Chapter 120

1957 REPLACEMENT PART

(1963 reprint)

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ESCHEATS

120.010 Property that escheats; disposition of proceeds. Immediately upon the death of any person who dies intestate without heirs, leaving any real, personal or mixed property, interest or estate in this state, the same escheats to and vests in the state, subject only to the claims of the creditors and as provided in ORS 120.060 to 120.130; and the clear proceeds derived therefrom shall be paid into and become a part of the Common School Fund of this state and be loaned or invested by the State Land Board, as provided by law.

120.020 State as a party defendant to foreclosure of lien on escheated property. In case the property, interest or estate of a person dying intestate without heirs is subject to a lien created during the life of such decedent, the state may be made a party defendant upon foreclosure thereof by service of summons and complaint therein upon the Attorney General of the state. The state shall be bound by any order, judgment or decree entered in such foreclosure proceeding in like manner and with like effect as any natural person.

120.030 Determination of escheat; service on State Land Board; payment to state; records. (1) The probate court, before whom any probate matter is pending, shall determine whether there are any legal heirs to the estate, and if it is determined by the court that there are no legal heirs thereto, the court shall order the administrator of the estate to serve upon the State Land Board a true copy of each order, motion, petition or citation, and of the order of court directing that the proceeds shall escheat, together with a copy of the final account in the estate.

(2) No disbursements from any escheated estate in excess of the sum of $100 shall be made by any administrator until the State Land Board has been given 10 days from the date of service upon it of the order allowing such disbursement in which to file its objections thereto.

(3) The State Land Board shall have three weeks from the date of service upon it of the copy of the final account in which to file its objections thereto. After the final account has been approved by the court, the administrator immediately shall pay over to the State Land Board all of such proceeds, and the board shall credit the same to the Common School Fund as other moneys received from escheats. The administrator and his bondsmen are liable for the payment of such moneys to the State Land Board.

(4) The records of the State Treasurer and of the State Land Board as to amounts paid to the State Land Board as escheats under this section or pursuant to any other law, are public records, but the State Treasurer and the State Land Board shall grant access to such records to only those persons as shall reasonably show to the satisfaction of the treasurer and the board that they are interested parties in the contemplated recovery of particular escheated moneys.

120.040 Sale of real property of escheated estate; deed to state if not sold. If the escheated estate or any part thereof consists of real property which has not been sold for the purposes of administration, the administrator shall sell such real property in the same manner as real property is sold by administrators for the payment of debts against the estate upon order of the probate court obtained in like manner. If no offer for the purchase of such real property is received which the administrator or the probate court deems adequate, any and all offers may be rejected, whereupon the court shall make and enter an order directing the administrator to deed such real property to the State of Oregon. Such property shall thereafter be under the control and management of the State Land Board, as other real property belonging to the Common School Fund and acquired upon foreclosure of mortgage.

120.050 Action to recover or enforce rights to escheated property. In all cases where property has escheated to the state and has not been delivered to, or the title thereto vested in the state, the state may maintain any action, suit or proceeding necessary to recover the possession of any such property, interest or estate, or for the enforcement or protection of the rights to or an account thereof in like manner and with like effect as any natural person. Such action, suit or proceeding shall be prosecuted by the district attorney of the county in which such property, interest or estate is located or affected, or the Attorney General of the state, by the leave and under the direction of the State Land Board, and not otherwise. The action, suit or proceeding shall be brought in the county in which such

property, interest or estate is located or affected.

120.060 Filing information of escheat; order to show cause. (1) At any time after the death of any person described in ORS 120.010 and whenever the State Land Board is informed, or has reason to believe, that any such property has escheated to the state, and has not been delivered to, or the title vested in the state, the board shall direct the district attorney of the judicial district in which such property is located, or the Attorney General of the state, to file an information in behalf of and in the name of the state, in the circuit court of the county in which such estate, or any part thereof, is situated, setting forth the description of the same, the name of the person last seized, the name of the occupant or the person in possession and claiming the same, if known, and the fact that such person last seized has died without heirs, leaving the property so described in the information, escheated and vested in the state.

(2) Upon filing such information, a summons must issue to the person or occupant in possession, requiring him to appear and answer the information within the time allowed by law in civil actions. The court must, upon application of the district attorney, or the Attorney General, make an order setting forth briefly the contents of the information and requiring all persons interested in the estate to appear and show cause, if any they have, within such time as the court making such order may fix, not less than six weeks from the date thereof, why the title should not vest in this state. Such order must be published for at least six successive weeks from the date thereof, in a newspaper published in the county, and in case no newspaper is published in the county, then in such newspaper as the court by order may direct.

