Chapter 116

1957 REPLACEMENT PART

Administration of Estates

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SUPPORT OF SURVIVING SPOUSE AND MINOR CHILDREN

116.005 Possession of homestead, wearing apparel and furniture before inventory; provision for support. Until administration of the estate is granted and the inventory filed, the surviving spouse and minor children of the deceased are entitled to remain in the possession of the homestead, all the wearing apparel of the family and household furniture of the deceased. The widow and minor children shall also have a reasonable provision for their support during such period, to be allowed by the court.

116.010 Setting apart property exempt from execution. Upon the filing of the inventory the court or judge thereof shall make an order setting apart for the widow, widower or minor children of the deceased, if any, all the property of the estate exempt from execution, according to exemption laws in effect as of date of death of deceased. The property thus set apart is the property of such widow or widower to be used or expended by her or him in the maintenance of herself or himself and minor children, if any. If there is no widow or widower, it is the property of the minor child; or if more than one child, then of the minor children in equal shares, to be used or expended in the nurture and education of such child or children by the guardian thereof, as the law directs.

116.015 Further order for support. If the exempt property described in ORS 116.010 is insufficient for the support of the widow and minor children, according to their circumstances and condition in life, for one year after the filing of the inventory, the court or judge thereof may order that the executor or administrator pay to such widow, if any, and if not, then to the guardian of such minor children, an amount sufficient for that purpose; but such order shall not be made unless it appears probable that the estate is sufficient to satisfy all the debts and liabilities of the deceased and pay the expenses of administration in addition to the payment of such amount.

116.020 Small estates; setting apart to surviving spouse and children; termination of administration. If upon filing the inventory of the estate of an intestate decedent who died leaving a spouse or minor children, it appears from the inventory that the value of the estate does not exceed $1,000 over and above property exempt from execution, the court or judge thereof shall make a decree providing that the whole of the estate, after the payment of funeral expenses and expenses of administration, be set apart for such spouse or minor children in like manner and with like effect as in case of property exempt from execution. There shall be no further proceeding in the administration of such estate unless further property is discovered. [Amended by 1957 c.352 §1]

116.025 When estate all to be deemed assets. If an intestate leaves neither surviving spouse nor minor children, all the property of the estate is assets in the hands of the administrator for the payment of funeral expenses, expenses of administration, the debts of the deceased or distribution according to law.

116.030 to 116.100 [Reserved for expansion]

POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS GENERALLY

116.105 Possession and control of property. The executor or administrator is entitled to the possession and control of the property of the deceased, both real and personal, and to receive the rents and profits thereof until the administration is completed or the same is surrendered to the heirs or devisees by order of the court or judge thereof; but where any such property is in the possession of a third person by virtue of a valid subsisting lease or bailment, the possession and control of the executor or administrator is subordinate to the right of the lessee or bailee. During the time the property is in the possession or control of the executor or administrator, it is his duty to keep the same in repair and preserve it from loss or decay as far as possible.

116.110 Performance of contract to convey. (1) If any deceased person was at the time of his death a party to a bond for a deed or other enforcible contract requiring him to convey real estate, the interest and title of the deceased may be conveyed by his executor or administrator upon full compliance with the terms and conditions of such bond or contract by the other party thereto, and a deed so made transfers the same title as though made by the deceased if living.

(2) Such conveyance shall be made upon report to the judge of the court in which

the estate of such deceased person is being administered, showing that all the terms and conditions of the bond or contract have been met so as to entitle the other party thereto to a conveyance, and the judge shall, if satisfied therewith, thereupon make an order authorizing and directing the execution and delivery of the requisite deed to the proper parties.

116.115 [Reserved for expansion]

116.120 Right to file notice of and perfect lien. If any person who is entitled to a lien under the provisions of any statute of this state dies prior to the expiration of the time allowed by law for the filing of notice of such lien or otherwise perfecting the same, the executor, administrator or legal representative of such person has the same rights to file notice and to perfect the lien that his testator or intestate would or might have, if living.

116.125 Power to borrow money. An executor or administrator, with the consent of the court in which the estate is being administered, may borrow money upon any property belonging to the estate and execute a mortgage thereon as security, at such rate of interest and upon such terms as the court shall prescribe, for the purpose of funding the indebtedness against the estate or for the purpose of paying the interest on outstanding obligations that are liens on premises to be mortgaged, or for the purpose of securing funds for the payment of expenses of administration, taxes or indebtedness of the estate of decedent, or for the purpose of paying off homestead, dower, curtesy or exempt property rights, when it is shown by verified petition to the satisfaction of the court to be necessary, whether such property has or has not before that time been mortgaged by the decedent or his executor or administrator.

116.130 Executor or administrator may compound for debts due estate. Whenever a debtor of a deceased person is unable to pay all his debts, an executor or an administrator, by order of the court or judge thereof, may compound with him and give him a discharge upon receiving a fair and just proportion of his effects; but if such compounding is procured or induced by the false or fraudulent representations or conduct of such debtor, such payment shall only operate to discharge a like amount of the debt.

116.135 Medium of compromise of secured debts; bonds of federal corporations. The court having jurisdiction of the estate of a deceased person, may, on the application of the executor or administrator of the estate, authorize the executor or administrator, by order of the judge thereof, to compromise any debt owing the estate secured by mortgage on real property, or by mortgage on real and personal property, and by such compromise to accept in lieu thereof bonds issued by the Home Owners' Loan Corporation, organized pursuant to Act of Congress of June 13, 1933, and the bonds of the Federal Farm Mortgage Corporation, and the bonds of any other corporation, all the stock of which is owned beneficially by the United States, either directly or indirectly, or to accept part cash and the balance in such bonds, as the executor or administrator and the court shall deem to be for the best interests of the estate, and to give a discharge to such debtor upon receiving such bonds, or bonds and cash; but if such compromising is procured or induced by false or fraudulent representations of the debtor, such payment shall operate only to discharge a like amount of his debt.

