Chapter 113

1963 REPLACEMENT PART

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GENERALLY

113.010 Widow's dower. The widow of every deceased person shall be entitled to dower, the use during her natural life of one-half part of all the land, including any equitable estate in land, whereof her husband was seised of an estate of inheritance at any time during the marriage, unless she is lawfully barred thereof.

113.020 Widower's curtesy; application of laws applicable to dower. (1) The widower of every deceased person shall be entitled, as tenant by the curtesy, to the use during his natural life of one-half part of all the land, including any equitable estate in land, whereof his wife was seised of an estate of inheritance at any time during their marriage, although such husband and wife may not have had issue born alive, unless he is lawfully barred thereof.

(2) Estates by the curtesy may be admeasured, assigned and barred in the same manner as dower; and, as far as practicable, all other laws of this state applicable to dower shall be applicable, in like manner and with like effect, to estates by the curtesy.

113.030 Election between provision in will and dower or curtesy. If any land is devised to a surviving spouse, or other provision is made for him in the will of the deceased spouse, he shall make his election whether he will take the land so devised or the provision so made, or whether he will be endowed by the land of his deceased spouse; but he shall not be entitled to both unless it plainly appears by the will to have been so intended by the testator.
[Amended by 1963 c.308 §1]

113.040 What constitutes election. When any spouse is entitled to an election under ORS 113.030, he is deemed to have elected to take such devise or other provision, unless, within six months after the date of the admission of the will to probate, he makes, executes and acknowledges and causes to be recorded in the deed records of the county where the estate is being administered his statement that he elects to accept dower or curtesy instead of the provisions of the will.
[Amended by 1963 c.308 §2]

113.050 Surviving spouse's right to take under will or take one-fourth interest in personalty; personalty subject to expenses and taxes. (1) The surviving spouse of a decedent domiciled in this state at the time of death shall have an election whether to take under the will of the decedent or to have and take upon distribution an undivided one-fourth interest in all the personal property of which the decedent died possessed, which interest shall be in addition to, and not in lieu of, any right of dower or curtesy or homestead.

(2) Such undivided one-fourth interest in personal property shall be subject to the following:

(a) A proportionate share of the debts of the decedent, the expenses of last illness and administration, the inheritance tax computed under subsection (1) of ORS 118.100, and, if applicable, the inheritance tax of any other state.

(b) A proportionate share of the federal estate tax, if any, provided the total of all property passing to the surviving spouse of a type which qualifies for the marital deduction under the federal estate tax law exceeds the maximum marital deduction permitted under such law. Said proportionate share shall be determined by first multiplying the total federal estate tax by the lesser of:

(A) The total of all such property so passing to the surviving spouse less the maximum marital deduction allowable; or

(B) The value of such undivided one-fourth interest;

and then dividing the product thereof by a sum equal to the value of the taxable estate for federal estate tax purposes plus the exemption allowable under the federal estate tax law.

(c) Being sold for the best interest of the estate or for purpose of distribution.
[Amended by 1963 c.272 §1]

113.060 What constitutes election under ORS 113.050. The surviving spouse is deemed to have elected to take under the will unless, within six months after the date of the admission of the will to probate, she or he makes, acknowledges, serves on the executor or his attorney and causes to be filed in the estate proceedings a statement that she or he elects to take the undivided one-fourth interest mentioned in ORS 113.050 instead of under the will. The clerk of the court shall record every such statement of election in the record of wills.
[Amended by 1963 c.271 §1]

113.070 Widow may remain in dwelling and have sustenance one year. A widow may remain in the dwelling house of her husband one year after his death without being chargeable with rent therefor, and shall have her reasonable sustenance out of the estate for one year.

113.080 Alien or nonresident entitled to dower. A woman being an alien shall not on that account be barred of her dower; and any woman residing out of the state shall be entitled to dower of the land of her deceased husband lying in this state of which her husband died seised, and the same may be assigned to her, or recovered by her, in like manner as if she and her deceased husband had been residents within the state at the time of his death.