120.070 Ouster of jurisdiction of county court upon filing information in circuit court; necessity of final accounting before judgment of escheat. After an information to escheat an estate pursuant to ORS 120.060 has been filed in a circuit court and the summons has been issued and served upon the person or occupant in possession of the estate and the order to show cause has been made, the county court shall be ousted of jurisdiction to determine the question of heirship or right of claimants to the estate, except as to the claims of creditors, and its jurisdiction shall only continue for the purpose of determining the claims and demands of creditors, as provided in ORS 120.070 to 120.130 and to collect debts and demands due the decedent at the time of his death and to otherwise settle and close the estate. However, before final judgment escheating an estate to the state may be entered in the circuit court, the amount of all claims and demands of creditors of the deceased, together with the amount of expenses of administering the estate, shall be adjudicated by the proper probate court and certified by such court to the judge of the circuit court in which such escheat proceeding is pending.

120.080 Receiver may be appointed. The court, upon the information being filed, and upon the application of the district attorney or the Attorney General, either before or after answer, upon notice to the party claiming such estate, if known, may, upon sufficient cause therefor being shown, and upon a showing that a receivership will not interfere with or delay the payment of claims and expenses of administration by the probate court, appoint a receiver to take charge of such estate and receive the rents and profits of the same until the title to the estate is finally settled.

120.090 Appearances and answers; trial of issues made. (1) All persons named in the information may appear and answer, and may deny the facts stated in the information, the title of the state to lands, tenements, and other property therein mentioned, at any time before the time for answering expires. Any person claiming an interest in the estate may appear and be made a defendant by motion for that purpose in open court, within the time allowed for answering as fixed in the published order.

(2) If no person appears and answers within the time, then judgment must be rendered that the state be seized of the lands and tenements or property in such information claimed; but if any person appears and denies the title set up by the state, or denies any material facts set forth in the information, the issue of the fact must be tried as in civil actions, with the aid of a jury, if requested by either party.

(3) If, upon such trial, the verdict of the jury or the judgment of the court, if the case is tried by the court without a jury, is in favor of the state, judgment must be rendered that the state be seized thereof and recover costs of suit against the defend-

ant; but the property shall be subject to and charged with the amount of all claims and demands of creditors of the deceased, as adjudicated by the proper probate court, together with the expenses of administration, which claims and expenses of administration, shall be paid to the probate court out of the proceeds from the sale of the property, as provided in ORS 120.100.

120.100 Payment of claims against estate; deed to state; sale of realty. (1) In any proceeding in which judgment is or has been rendered by any court of competent jurisdiction, escheating real property to the state, if it is not necessary to sell such real property to satisfy liens upon it or claims against the estate and costs and expenses of administration, or if such liens, claims, costs and expenses do not exceed one-half of the assessed value of such real property, the assessed value being determined as of the time of filing the information, the State Land Board may, in its discretion, pay to the administrator of such estate if there is one, and if not, then to the clerk of the court, the amount of such liens, claims, costs and expenses. In either case the court shall thereupon make and enter an order directing the administrator of the estate or, if there is none, the sheriff, to deed such real property to the state. Such property is thereafter under the control and management of the State Land Board and subject to sale or lease as other real property belonging to the Common School Fund and acquired upon foreclosure of mortgage.

(2) If neither of the foregoing conditions is applicable, on motion of the district attorney or the Attorney General, the court shall make an order that the real property be sold by the sheriff of the proper county where the same is situated, at public auction, for cash, in the same manner as real estate is sold on execution. The sheriff shall, within 10 days after such sale, make a report thereof to the court, and upon hearing the report the court may examine the same and witnesses thereto. If the proceeds of such sale are unfair, or the sum or sums bid are disproportionate to the value of the property sold, and if it appears that a greater sum can be obtained for the property, exceeding such bid at least 10 percent exclusive of the expense of a new sale, the court may vacate the sale and direct another sale to be had, and the new sale shall be conducted in all respects as if no previous sale had taken place. If it appears to the court that the sale was legally made and fairly conducted, and that the sum bid is not disproportionate to the value of the property sold, and that a greater sum, exceeding the bid by more than 10 percent exclusive of the expense of a new sale, cannot be obtained, the court must make an order confirming the sale and directing the sheriff, in the name of the state, to execute to the purchaser a conveyance of the property sold. The conveyance vests in the purchaser all the right and title of the state therein, and the right and title which the deceased person had therein at the time of his death.