116.140 Right to redeem mortgaged property. If the deceased left any property, real or personal, under mortgage, and did not devise or provide for the redemption of the same by will, the court or judge thereof, upon the application of the executor or administrator, or the application of an heir or creditor, or other person interested in the estate, may order the executor or administrator to redeem such property out of the proceeds of the other personal property, if it appears that such redemption would be for the interest of the estate, and not prejudicial to creditors.

116.145 Order for sale where redemption deemed improper. If, upon such application, such redemption is deemed improper or inexpedient, the court shall order such property to be sold as is provided in other cases of the sale of real property by ORS 116.705 to 116.830. The conveyance to the purchaser shall convey to him all the estate, right and interest which the deceased would have had in the property had not the same been mortgaged by him.

116.150 Citation to mortgagee or payee; application of proceeds of sale. Ten days before making an order for the application of

the proceeds of such sale, the mortgagee or other person to whom the debt which is secured by such mortgage is payable shall be cited to appear and show the amount of his debt, and make his objections, if any, to the report of the expenses of the proceeding and sale as claimed by the executor or administrator. Thereupon the court shall order that the proceeds of the sale be applied first to the payment of the proper expenses of the proceeding and sale, and secondly, to the satisfaction of such debt, and the residue, if any, in due course of administration.

116.155 Inapplicability of sections to certain mortgages and liens. ORS 116.140, 116.145 and 116.150 do not include a mortgage which has been foreclosed, or upon which a suit has been commenced for foreclosure, before the application for the order of redemption or sale is made, nor to any other lien arising upon judgment or decree given against the deceased in his lifetime.

116.160 Satisfaction of debt not due. If the debt secured by the mortgage mentioned in ORS 116.140 is not due at the time of the making of the order for redemption or application of the proceeds of sale, the party to whom it is payable is entitled to receive in satisfaction thereof such sum as may be ascertained to be equal to the present value thereof.

116.165 Power to redeem property sold at foreclosure or execution sale. Any executor or administrator of an estate of any decedent may redeem, for the benefit of the estate, any real estate belonging to the estate which may at any time be sold at public auction, either by decree of court on foreclosure of mortgage or upon judgment, in the same manner and upon the same terms that property may be redeemed by any debtor.

116.170 Authority of executor or administrator to continue a business. In all cases where a person dies while engaged in any trade or business, other than a trade or business in which the decedent was engaged as a partner, the court having jurisdiction of the administration of the estate of such decedent may, in its discretion, authorize the executor or administrator of the estate to continue and carry on such trade or business for a period not to exceed 12 months after the death of the decedent. The court shall require such executor or administrator to file such additional undertaking, conditioned upon his faithfully carrying out his trust and all orders of the court, as the court shall direct and approve. Nothing in this section shall affect the provisions of ORS 709.240, relating to a trust company acting as executor or administrator.

116.175 Debts incurred in operating a business. In the conduct of a trade or business, the executor or administrator shall keep full and accurate account of all receipts and expenditures, and also of all accounts payable and receivable, and shall make monthly reports thereof to the court. All debts contracted by the executor or administrator, including moneys borrowed, shall constitute expenses of administration.

116.180 Discontinuance of business or modification of authority. (1) Any person interested in the estate may at any time petition the court for an order requiring the executor or administrator to discontinue and wind up the trade or business or for an order modifying or limiting authority theretofore conferred. The petition shall be served upon the executor or administrator, or his attorney of record, in the manner provided by law for the service of pleadings, and shall be heard by the court upon 10 days' notice to such executor or administrator. At that time the court shall hear the testimony of the respective parties and may, in its discretion, require an audit or such additional information as may be necessary for a complete understanding of the issues, and shall then enter such order as may be to the best interests of the estate.

(2) Whether or not a petition therefor has been filed, the court may at any time order the discontinuance and winding up of the business.

116.185 Delivery of personal property and payment of indebtedness to foreign representative of nonresident decedent. (1) Whenever any nonresident of this state dies leaving personal property within this state or a cause of action for the recovery of a money judgment against any person residing or who may be found in this state, the person in possession of such personal property may deliver the same, or the obligor upon such indebtedness may pay the same, after 30 days notice in writing to the Treasurer of the State of Oregon and not sooner than 90 days after the death of the nonresident, to the foreign executor or administrator of the estate of such nonresident decedent.

(2) Such payment or delivery shall be a complete acquittance and satisfaction, unless, prior thereto, written demand shall have been made upon such obligor or possessor of personal property by an executor or administrator of such estate appointed by any court of this state.

(3) This section does not apply to any payment, delivery or obligation of a fair value in excess of $500.

(4) This section shall not be deemed to modify the provisions of ORS 118.440.

116.190 Recording of copies of records in other counties wherein real property is situated. (1) If any real property belonging to an estate of a deceased person is situated in any county other than that in which the estate is being administered, the administrator or executor of the estate shall cause to be recorded in the deed records of each of such counties a certified copy of the will, if any; petition for appointment of executor or administrator; order appointing executor or administrator and order determining heirship, if any.

(2) If any such real property has been sold during the administration of such estate, the administrator or executor shall also cause to be recorded in the deed records of the county where such real property is situated a certified copy of so much of the proceedings in relation to the administration of such estate as will be necessary to show the authority of the executor or administrator to sell such property.

(3) If any real property situated in any county other than that in which the estate is being administered has not been sold during the administration of the estate the administrator shall cause to be recorded in the deed records of such county a certified copy of the order approving the final account of an order decreeing that all expenses of administration, all taxes and all other known lawful claims against the estate have been fully satisfied and discharged and the administration, so far as it relates to the presentation and allowance of claims, has been completed.

116.195 Discharge of representative conditioned on compliance with ORS 116.190; filing order of discharge. No order shall be made discharging an executor or adminstrator, until it appears to the satisfaction of the court that the provisions of ORS 116.190 have been complied with fully, and when the estate is closed a certified copy of the order of discharge and of closing the estate shall be filed by the executor and administrator in every county of the state where any real property belonging to the estate of the deceased person is situated.

