.130, and may mortgage and hypothecate the real and personal property of the missing person when duly authorized so to do by the court. The court may direct the trustee to pay to the person or persons constituting the dependent members of the family of the missing person such sum or sums of money for family expenses and support from the income of the estate, or from the proceeds of the sale or hypothecation of the property of the estate, as it may from time to time determine.

127.070 Contract by missing person to convey realty; deed by trustee. If any missing person was, at the time of his or her disappearance, a party to a bond for a deed or other enforceable contract requiring the missing person to convey real estate, the interest and title of the missing person may be conveyed by the trustee appointed under the terms of ORS 127.010 to 127.190 upon full compliance with the terms and conditions of such bond or contract by the other party thereto, and a deed so made shall transfer the same title as though made by the missing person.

127.080 Borrowing of money by trustee; security. A trustee appointed under the terms of ORS 127.010 to 127.190 may, with the consent of the court making the appointment, borrow money upon any property belonging to the estate and execute a mortgage thereon as security for the loan at such rate of interest and upon such terms as the court shall prescribe, for the purpose of funding the indebtedness against the missing person or for the purpose of paying interest on outstanding obligations that are liens upon the premises to be mortgaged, or for the purpose of securing funds for the payment of the expenses of administration, taxes or indebtedness of the missing person, or for the purpose of securing funds to support the dependent members of the family of the missing person, when it is shown by verified petition to the satisfaction of the court to be necessary, whether the property has or has not before that time been mortgaged by the missing person.

127.090 Sale of corpus by order of court. When the rents, income and profits of operation of the property of the missing person are exhausted or insufficient to pay the charges, expenses, claims and indebtedness and the support of the dependent members of the family of the missing person, the trustee may sell the property of the estate, or so much thereof as may be necessary for that purpose; provided, that whenever it appears to the satisfaction of the court that it is for the best interests of the estate of the missing person that the property, or any part thereof, should be sold, the court may order the property, or any part thereof, to be sold for the purpose of reducing the property into cash.

127.100 Petition for sale of property; citation of interested persons. Upon the fil-

ing of a petition for the sale of property, a citation shall issue directed to each dependent member of the family of the missing person and to every person who would be an heir at law of the missing person if he were dead, and, if it appears that the missing person left a will, to each legatee and devisee mentioned in the will, and to all other persons, if any, interested in the property of the estate to appear within 10 days from the date of the service of such citation if served within the county wherein the proceeding is pending, or within 20 days if served within any other county in this state if personally served, or, if served by publication or personal service without the state, within 28 days from the date of the first publication thereof or date of service of the citation without the state, to show cause, if any exists, why an order of sale should not be made as prayed for in the petition.

127.110 Order of sale; filing of additional undertaking by trustee. If, upon the hearing, the court finds that it is necessary or expedient that any portion of the property be sold, it shall make the order accordingly and prescribe the terms of the sale, whether cash or credit, or both. Unless it appears to the satisfaction of the court that the amount of the undertaking of the trustee previously given is equal to the probable value of the property ordered sold, the court must require the trustee to give an additional undertaking in such sum as it may fix, to be void upon the condition that the trustee accounts for and disposes of the proceeds of the sale according to law. Before proceeding to sell any property of the missing person under such order of sale, the trustee must file with the clerk of the court any additional undertaking so required of him, duly approved by the court.

127.120 Notice of sale; mode of selling. If the sale is of personal property, notice thereof shall be given in the manner and for and during the time prescribed by law for sales of personal property upon execution. If the sale is of real property, such property shall be sold at public auction as like property is sold on execution, after giving notice once a week for four weeks successively in a newspaper published in the county in which the property to be sold is situate, which notice shall state the terms of sale and that the same is subject to confirmation by the court.

127.130 Report of sales by trustee; confirmation; conveyance of property. The trustee shall report to the court such sale or sales of the property of the missing person and if the court is satisfied that the proceedings are regular and that the sum for which the property was sold is not disproportionate to the value thereof, the court shall confirm such sale or sales and direct the trustee to make a proper bill of sale of the personal property and a proper conveyance of the real property to the purchaser or purchasers thereof.