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

113.100 [Reserved for expansion]

EFFECT OF EXCHANGE OR MORTGAGE OF LAND ON DOWER

113.110 Exchange of land, effect on dower; election by widow. If a husband seised of an estate of inheritance in land exchanges such land for other land, his widow shall not have a dower of both, but shall make her election to be endowed of the land given or of that taken in exchange and if such election is not evinced by the commencement of proceedings to recover her dower of the land given in exchange within one year after the death of her husband, she shall be deemed to have elected to take her dower of the land received in exchange.

113.120 Dower in land mortgaged before marriage. When a person seised of an estate of inheritance in land shall have executed a mortgage of such estate before marriage, his widow shall be entitled to dower out of the land mortgaged, as against every person, except the mortgagee and those claiming under him.

113.130 Dower in land mortgaged during coverture for purchase money. When a husband purchases land during coverture, and at the same time mortgages his estate in such land to secure the payment of the purchase money, his widow is not entitled to dower out of such land as against the mortgagee or those claiming under him, although she has not united in such mortgage; but she is entitled to dower as against all other persons.

113.140 Widow entitled to interest in surplus of mortgage sale. In the cases mentioned in ORS 113.120 or 113.130, or in case of a mortgage in which she has joined with her husband, if the mortgagee, or those claiming under him, after death of her husband, causes the mortgaged premises to be sold by virtue of such mortgage and a surplus remains after payment of the money due thereon and the costs and charges of the sale, the widow is entitled to the interest or income of one-half part of such surplus for her life as dower.

113.150 Effect on dower of satisfaction of mortgage by claimant under her husband. If, in the cases specified in ORS 113.120 to 113.140, the heir or other person claiming under the husband pays and satisfies the mortgage, the amount so paid shall be deducted from the value of the land, and the widow shall have set out for her, for her dower in the mortgaged lands, the value of one-half of the residue after such deduction.

113.160 Valuation of land enhanced in value after husband's sale. When a widow is entitled to dower out of any land which has been aliened by the husband in his lifetime and such land has enhanced in value after the alienation, in setting forth the widow's dower such land shall be estimated according to its value at the time it was so aliened.

113.170 to 113.200 [Reserved for expansion]

ADMEASUREMENT OF DOWER AND CURTESY

113.210 Assignment of dower by probate court; proceedings in case of dispute. (1) When a widow is entitled to dower in the land of which her husband died seised, it may be assigned to her in whatever counties the land may lie, by the probate court of the county in which the estate of the husband is settled, upon application of the widow or any other person interested in the land. Notice of such application shall be given to the heirs, devisees or any person claiming under any of them in such manner as the court shall direct.

(2) If it appears on the trial of any proceeding before a county court for the admeasurement of dower from the evidence of any of the heirs, devisees or any person claiming under any of them or from the pleadings, that the right to dower is disputed by such heirs, devisees or person claiming under any of them, the county court shall immediately make an entry thereof in its docket and cease all further proceedings and shall certify and return to the circuit court a transcript of all the proceedings relating to such admeasurement of dower together with all the process and other papers relating to such proceeding in the same manner and within the same time as upon appeal. Thereupon the circuit court shall proceed to admeasure the dower to final determination as if the proceeding had been originally commenced therein, and disbursement shall abide the event of such proceeding.

113.220 Warrant for assignment of dower. For the purpose of assigning dower, the probate court shall direct a warrant to issue to three discreet and disinterested persons, authorizing and requiring them to set off the dower by metes and bounds, when it can be done without injury to the whole estate.

113.230 Oath and duty of commissioners; acceptance and record of return; costs. The commissioners shall be sworn by a judge of any court of record or a justice of the peace faithfully to discharge their duties, and forthwith shall set off the dower according to the command of the warrant mentioned in ORS 113.220, and make return of their doings, with an account of their charges and expenses, in writing to the appointing court. When the return is accepted and recorded and an attested copy thereof filed in the office of the county clerk of the county where the lands are situated, the dower shall remain fixed and certain, unless such confirmation is set aside or reversed. Costs on appeal and one-half of the costs of such proceedings shall be paid by the widow, and the other half by the adverse party.