116.200 to 116.300 [Reserved for expansion]

DISCOVERY OF ASSETS

116.305 Proceedings in case of refusal to disclose property. Whenever it appears probable from an affidavit of an executor, administrator, heir or other person interested in the estate, that any person has concealed or in any way secreted or disposed of any property of the estate or any writing relating or pertaining thereto, or that any person has knowledge of any such property or writing being so concealed, secreted or disposed of, and refuses to disclose the same to the executor or administrator, the court or judge thereof, upon the application of the executor or administrator, may cite such person to appear and answer under oath concerning the matter charged.

116.310 Mode of examination. Such examination may be oral or upon written interrogatories filed by the applicant, but in either case the answers of the person cited shall be reduced to writing, and subscribed by him and filed. If such person is not in the county where administration is granted, the proceeding may be either before the court or judge thereof of such county, or before the court or judge thereof of the county where such person resides or may be found. In the latter case, a certified copy of the written interrogatories, if any, and the examination or other proceeding thereon or connected therewith, shall be filed with the clerk of the court where administration is granted.

116.315 Proceedings in case such person refuses to appear or answer. If the person cited refuses to appear, or to answer such interrogatories as may be allowed to be put to him touching the matter charged, he may be punished for a contempt, or may at once be committed, by the warrant of the judge, to the county jail, there to remain in close custody until he submits to the order of the court or judge.

116.320 Person intrusted with property of estate compelled to account. The court or judge thereof, upon the application of the

executor or administrator, may cite any person who has been intrusted with any of the property of the deceased, to appear and answer concerning the same when it appears probable that such person refuses or neglects to render to the executor or administrator a true account thereof. The application shall be made and the proceeding conducted in the manner prescribed in ORS 116.305 to 116.315.

116.325 Damages for embezzlement, alienation or conversion of property before administration granted. If any person, before administration is granted, embezzles, aliens or in any way converts to his own use any of the property of a deceased person, he is liable to the executor or administrator in double the amount of damages which may be assessed therefor.

116.330 Avoidance of acts of decedent in fraud of creditors. Whenever the assets of the estate are insufficient to satisfy the funeral charges, expenses of administration and the claims against the estate, and the deceased in his lifetime made or suffered any conveyance, transfer or sale of any property, or any right or interest therein, with intent to delay, hinder or defraud creditors, or when such conveyance, transfer or sale was so made or suffered that the same is void in law as against creditors, or when the deceased in his lifetime suffered, consented or procured any judgment or decree to be given against him with such intent or in such manner as to be likewise void, such executor or administrator shall make application by petition to the probate court or judge thereof for leave to commence and prosecute to final judgment or decree the necessary and proper actions, suits or proceedings to have such conveyance, transfer, sale, judgment or decree declared void, and the property affected thereby discharged from the effect thereof.

116.335 Order allowing proceedings therefor. If upon the application it appears to such court or judge that the assets are insufficient for the purposes specified in ORS 116.330, and that it is probable that the conveyance, transfer, judgment or decree was made, suffered, consented to or procured with the intent or in the manner specified in such section, it shall make the order directing the proceedings to be commenced and prosecuted as to any or all of the matters alleged in the petition and necessary to supply the deficiency in the assets.

116.340 Disposition of property recovered. The property recovered by means of any proceeding pursuant to ORS 116.330 and 116.335 is to be sold and appropriated to supply the deficiency mentioned in ORS 116.330 in the same manner as other like property; but the right to or interest in the surplus, if any, remains as if such proceeding had not been allowed or commenced.

116.345 to 116.400 [Reserved for expansion]

INVENTORY AND APPRAISAL

116.405 Inventory of estate; when and how made. An executor or administrator shall, within one month from the date of his appointment, or, if necessary, such further time as the court or judge thereof may allow, make and file with the clerk an inventory, verified by his own oath, of all the real and personal property of the deceased which shall come to his possession or knowledge.

116.410 Money of deceased and debts due deceased. The inventory shall contain an account of all money belonging to the deceased, or a statement that none has come to the possession or knowledge of the executor or administrator; also a statement of all debts due the deceased, the written evidence thereof, the security therefor, if any exists, specifying the name of each debtor, the date of each written evidence of debt, and security therefor, the sum originally payable, the indorsements thereon, if any, and their dates, and the sum appearing then to be due thereon.

116.415 Property discovered after filing inventory. If, after the filing of the inventory, property not mentioned therein shall come to the knowledge or possession of the executor or administrator, he shall immediately make an inventory thereof, and cause it to be appraised in the manner prescribed in ORS 116.420 to 116.445, and file the same with the clerk.

116.420 Appraisement; appointment of appraisers. Before the inventory is filed, the property therein described shall be appraised at its true cash value by three disinterested and competent persons, who shall be appointed by the court; provided, that the court may, in its discretion, appoint but one

appraiser if the probable value of the estate does not exceed $10,000, exclusive of cash and securities of the United States Government. If any part of the property is in a county other than that wherein the administration is granted, the appraiser or appraisers thereof may be appointed by such court, or the court of the county in which the property is located. In the latter case, a certified copy of the order of appointment shall be filed with the inventory. [Amended by 1957 c.364 §1]

116.425 Compensation of appraisers. (1) Each appraiser is entitled to receive compensation not in excess of the following rates:

(a) For appraising real estate, $1 per $1,000 of appraised value on the first $100,000, and 50 cents for each $1,000 thereafter.

(b) For appraising listed securities and insurance, 25 cents per $1,000 of appraised value.

(c) For appraising unlisted over-the-counter securities, other than those mentioned in paragraph (d), $1 per $1,000 of appraised value.

(d) For appraising an interest in a partnership or stock in a closed corporation, $1 per $1,000 of appraised value, on the first $100,000, and 50 cents for each $1,000 thereafter.

(e) For appraising cash, nothing.

(f) For appraising other property, $1 per $1,000 of appraised value on the first $100,000, and 50 cents for each $1,000 thereafter. The rates provided for in this paragraph shall include the appraisal of mortgages on real and personal tangible property, conditional sales contracts thereon, and contracts receivable for sale thereof, and all other secured obligations of similar character, but shall not be deemed to include corporate bonds or debentures.