(3) The sheriff shall, out of the proceeds of such sale, pay the costs thereof, and pay the costs of the proceeding incurred on behalf of the state in accordance with and as shown by the decree of the court ordering such sale, also the amount of all claims and demands of creditors, as adjudicated by the probate court, together with the expenses of administration, and the remainder of the proceeds of sale he shall pay to the State Land Board.

120.110 Provisions of decree of escheat of personal property. Every decree escheating personal property shall provide that any personal property of a decedent dying without heirs remaining undisposed of by order of probate court shall be sold by the administrator under order of court, and the proceeds applied in the same manner as provided in ORS 120.100 in the case of the proceeds of the sale of real estate. However stocks, bonds, mortgages, notes or contracts shall not be so sold unless necessary to pay funeral and burial expenses of the decedent, claims against the estate, and expenses of administration, but shall be ordered, assigned, transferred and delivered in kind to the State Land Board.

120.120 Escheated deposits; direction by Governor to file information or bill of discovery; disposal. (1) When the Governor is informed or has reason to believe that any banker or banking institution in this state, or any other person has or holds on deposit, or otherwise, any property of any kind or nature of any decedent which has escheated to this state, he shall direct the Attorney General or the district attorney in the district where such banking institution or other person is located, to file in the circuit court in the district in which such banking institu-

tion or other person is located, an information or bill of discovery, naming the decedent, with proper interrogatories to be answered by the owner, agent or manager of such banking institution, or other person.

(2) Upon the filing of such information or bill, the court shall order and direct, at a time to be designated in the bill, that the owner, agent or manager, of such banking institution, or other person, shall, under oath, file an answer to the information and interrogatories, and shall specially answer each and every interrogatory contained in such information or bill. If it appears to the court from the answer that the banker, banking institution or other person, has any property in its or his possession which has escheated to this state, it shall direct the banker, banking institution or other person, forthwith to bring the same into court, and the court shall proceed to dispose of the property as provided in ORS 120.010 to 120.130.

120.130 Recovery of escheated property. (1) Within 10 years after judgment in any proceeding in the circuit court escheating real property to the state, or after the order of the court having probate jurisdiction directing the conveyance of escheated real property to the state, and in all other cases within 10 years after payment of the proceeds of escheated personal property to the State Land Board, claim may be made for the property escheated, or the proceeds thereof, by or on behalf of a person not a party or privy to such proceeding, nor having actual knowledge of the making of such judgment or order or of such payment to the State Land Board.

(2) The claim shall be made by a petition filed in the court in which the escheat proceedings were held. The petition shall be verified in the same manner as a complaint and shall state:

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

(b) That the claimant lawfully is entitled to such property or proceeds, briefly describing the same;

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

(d) That the claimant claims the property or proceeds as an heir or next of kin, or as executor, administrator, guardian or conservator of either, setting forth the relationship of the decedent, who at the time of his death was the owner of same;

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

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

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

(4) If it is determined that the claimant is entitled to such property or the proceeds thereof, the court must order the same to be delivered to the petitioner, subject to and charged with the inheritance tax thereon, if any, and the costs and expenses of the state in connection therewith. The order for delivery shall be an order upon the State Land Board to draw its warrant on the State Treasurer for the payment of the same, but without interest or cost to the state, a certified copy of which order shall be sufficient voucher for drawing such warrants.

(5) If the person whose property or funds escheated or reverted to the state was at any time an inmate of a state institution in Oregon for the insane or feeble-minded, the reasonable unpaid cost, as determined by the State Board of Control, of the care and maintenance of the person while a ward of such institution, regardless of when the cost was incurred, may be deducted from, or, if necessary, be offset in full against, the amount of the escheated property or funds, and, for the purpose of collecting the charge, the State Board of Control shall have the right to intervene and file an account in any proceeding, whether in the circuit court or before the State Land Board for the recovery of such property or funds.

[Amended by 1957 c.421 §1]

120.140 Procedure where real property or amount sought to be recovered does not exceed $250. (1) If the real property or amount sought to be recovered under ORS 120.130 does not exceed in value the sum of

$250, the petitioner may file the petition mentioned in ORS 120.130 in duplicate with the State Land Board. If the board is convinced thereby, and by such further proof as the board shall require, that the petitioner is entitled to the property or amount claimed, the board may reconvey such real property or pay the amount of the claim by warrant upon the State Treasurer in the manner provided in ORS 120.130.

(2) In case of repayment, the board shall file with the county clerk of the county in which the estate was probated one copy of the petition, with endorsement thereon, showing the probate file number, if known, and the amount paid.