113.240 Property incapable of division. When the estate out of which dower is to be assigned consists of a mill or other tenement which cannot be divided without damage to the whole, and in all cases where the estate cannot be divided by metes and bounds, the dower may be assigned out of the rents, issues and profits thereof to be had and received by the widow as a tenant in common with the other owners of the estate.

113.250 Widow may use land without having dower assigned. When a widow is entitled to dower in the land of which her husband died seised, she may continue to occupy the same with the children or other heirs of the deceased, or may receive one-half part of the rents, issues and profits thereof, so long as the heirs or others interested do not object, without having the dower assigned.

113.260 Endowment anew. If a woman is lawfully evicted of land assigned to her as dower or settled upon her as jointure, or is deprived of the provision made for her by the will or otherwise, in lieu of dower, she may be endowed anew in like manner as if such assignment, jointure or other provision had not been made.

113.270 Doweress not to suffer waste, but to keep in repair. No woman endowed of any land shall commit or suffer any waste on the same; but every woman so endowed shall maintain the houses and tenements, with the fences and appurtenances, in good repair and shall be liable to the person having the next immediate inheritance therein for all damages occasioned by any waste committed or suffered by her.

113.280 Bar of claim of dower by accepting assignment of dower. When the widow accepts an assignment of dower in satisfaction of her claim upon all the land of her husband, it is a bar to any further claim of dower against the heir of such husband, or any grantee of such husband or heir, unless such widow has been lawfully evicted of the land so assigned.

113.290 Unauthorized recovery of dower not to prejudice infant heirs. When a widow not having a right of dower shall, during the infancy of any of the heirs of the husband, or of any person entitled to the lands, recover dower by the default or collusion of the guardian of such infant heirs or such other person, such heir or person is not prejudiced thereby, but when he comes to full age has an action against such widow to recover the land so wrongfully awarded.

[Amended by 1953 c.601 §1]

113.300 to 113.400 [Reserved for expansion]

BAR BY CONVEYANCE AND JOINTURE

113.410 Bar of dower by conveyance. A married woman may bar her right of dower in any estate conveyed by her husband, or by his guardian if he is a minor, by joining in the deed of conveyance with, or by executing a deed separately from, her husband or such guardian, with or without mentioning the barring of dower therein; provided, that such separate deed, if barring an inchoate right of dower, shall not be executed to a stranger to the title, but shall be executed to the grantee of her husband or to such grantee's heirs or assigns.

113.420 Bar of dower by jointure. A woman may be barred of her dower in all the land of her husband by a jointure settled on her with her assent before the marriage if such jointure consists of a freehold estate in land, for the life of the wife at least, to take effect in possession or profit immediately on the death of her husband.

113.430 How assent to jointure expressed. Assent to jointure shall be expressed, if the woman is of the age of 21 years, by her becoming a party to the conveyance by which it is settled, and if she is under that age, by her joining with her father or guardian in such conveyance.

113.440 Pecuniary provision in lieu of dower. Any pecuniary provision that is made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in ORS 113.430, bar her right of dower in all the land of her husband.

113.450 Election between jointure or pecuniary provision and dower. If any jointure or pecuniary provision is made before marriage and without the assent of the intended wife, or if it is made after marriage, she shall make her election after the death of her husband whether she will take such jointure or pecuniary provision or be endowed with the land of her husband, but she shall not be entitled to both. This election shall be governed by the provisions of ORS 113.040.

113.460 to 113.500 [Reserved for expansion]

DAMAGES FOR WITHHOLDING DOWER

113.510 Recovery of damages in action for dower. Whenever, in any action brought for the purpose, a widow recovers her dower in land of which her husband died seised, she is entitled also to recover damages for the withholding of such dower.