(2) These allowances shall not be increased solely because the estate's interest in property is less than an entire interest. These allowances may be increased upon showing of an extraordinary amount of work necessary to be done, and if such a showing is made, the appraisers shall be paid for such extraordinary work at a fair compensation to be fixed by the judge.

(3) In addition to compensation provided in this section, the appraisers shall be allowed their actual and necessary traveling expenses.

116.430 Oath of appraisers. Before making the appraisement, the appraisers shall each file with the inventory an affidavit to the effect that he will honestly and impartially appraise the property which shall be exhibited to him according to the best of his knowledge and ability.

116.435 Each article to be separately appraised; appraisement of money and debts. The appraisers shall appraise each article of property separately, and set down the value thereof in dollars and cents, opposite the entry of the article in the inventory. Money, of whatever nature, that is a legal tender, is to be appraised at its nominal value; but debts, of all descriptions or kinds, are to be appraised at that sum which, in the judgment of the appraisers, may be realized from them by due process of law. When the appraisement is completed, the inventory shall be signed by the appraisers.

116.440 Debt due from person named as executor; inclusion in inventory; liability for debt. The naming of any one as executor in a will shall not operate to discharge such executor from any claim which the testator had against him, but the claim shall be included in the inventory. If the person so named accepts the administration of the estate, he shall be liable for such claim as for so much money in his hands at the time the claim became due and payable; otherwise he is liable for such claim as any other debtor of the deceased.

116.445 Discharge by will or bequest of a claim of decedent. The discharge or bequest in a will of any claim of the testator against a person named as executor therein or against any other person, shall, as against the creditors of the deceased, be invalid. Such claim shall be included in the inventory, and for all the purposes of administration is to be deemed and treated as a specific legacy of that amount.

116.450 Inventory and appraisal of copartnership property; duties of surviving partner. Within 30 days after the death of a partner the surviving partner shall file a verified inventory of the assets of the partnership in the probate court in which letters testamentary or of administration are issued on the estate of the decedent, or, if no letters are issued, in the probate court of the county of which the decedent was a resident at the time of his death. The inventory shall state the value of the assets as shown by

the books of the partnership and a list of the liabilities of the partnership. If letters testamentary or of administration have issued on the estate of the decedent, the surviving partner shall cause the assets of the partnership to be appraised in like manner as the individual property of a deceased person, which appraisal shall include the value of the assets of the partnership and a list of the liabilities. The appraisers appointed by the court to appraise the separate property of the deceased partner shall appraise the partnership property, and the surviving partner shall file the inventory and appraisal with the court in which the estate of the deceased partner is being administered.

116.455 Surviving partner may remain in possession of partnership estate; accounting by partner. The surviving partner may continue in possession of the partnership estate, pay its debts and settle its business, and shall account to the executor or the administrator of the decedent and shall pay over such balances as may, from time to time, be payable to him. Upon the verified petition of the executor or administrator, or on its own motion, the probate court, whenever it appears necessary, may order the surviving partner to account to said court.

116.460 Security of surviving partner for faithful settlement of affairs. If the surviving partner commits waste, or if it appears to the probate court that it is for the best interest of the estate of the decedent, such court may order the surviving partner to give security for the faithful settlement of the partnership affairs and the payment to the executor or administrator of any amount due the estate.

116.465 Failure of partner to file inventory, appraisal, account or bond; contempt; appointment of receiver. If the surviving partner fails or refuses to file the inventory, list of liabilities or appraisal, or if it appears proper to order the surviving partner to account to the probate court or to file a bond, the court shall order a citation to issue requiring the surviving partner to appear and show cause why he has not filed an inventory, list of liabilities or appraisal or why he should not account to the court or file a bond. The citation shall be served not less than 10 days before the return day designated therein. If the surviving partner neglects or refuses to file an inventory, list of liabilities or appraisal, or fails to account to the court or to file a bond, after he has been directed to do so, he may be punished for a contempt or the court may commit him to jail until he complies with the order of the court. Where the surviving partner fails to file a bond after being ordered to do so by the court, the court may also appoint a receiver of the partnership estate with like powers and duties of receivers in equity, and order the costs and expenses of the proceedings to be paid out of the partnership estate or out of the estate of the decedent, or by the surviving partner personally, or partly by each of the parties.

116.470 to 116.500 [Reserved for expansion]

CLAIMS AGAINST THE ESTATE

116.505 Publication of notice by executor or administrator. Every executor or administrator shall, immediately after his appointment, publish a notice thereof, in some newspaper published in the county, if there is one, or otherwise in such paper as may be designated by the court or judge thereof, as often as once a week, for four successive weeks, and oftener if the court or judge shall so direct. Such notice shall require all persons having claims against the estate to present them, with the proper vouchers, within six months from the date of such notice, to the executor or the administrator, at a place within the county therein specified. Before the expiration of such six months a copy of the notice as published with the proper proof of publication shall be filed with the clerk.

116.510 Time for presentation of claims; effect of nonpresentation of claim in time. A claim not presented within six months after the first publication of the notice is not barred, but it cannot be paid until the claims presented within that period have been satisfied. If a claim is not then due, or if it is contingent, it shall nevertheless be presented as any other claim. Until the final account is filed, a claim against the estate not barred by the statute of limitations may be presented, allowed and paid out of any assets then in the hands of the executor or administrator not otherwise appropriated or liable. [Amended by 1957 c.410 §1]

116.515 Verification of claims; production of written evidence of claim. Every claim presented to the executor or administrator shall be verified by the affidavit of

the claimant, or some one on his behalf who has personal knowledge of the fact, to the effect that the amount claimed is justly due, that no payments have been made thereon, except as stated, and that there is no just counterclaim to the same to the knowledge of the affiant. When it appears or is alleged that there is any written evidence of such claim, the executor or administrator may demand that such evidence be produced or its nonproduction accounted for.