(3) If the board disallows the claim, the petitioner may, nevertheless, file his petition in court, as provided in ORS 120.130, and shall recite therein that his claim has been denied by the State Land Board.

(4) If the court finds that the petitioner is entitled to the property or funds sought to be recovered, it shall enter its order accordingly, and the order shall supersede the findings of the State Land Board, but the board shall have its right of appeal therefrom as in other cases.

120.150 Right of aliens to recover escheated property. The right of aliens to recover escheated property is dependent upon the existence of a reciprocal right upon the part of citizens of the United States to take or inherit property within the countries of which such alien claimants are inhabitants or citizens and to recover, by payment to them within the United States, funds originating from estates of persons dying within such foreign countries.

120.160 to 120.200 [Reserved for expansion]

ESCHEAT OF CERTAIN PROPERTY OF PERSONS CONFINED IN STATE INSTITUTIONS

120.210 Escheat of money or property deposited with institution on death, escape or parole of inmate; notice and publication. All money, certificates of deposit, securities, assets or other personal property which have been or shall be taken charge of by the officials of the state institutions listed in ORS 179.320, belonging to patients or inmates committed to any of such institutions and who die inmates thereof or escape or who are paroled therefrom, and which is not claimed by such person, or by the heirs or personal representative of such person within one year after such death, escape or parole, escheats to the state for the benefit of the Common School Fund, and without other or further proceeding shall be paid or turned over by the officials of the above institutions to the State Land Board, who shall issue therefor receipts in duplicate. One of the receipts shall be filed in the office of the Secretary of State. However, if such escheated money, certificates of deposit, securities or other personal property exceeds the sum of $50, a notice of such escheated property shall be published under direction of the State Land Board in a newspaper of general circulation within the county in which such institution paying or turning over the same is situated, and also in a newspaper in the county from which the inmate was committed, once each week for not less than three consecutive weeks. The expense of such publication shall be paid out of the proceeds of the escheated property.

[Amended by 1955 c.651 §1; 1955 c.660 §13]

120.220 Collection and disposition by State Land Board. The money, certificates of deposit, securities or other personal property mentioned in ORS 120.210 shall be collected or liquidated by the State Land Board, and the board may sell, indorse and collect all such money, certificates of deposit, securities or other personal property and place the proceeds thereof in the State Treasury to the credit of the Common School Fund.

120.230 Owners' and representatives' rights to reclaim property; limitation. The money or the proceeds of such certificates of deposit, securities or other personal property which has escheated to the state under the provisions of ORS 120.210, may be reclaimed by the original owner or his or her heirs, or personal representatives, at any time within 10 years after such escheat, in the same manner as property belonging to estates of deceased persons which have escheated to the state.

120.240 to 120.300 [Reserved for expansion]

ESTATES OF PERSONS PRESUMED TO BE DEAD

120.310 Application for administration; hearing as to absence. Whenever letters of

administration on the estate of any person presumed to be dead on account of not being heard from in seven years or more from his last known place of residence, and having left property in the State of Oregon, shall be applied for, the probate court of the county where such application is made, shall, if satisfied that the applicant would be entitled thereto were the presumed decedent in fact dead, cause a notice to be published in a newspaper published in the county once a week for four successive weeks, of the fact of such application, together with notice that on a day certain, which shall be at least two weeks after the last of the publications, the court will hear evidence concerning the alleged absence of the presumed decedent and the circumstances and duration thereof.

120.320 Applicability to nonresident absentees. The provisions of ORS 120.310 to 120.400 also apply to a person not heard from in seven years who was a resident of another state, territory or district of the United States, or of a foreign country at the time he was last heard from or his last whereabouts or residence known, and whose estate at the time of the issuance of letters of administration consists of real or personal property in the State of Oregon or of a distributive share under an order of a probate court or moneys in an estate of a deceased person in the State of Oregon, whose estate has not been closed or settled and is in course of administration and in the possession of an executor of a will, or of an administrator with a will annexed or an administrator of an estate. The administrator appointed under ORS 120.310 is entitled to receive distributive shares in an estate made under order of a probate court subsequent to his appointment.

120.330 Commissions for taking depositions. The probate court or judge thereof where an application is made pursuant to ORS 120.310 for issuance of letters of administration, on the application of such applicant may issue commissions for taking the depositions of witnesses in the State of Oregon and commissions for taking the depositions of witnesses out of the State of Oregon. The provisions of the law of this state then in force in relation to the issuance of such commissions and the taking of depositions of witnesses in suits and actions shall apply, except that no notice is required to be given to any party or parties.