127.140 Accounting by trustee. The trustee, on the first Monday in April and the first Monday in October of each year, shall file with the court a semiannual account exhibiting all receipts and expenditures during the preceding six-months' period and shall show therein the condition of all the property of the missing person.

127.150 Return of missing person; accounting by trustee. In the event the missing person returns, the court, upon the application of such person or upon its own motion, shall require the trustee to render and file a verified account of the administration of the trust. The provisions of the law relating to final accounts of administrators and executors shall apply with reference to the form and contents of such final account.

127.160 Delivery of property in possession of trustee. Upon settlement of the accounts of the trustee, the court shall order the property of the missing person remaining in the hands of such trustee to be delivered to the owner thereof.

127.170 Appointment of successor trustee. In the event of the death, resignation, removal or disability of the trustee, the court shall have the power, upon petition, to appoint a successor trustee without notice or formal hearing.

127.180 Trustee's duties upon commencement of administration of estate of missing person as being that of a decedent. If, during the existence of a trust provided for in ORS 127.010 to 127.190, administration of the estate of such missing person is instituted under the provisions of the law relative to the administration of the estates of deceased persons, the court shall require an accounting as provided in ORS 127.150 and shall order the property of the missing person remaining in the hands of the trustee

to be delivered to the administrator or executor of the estate.

127.190 Exhaustion of property; settlement of estate. Whenever all the property of the missing person has been exhausted in the payment of debts, charges of administration, taxes and support of family dependents, the trustee shall file a final account and close the trust estate in the same manner and form, including notice, as provided by law for settlement of estates of deceased persons.

127.200 to 127.300 [Reserved for expansion]

PERSONS MISSING DURING WAR

127.310 Appointment of conservator to care for absentee's estate. Whenever a person, hereafter in ORS 127.310 to 127.350 referred to as an absentee, has been reported or listed as missing, or missing in action, or interned in a neutral country, or beleaguered, besieged or captured by an enemy, has an interest in any form of property in this state and is a legal resident of this state and has not provided an adequate power of attorney authorizing another to act in his behalf in regard to such property or interest, then the court having probate jurisdiction in the county of the absentee's legal domicile or of the county where the property is situated, upon petition alleging the foregoing facts and showing the necessity for providing care of the property of the absentee, made by any person who would have an interest in the property of the absentee were the absentee deceased, or on the court's own motion, after notice to or receipt of proper waivers from all the heirs or next of kin of the absentee as provided by law for the administration of an estate, and upon good cause being shown, may, after finding the facts to be as aforesaid, appoint a conservator to take care of the absentee's estate, under the supervision and subject to the orders of the court.

127.320 Bond and reports of conservator; powers. The court has discretionary authority to appoint any suitable person as such conservator and may require the conservator to post an adequate bond and make such reports as the court may deem necessary. The conservator shall have the same powers and authority as the guardian of the property of an infant or incompetent

and shall be considered an officer of the court.

127.330 Support for dependents. The court is authorized to order the conservator to provide support for any person dependent upon the absentee for support or for the wife and minor children of the absentee, out of the assets of the absentee's estate.

127.340 Appointment of attorney; fees. In case of legal controversy involving the absentee's estate or any part thereof, the court is authorized to appoint an attorney to appear and represent the interests of the absentee therein. The attorney ad litem so appointed shall stand in the relation of attorney for the absentee, and reasonable fees for service rendered may by the court be ordered paid from the estate by the conservator.

127.350 Termination of conservatorship; death of absentee. At any time, upon petition signed by the absentee, or on petition of an attorney in fact acting under an adequate power of attorney granted by the absentee, the court shall direct the termination of the conservatorship and the transfer of all property held thereunder to the absentee or to the designated attorney in fact. Likewise, if at any time subsequent to the appointment of a conservator it appears that the absentee has died and an executor or administrator has been appointed for the estate, the court shall direct the termination of the conservatorship and the transfer of all property of the deceased absentee held thereunder to such executor or administrator.