116.520 Indicating approval or rejection of claims. When the claim is presented to the executor or administrator, if he is satisfied that it is just, he shall indorse upon it the words "Examined and allowed," with the date thereof, and officially subscribe such notation, and pay such claim in due course of administration. If he is not so satisfied, he shall indorse thereon the words "Examined and rejected," with the date thereof, officially subscribe such notation and file such rejected claim with the clerk of the court and serve notice thereof in writing upon the claimant or his attorney, in person or by mail. If the executor or administrator neither allows nor rejects and files such claim with the clerk of the court within 60 days after the receipt thereof by him, it shall be deemed rejected by him.

116.525 Contesting rejected claims; election to have matter tried as action or suit in circuit court. Any claimant may present any rejected claim to the probate court for allowance within 30 days after service of notice upon him or his attorney of such rejection or within 30 days after the claim is deemed to have been rejected under the provisions of ORS 116.520. Any claimant of such rejected claim or his attorney, or the executor or administrator or his attorney, upon notice of summary hearing being given, may elect to have the matter tried as an action or suit, as the case may be, in and by the circuit court, by serving on the opposing party or his attorney, and filing with the clerk of the court, a notice in writing signed by himself or his attorney to the effect that he demands such trial. Such notice shall be served and filed at least three days prior to the time set for the summary hearing by the notice thereof. [Amended by 1957 c.410 §2]

116.530 Summary determination. If neither the claimant or his attorney, nor the executor or administrator or his attorney, makes a demand pursuant to ORS 116.525, the probate court has jurisdiction to hear and determine any such rejected claim in a summary manner and forthwith shall cause a concise entry of the order of allowance or rejection thereof to be made in the probate journal. [Amended by 1957 c.410 §3]

116.535 Appeal from summary order of county court. If such order is made by the county court, it has the force and effect of a decree, from which an appeal to the circuit court may be taken as in ordinary matters in probate.

116.540 Notice demanding trial after summary determination. If either party is aggrieved by an order issued pursuant to ORS 116.530, he may have the matter tried as an action or suit, as the case may be, in and by the circuit court, by serving on the opposing party or his attorney, and filing with the clerk of the court, a notice in writing, signed by himself or his attorney, to the effect that he demands such trial. Such notice shall be served and filed within 30 days from and after the making of the entry of the order of allowance or rejection upon summary hearing, and, if the notice is given by the executor or administrator or his attorney, it shall recite the provisions of ORS 116.545, or the effect thereof. [Amended by 1957 c.410 §4]

116.545 Time within which action or suit must be filed in circuit court; trial de novo. Whenever a trial in the circuit court is demanded by either party under ORS 116.525 or 116.540, the claimant shall, within 60 days after the date of the service of such demand, file an original action or suit on such claim in the circuit court, and, unless such action or suit is so filed, the claim shall thereafter be of no validity and shall be barred. Every such matter for trial in the circuit court shall be, unless the parties otherwise agree and the court approves, tried anew and fully as an action or suit, whichever is its nature. [Amended by 1957 c.410 §5]

116.550 Appeal to Supreme Court. An appeal shall lie to the Supreme Court from the judgment, decree or other determinative order of the circuit court made in such matter, as in the ordinary case.

116.555 Statute of limitations shall not be waived; quantum of proof to establish claims. No claim which is barred by the statute of limitations shall be allowed by any

executor, administrator or court. No other claim which has been rejected by the executor or administrator shall be allowed by any court except upon some competent, satisfactory evidence other than the testimony of the claimant.

116.560 Costs and disbursements; decrees for payment of money, how enforced. Costs may be awarded in favor of one party against another, to be paid personally or out of the estate or fund, in any proceedings contested adversely, but such costs cannot exceed those allowed in the trial of a civil action in the court trying the contest. Witness' fees and other disbursements similar to those allowed on the trial of a civil action may also be allowed, to be paid in like manner. Orders or decrees for the payment of money may be enforced by execution, or otherwise, in the same manner as orders or decrees for the payment of money in the circuit court.

116.565 Effect of judgment or decree against executor or administrator. The effect of a judgment or decree against an executor or administrator, on account of a claim against the estate of his testator or intestate, is only to establish the claim, as if it had been allowed by him, so as to require it to be satisfied in due course of administration, unless it appears that the complaint alleged assets in his hands applicable to the satisfaction of such claim, and that such allegation was admitted or found to be true, in which case the judgment or decree may be enforced against such executor or administrator personally.

116.570 Proof of judgment rendered against deceased in his lifetime; execution not prevented. A claim established by judgment or decree against the deceased in his lifetime need not be verified by affidavit, but it is sufficient to present a certified copy of the judgment docket thereof to the executor or administrator for allowance or rejection, as in other cases. This section does not prevent an execution from being issued upon such judgment or decree.

116.575 Reference of claim. (1) If the executor or administrator doubts the validity of any claim presented to him, he may agree in writing with the claimant that an order of reference be made by the court or judge thereof concerning the same. Upon the filing of such agreement, the court or judge shall make the order accordingly.

(2) The referee shall proceed to hear and determine the matter and report thereon to the court that made the order of reference, in the same manner and with like effect as if the order were made in an action or suit upon such claim.

116.580 Claim of executor or administrator. If the executor or administrator is himself a creditor of the decedent, his claim, duly verified, may be presented to the court or judge thereof, for allowance or rejection; but the allowance of such claim by the court or judge does not conclude a creditor, heir or other person interested in the estate, in any action, suit or proceeding between the executor or administrator and such creditor, heir or other person.

116.585 Determination of claim of executor or administrator on settlement of final account. If the court or judge thereof rejects the claim of the executor or administrator, either in whole or in part, or in case the claim is not presented for allowance as provided in ORS 116.580, the executor or administrator may retain the amount thereof until the final settlement of his accounts, when, if the same is controverted or objected to by any person interested in the estate, the right of the executor or administrator to have the allowance claimed shall be tried and determined by the court. If the claim is not presented to the court or judge, as provided in ORS 116.580, before it is barred by the statute of limitations, such claim cannot be allowed, retained, or recovered.