120.340 Ascertainment as to presumption of death; spouse or interested person as witness. At the hearing described in ORS 120.310 the probate court shall take such legal evidence as is then offered, for the purpose of ascertaining whether the presumption of death is established. No person shall be disqualified from testifying by reason of his or her relationship as husband or wife to the presumed decedent, or of his or her interest in the estate of such person.

120.350 Finding in favor of presumption of death; notice; publication. If satisfied upon the hearing that the legal presumption of death is made out, the court shall so decree, and shall forthwith cause notice thereof to be inserted for two successive weeks in a newspaper published in the county, and for the same time and in the same manner, also when practicable, in a newspaper published at or near the place, outside the state, where, when last heard from, the presumed decedent had his residence. The notice shall require the presumed decedent, if alive, or any other person for him, to produce to the court within 12 weeks from the date of the last publication of the notice, satisfactory evidence of his or her continuance in life.

120.360 Issuance of letters when presumption not rebutted. If, within the period of 12 weeks, evidence satisfactory to the court of the continuance of life of the presumed decedent is not forthcoming, the court shall order the issuance of letters of administration to the applicant or person entitled thereto, upon filing of an undertaking as provided by law for administrators. The letters until revoked and all acts done in pursuance thereof and in reliance thereupon shall be as valid as if the presumed decedent were in fact dead.

120.370 Distribution of estate; undertaking by recipient to refund to absentee. Before any distribution of the proceeds of the estate of a presumed decedent, the persons entitled to receive the same shall respectively furnish an undertaking with surety or sureties, satisfactory to and to be approved by the judge of the court, in such sum and form as the court shall direct, so conditioned that if the presumed decedent is in fact alive at the time and shall within five years after the date of the order of distribution make demand therefor, refund will be made of the amounts received by each on demand with interest thereon. If any person

entitled to receive the same is unable to give such undertaking, then the money entitled to be received by such person shall be loaned at interest on security to be approved by the court, which interest shall be paid annually to such person entitled thereto, and the money shall remain at interest until the expiration of five years after the date of the order of distribution or the security is given or the court, on application, shall order it to be paid to the person or persons entitled thereto.

120.380 Absentee shown to be alive; revocation of administration; liability of administrator. Any court having probate jurisdiction may revoke letters of administration at any time upon due and satisfactory proof that the presumed decedent is in fact alive, after which revocation all the powers of the administrator shall cease, but all receipts or disbursements of assets and other acts by him before revocation shall remain as valid as though such letters had not been revoked. The administrator shall settle an account of his administration down to the time of such revocation, and shall transfer all assets remaining in his hands to the person as the administrator of whose estate he had acted, or to his attorney or other duly authorized agent. In the event a sale of real or personal property has been conducted and closed by the administrator the presumed decedent has no right, title or interest in or to such real or personal property but only to the funds realized therefrom or so much thereof, if any, as remains in the hands of the administrator upon the closing of the estate of the presumed decedent, and such presumed decedent shall have the right of recovery of all such funds in all cases in which such recovery could have been had in the absence of ORS 120.310 to 120.400.

120.390 Substitution of absentee as party in actions and suits; opening prior judgments. (1) After revocation of letters of administration, the person erroneously presumed to be dead may, on application filed of record, and in conformance with the statutory provisions, be substituted as plaintiff in all actions and suits brought by such administrator, whether prosecuted to judgment or otherwise. He may, in all actions or suits previously brought against such administrator, be substituted as defendant, on proper application filed by him or by the plaintiff therein, but shall not be compelled to go to trial within less than three months from the time of such application.

(2) Judgments or decrees recovered against such administrator before revocation of letters may be opened upon application by the presumed decedent, made within three months after such revocation, and supported by affidavit, specifically denying, on the knowledge of the affiant, the cause of action or specifically alleging the existence of facts which would constitute a valid defense; but if within the three months such application is not made, or, being made, the facts shown are adjudged an insufficient defense, the judgment or decree shall be conclusive as to all intents, saving the defendant's right of appeal, as in other cases.

(3) After the substitution of the supposed decedent as defendant in any judgment or decree, it becomes a lien upon his real estate in the county, and so continues as other judgments unless or until it is set aside by the lower court or reversed by the Supreme Court.

120.400 Costs. The costs attending the issuance of such letters of administration or their revocation shall be paid out of the estate of the presumed decedent, and costs arising upon an application for letters which are not granted, shall be paid by the applicant.

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