116.590 Exemption of homestead when it is not devised. When the owner of any homestead dies, not having lawfully devised the same, such homestead descends free of all judgments and claims against the deceased owner or his homestead estate, except mortgages executed thereon and laborers' and mechanics' liens, to the person and in the manner provided by law. Such exemption shall not extend to any person other than a child or grandchild, widow or widower, and father or mother of the deceased owner. Such homestead shall be subject to and charged with the expenses of his last sickness and for his funeral, the cost and charges of administration and the claim of the State Public Welfare Commission for the net amount of public assistance, as defined in ORS 411.010, which was paid to or on behalf of the deceased and the recovery

of which from the estate of a deceased recipient is authorized by statute other than this section. Nothing in this section shall prevent or limit the court or judge from setting apart for the widow, widower or minor children of the deceased the homestead as provided in ORS 116.010. [Amended by 1955 c.444 §1]

116.595 Exemption of homestead when it is devised. When any homestead is devised by the will of the owner thereof, the devisee takes the same free of all judgments and claims against the testator of his homestead estate, except mortgages executed thereon and laborers' and mechanics' liens. Such exemption shall not extend to any devisee other than a child or grandchild, widow or widower, and father or mother of the testator. Such homestead shall be subject to and charged with the expenses of his last sickness and of his funeral, the costs and charges of probate and the claim of the State Public Welfare Commission for the net amount of public assistance, as defined in ORS 411.010, which was paid to or on behalf of the deceased and the recovery of which from the estate of a deceased recipient is authorized by statute other than this section. Nothing in this section shall prevent or limit the court or judge from setting apart for the widow, widower or minor children of the deceased the homestead as provided in ORS 116.010. [Amended by 1955 c.444 §2]

116.600 to 116.700 [Reserved for expansion]

SALE OF PROPERTY

116.705 Application for order for sale; citation to heirs. No sale of the property of an estate is valid unless made by order of the court or judge thereof or as provided in ORS 116.825 and 116.830. The application for an order of sale shall be by the petition of the executor or administrator, and in case of real property, a citation to the heirs and others interested in such property.

116.710 Application to sell personalty; terms of sale. Upon the filing of the inventory, or at the next term of the court, the executor or administrator may make an application to sell the personal property of the estate for the purpose of paying the funeral charges, expenses of administration, the claims, if any, against the estate and for the purposes of distribution; and the court or judge shall grant such order, if in his judgment it is for the best interest of the estate, and shall direct and prescribe the terms of sale upon which the property shall be sold, whether for cash or on credit.

116.715 Time, manner and amount of sale of personalty; return. Thereafter the executor or administrator shall sell such personal property from time to time for the purposes specified in ORS 116.710, and as often and as much thereof as may be necessary. The sale shall be conducted in the same manner as a sale of personal property on execution, except as provided in ORS 116.720, 116.765, 116.825 or 116.830. However, the executor or administrator shall, within 15 days after the completion of the sale of the property described in the order of sale, make a return of such sale to the court, but such sale need not be confirmed.

116.720 Personalty may be sold at private sale; special bequests exempt. If, upon the application for an order of sale, or upon a subsequent application for that purpose, it appears to the court or judge that it would be for the interest of the estate, it may order that the executor or administrator may sell all the personal property of the estate or any article thereof at private sale, with or without notice. If any articles of personal property have been specially bequeathed, they are to be exempt from the operation of the order of sale so long as any property of the estate not specially devised or bequeathed remains unsold or appropriated to the purposes specified in ORS 116.710. [Amended by 1955 c.149 §1]

116.725 Effect of escheat of personalty on power to order sale. The fact that any personal property of a decedent may have escheated to the state shall not oust the proper probate court of jurisdiction to order a sale thereof at any time, and the proceeds of such sale, as well as any money in the hands of the administrator, may, upon order of the court, at any time after the expiration of six months from the publication of notice of the appointment of the administrator, be applied as in the ordinary course of administration in payment of claims against the estate of the decedent; provided, that application therefor specifying the claims to be paid shall be first made in writing by the administrator to the probate court, and a copy of such application shall be served upon the clerk of the State Land Board at least 20 days prior to the making of an order for such payments.

116.730 Real property; when sold; specific devises. When the proceeds of the sale of personal property and the other funds of the estate have been exhausted, and the charges, expenses and claims specified in ORS 116.710 have not all been satisfied, the executor or administrator shall sell the real property of the estate or so much thereof as may be necessary for that purpose, or when it appears to the satisfaction of the court that it would be for the best interest of the heirs, devisees or legatees that all or a part of the real property of the estate be sold for the purpose of distribution, the executor or administrator shall sell the real property of the estate or so much thereof as may be appropriate for that purpose; provided, that whenever it appears to the satisfaction of the court that it is for the best interest of the estate or of the heirs, devisees or legatees thereof that the real property or any part thereof should be sold, the court or judge thereof may order that the real property or any part thereof be sold for any purpose without reference to whether or not the personal property has been sold. If any of such real property has been specially devised, it is exempt from the operation of the order of sale in the same manner as personal property specially bequeathed.

116.735 Sale of realty to obviate resort to specific bequest or legacy. When the testator bequeaths any specific article of personal property, or gives any legacy by will, and there is not sufficient personal property, besides such specific article or the value of such legacy, to pay the funeral charges, expenses of administration, and claims against the estate, the executor or administrator shall obtain an order to sell the real property sufficient to make up the deficiency.

116.740 Contents of petition to sell realty. The petition for the order of sale of real property shall state the amount of sales of personal property, the charges, expenses and claims still unsatisfied, so far as can be ascertained, a description of the real property of the estate, the conditions and probable value of the different portions or lots thereof, the amount and nature of any liens thereon, the names, ages and residences of the devisees, if any, and of the heirs of the deceased, so far as known, and if it is desired to sell the real property or any part thereof as provided in ORS 116.730 the petition shall set out the reasons therefor.

116.745 Citation of heirs and devisees; time for appearance. Upon the filing of the petition, a citation shall issue to the devisees and heirs therein mentioned, and to all other devisees and heirs unknown, if there are any, to appear and show cause, if any exists, why the order of sale should not be made as prayed for in the petition, within the following times:

(1) If served within the county wherein the proceeding is pending, within 10 days from the date of service.

(2) If served personally in any other county of this state, within 20 days from the date of service.

(3) If served by publication, within 28 days from the date of the first publication.

(4) If served personally outside the state, as provided in subsection (3) of ORS 116.750, within four weeks from the date of service if served within the United States and within six weeks from the date of service if served outside the United States.

116.750 Manner of service of citation; effect of personal appearance. (1) If an heir or devisee is known and resident within this state, such citation shall be served and returned as a summons. If an heir or devisee is unknown or nonresident, the citation may be served by publication in a newspaper published in the county chosen by the administrator or executor not less than four weeks, or for such further time as the court or judge may prescribe. When service of the citation is made by publication, there shall be published with it a brief description of the property described in the petition.

(2) The appointment of a guardian ad litem for such of the unknown heirs as may be minors shall not be necessary.

(3) If an heir or devisee is not within the state, the executor or administrator may, as an equivalent of service by publication and in lieu therof, cause the citation personally to be served on the heir or devisee outside the state. Such personal service of citation outside the state may be made by any competent person over the age of 21 years and not a party to the proceedings, and proof thereof made by his affidavit. The affidavit shall state the time and place of service, that he is a competent person, that he is over the age of 21 years, that he is not a party to the proceedings and that the person, firm or corporation so served is the identical person, firm or corporation named as heir or devisee in the citation. Such affidavit may

be made and certified before a notary public, or other official authorized to administer oaths, and acting as such by authority of the United States or any state or territory of the United States or District of Columbia, and his official seal, if he has one, shall be affixed to the affidavit. The signature of such notary or other official, when so attested by the affixing of his official seal, if he has one, shall be prima facie evidence of his authority to take and certify such affidavit.

(4) In any case, when an heir or devisee appears in such proceedings personally or, if a minor, by a general guardian duly and legally appointed, service of citation shall not be necessary.

116.755 Order to sell; undertaking of executor or administrator. (1) If, upon the hearing, the court finds that it is necessary that the real property, or any portion thereof, be sold, it shall make the order accordingly, and prescribe the terms thereof, whether of cash or credit, or both. If the court finds that such property cannot be divided without probable injury and loss to the estate it may order that it, or any specific lot or portion thereof, be sold wholly, whether otherwise necessary or not.

(2) Unless it appears to the court that the amount of the undertaking previously given by the executor or administrator is equal to the amount required by law plus the probable amount to be realized on the sale of real property ordered to be sold under this section where the undertaking is signed by a surety company duly qualified to transact business in Oregon, or plus double such amount when signed by others than a surety company, the court must require such executor or administrator to give an additional undertaking with one or more sufficient sureties in such sum as it may fix, to be void upon the condition that such executor or administrator accounts for and disposes of the proceeds of such sale according to law. Before proceeding to sell any real property under any such order of sale the executor or administrator must file with the clerk of the probate court any additional undertaking so required of him, duly approved by the judge thereof; provided, that when, by the terms of his will, a testator expressly declares that no bond is required of his executor for the faithful performance of his duties as such executor, no undertaking shall be required under the provisions of this section.

116.760 How sale is made; security for purchase price. (1) Upon the order of sale being made, the executor or administrator shall sell the property therein specified upon the terms therein prescribed, and in the manner otherwise provided in this section. The sale shall be made in the same manner, if sold at public auction, as like property is sold on execution; or, if it appears to the best interest of the estate, the court may order the property to be sold on the premises; or, if upon application for an order of sale, or upon a subsequent application for the purpose, it appears to the court to the best interest of the estate, the court may by order authorize the executor or administrator to sell all the real property of the estate or any part thereof at private sale.

(2) Before proceeding to sell such real property at private sale, the executor or administrator shall publish a notice, particularly describing the property to be sold, once a week for four successive weeks, or four publishings in all, in a newspaper of the county where the property to be sold is situated, if there is one, or if there is none, in a newspaper published nearest such property, stating the terms of sale, and that from and after a day certain designated therein, which day shall be not less than one week after the last of such publishings, he will proceed to sell the property described in such notice. All such private sales shall be reported to the court, be subject to resale and require confirmation in the same manner as other sales of real property made by executors or administrators.

(3) When the sale is upon credit, the executor or administrator shall take the negotiable note of the purchaser for the purchase money, with a mortgage upon the property to secure the payment thereof, or he may sell the property on conditional contract of sale, provided title is reserved until the full purchase price shall have been paid and at least one-fourth of the purchase price is paid at the time of execution of such contract.

116.765 Sale where all estate or realty does not exceed $500. (1) When the inventory of any estate shows, or it otherwise appears to the satisfaction of the court that all the property left by the decedent within the jurisdiction of the court does not exceed in value the sum of $500, the court may order the property, real and personal, or

either, sold, if any sale thereof is necessary, without citation or other notice to the heirs, devisees, legatees or any other parties, or upon such notice as the court may direct, at public or private sale, and with or without notice of sale. In such cases the notice of the appointment of the executor or administrator may be given by posting the same in three public places of the county for four weeks successively, and notice of the filing of the final account may be given in the same manner.

(2) When it appears to the satisfaction of the court that it is necessary to sell the real property, or any part thereof, and that the value of all the real property of the estate, exclusive of taxes and other liens thereon, does not exceed the sum of $500, the court may order the real property, or any part thereof, sold, without citation or other notice to the heirs, devisees, legatees, or any other parties, or upon such notice as the court may direct, at public auction or private sale.

116.770 Sale of contract for the purchase of real property. If the deceased was, at the time of his death, a party to a contract for the purchase of real property, his interest in the real property by virtue of the contract may be sold in the same manner as if the contract had been executed in the lifetime of the deceased by a conveyance to him of the property according to the legal effect and terms of such contract.

116.775 Sale of contract subject to deferred payments; undertaking of purchaser. If there are any payments due, or to become due, on the contract mentioned in ORS 116.770 to the vendor of the deceased, the sale is made subject thereto, and before the sale can be confirmed, or the contract assigned to the purchaser, the purchaser shall execute an undertaking with one or more sufficient sureties, in an amount not less than double the value of all the payments then due, or to become due, for the benefit of whom it may concern, to be void upon the condition that such purchaser will make all such payments according to the terms of the contract, and indemnify the executor or administrator, or others whom it may concern, against all damages, costs and expenses by reason of any covenant or agreement contained in the contract.

116.780 Assignment of contract; effect. The order of confirmation of such sale shall direct the executor or administrator to make an assignment of the contract to the purchaser, which assignment shall vest in the purchaser, his heirs and assigns, all the estate, right and interest of the deceased at the time of his death in such real property, and give to the purchaser the same rights and remedies against the vendor thereof as the deceased would have had or been entitled to if living.

116.785 Acceptance of real property in part payment of price. When an executor or administrator is authorized by order of court to sell any real property belonging to the estate of a decedent, the executor or administrator may accept other real property in part payment of the purchase price thereof when it appears to the court to be to the best interest of the estate.

116.790 Report of proposal to accept other real property in part payment. In all cases where it is proposed to accept other real property in part payment of the purchase price, the legal description of such property, together with the value at which it is proposed to be taken, shall be set forth in the report of the sale required by law to be made to the court having jurisdiction of the estate. Upon the filing of such report a citation shall be issued to the same parties and served in the same manner as is provided by ORS 116.745 and 116.750. The citation shall include the description of the property which is to be taken in part payment together with the value at which it is proposed to be taken.

116.795 Hearing on objections to proposal to accept other real property in part payment. In case objections are filed to the proposal to accept other real property in part payment of the purchase price, or the value at which it is proposed to be taken, or any other matter in connection with the proposal, the court shall fix a time for hearing the objections. If upon the hearing the court is of the opinion that it is to the best interest of the estate that such other real property be taken in part payment and that the value at which it is to be taken is the fair value of such property, it may make an order approving the acceptance of such real property or make such other order as is deemed fair and equitable in the premises, but no order may be made increasing the value at which such premises may be taken in part payment without the consent of all

of the parties upon whom service of citation is required by law to be made in the sale of property by executors and administrators.

116.800 Conveyance to executor or administrator of real property accepted in part payment. In case the acceptance of other real property in part payment of the purchase price is approved by the court, conveyance of such property shall be to the administrator or executor of the estate, as the case may be, and shall be considered as a part of the assets of the estate and shall be administered and shall descend in the same manner as if the property was owned and stood in the name of the deceased at the time of his death.

116.805 Return of sale and objections thereto. Within 10 days after the sale of real property the executor or administrator shall make a return of his proceedings concerning the sale, and file the same with the clerk of the probate court. At any time within 15 days from the filing of such return, any person cited to appear on the application for the order of sale may file his objection to the confirmation of such sale.

116.810 Confirmance or vacation of sale; resale. Upon the hearing the court shall confirm the sale, and decree that the executor or administrator make a conveyance to the purchaser, unless it appears and the court finds that there was substantial irregularity in the sale, or that the sum bid for the property is disproportionate to the value thereof, and that a sum exceeding such bid at least 10 percent, exclusive of the expenses of a new sale, can be obtained therefor. In the event there was substantial irregularity in the sale, the court shall make an order vacating the sale, and directing that the property be resold. In the event that the court finds that such higher bid can be obtained, the court may authorize the executor or administrator to resell the property without further order or notice upon the terms of such, or another, higher bid. The order confirming the resale shall provide that all prior sales be set aside; and upon such final sale, the property, or any part thereof, authorized to be resold shall be sold as though no prior sale had been made. In case no objection is made, as provided in ORS 116.805, to the confirmation of the sale, the court nevertheless shall examine the proceedings of such sale, and if it appears proper, shall authorize the property to be resold, as provided in this section, in the same manner and with like effect as though objection had been filed thereto.

116.815 Recitals in conveyance; effect. A conveyance executed by an executor or administrator shall set forth the date of the order directing the sale, and the book, number thereof, and page containing the same, and the date of the order confirming the sale and directing the conveyance, and the book, number thereof, and page containing the same, and the title of the court making such orders. Such conveyance shall convey all the estate, right and interest of the testator or intestate in the premises at the time of his death.

116.820 Effect of order of confirmation; when purchase by executor or administrator void. The order of confirmation of sale is conclusive as to the regularity of the sale, and no further. All purchases of the property of the estate by an executor or administrator, however made, whether directly or indirectly, are prohibited, and if made are void, except when made in compliance with another statute, or the will of the decedent, or a contract, or other instrument, executed by the decedent. [Amended by 1953 c.350 §2]

116.825 Sale under power in will. When a testator makes provision in his will for the sale or disposition of all or any particular portion of his estate, the same may be sold or disposed of as directed, by the executor or administrator with the will annexed, without an order of the court therefor, but he is bound to conduct the sale and make a return thereof in all respects as if it were made by order of the court, unless there are special directions in the will concerning the manner and terms of sale, in which case he is governed by such directions in such respects.

116.830 Proceeding in case property appropriated by will insufficient. If the provision made by the will, or the property thereby appropriated, is insufficient for the purpose intended, the remaining portion of the estate may be sold for that purpose, according to the provisions of ORS 116.705 to 116.820.

116.835 Validation of certain sales. The following are the subject of validating Acts applicable to this chapter:

(1) Certain sales of decedent's real property made prior to 1903 where confirmation

of sale was premature. [1903 p. 133 §2]

(2) Certain sales of decedent's property made prior to 1907 under power in will. [1907 c.175]

(3) Certain sales of decedent's real property made prior to 1917 where publication of the notice of sale was improper. [1917 c.114 §2]

(4) Certain sales by executors or administrators made prior to 1943. [1943 c.26]

116.840 to 116.980 [Reserved for expansion]

PENALTIES

116.990 Penalties. Any person who administers any part of the personal estate of any decedent without proving the will of the deceased or taking out letters of administration of such personal estate within six calendar months after the death of the decedent is punishable, upon conviction, by imprisonment in the county jail not more than one year or by a fine not exceeding $500.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 2, 1957.

Sam R. Haley
Legislative Counsel