113.520 Estimation of damages. Damages for withholding dower shall be one-half of the annual value of the mesne profits of the lands in which the widow recovers her dower, to be estimated in a suit against the heirs of her husband from the time of his death, and in suits against other persons from the time of demanding her dower of such persons.

113.530 Use of improvements not included in estimate of damages. Damages for withholding dower shall not be estimated for the use of any permanent improvements made after the death of the widow's husband by his heirs or by any other person claiming title to such lands.

113.540 Damages against heir. When a widow recovers her dower in any land aliened by the heir of her husband, she is entitled to recover of such heir, in a civil action, her damages for withholding such dower from the time of the death of her husband to the time of the alienation by the heir, not exceeding six years. The amount which she is entitled to recover from the heir shall be deducted from the amount she would otherwise be entitled to recover from the grantee; and any amount recovered as damages from the grantee shall be deducted from the sum she would otherwise be entitled to recover from the heir.

113.550 to 113.600 [Reserved for expansion]

PROCEEDINGS FOR RELEASE OF DOWER OR CURTESY OF INCOMPETENT OR MISSING PERSONS

113.610 Procedure to obtain order authorizing deed or mortgage for incompetent spouse and relinquishing dower or curtesy. (1) When a husband or wife is judicially declared to be of unsound mind, or incapable of conducting his or her own affairs, the spouse of such incompetent person may present a petition to a court having general equity jurisdiction in the county where the petitioner resides or where the

land to be affected is situated, setting forth the facts, and particularly describing the land sought to be conveyed or mortgaged, and praying for an order authorizing the applicant or some other person to execute a deed of conveyance or mortgage for such incompetent person, and thereby relinquishing his or her right of curtesy or dower in said land.

(2) The petition shall be verified by the oath of petitioner and shall be filed in the office of the clerk of the county where the proceeding is brought.

113.620 Order to show cause. If it appears to the court from the petition that it is necessary or would not be detrimental to the incompetent person that a deed be given relinquishing or conveying his or her curtesy or dower interest in the land, the court shall make an order directing the guardian and next of kin of the incompetent person and all persons interested in the land to appear before such court at a time and place to be therein specified not less than four nor more than eight weeks from the time of making the order, to show cause why such deed should not be directed to be made by the court.

113.630 Service of order. A copy of the order shall be personally served on the incompetent person, his guardian, next of kin, and all persons interested in the land at least 10 days before the hearing of the petition if such persons reside or are found in the state. If any of such persons reside out of the state or cannot be found in the state then service may be made on such nonresident and those who cannot be found in the state by publication of the order once each week for four successive weeks in a newspaper published in the county.

113.640 Appointment of guardian; duties and powers of guardian. If no guardian has been appointed for the incompetent person the court shall appoint some discreet person or attorney as his or her guardian. The guardian then or theretofore appointed shall inquire into the propriety, good faith and necessity of the petition, and may resist such application and subpena and take depositions to disprove or show the impropriety of granting the same.

113.650 Decree. If the court is satisfied upon the hearing that the petition was made in good faith and the prayer ought to be granted, the court shall enter a decree granting the prayer and authorizing petitioner or some other proper person to make, execute, acknowledge and deliver all such conveyances or mortgages as shall be specified in the decree.

113.660 Provisions required to be made to protect interests of incompetent person. The court shall require of the petitioner as one of the conditions of granting the decree, such security for the protection of the interests and for the proper support of the incompetent person, as the court shall deem satisfactory. The security shall be deposited with the clerk of the court, and suits may be maintained thereon for the benefit of the incompetent person in any court of competent jurisdiction; or the court shall order such portion of the money received from the sale of the land as the court shall deem equitable and just to be set apart in such manner as the court shall direct for the use and benefit of the incompetent person. The sum so set apart shall be and remain subject to the control and order of the court.

113.670 Effect of conveyances or mortgages. All deeds of conveyances or mortgages authorized and executed under the order of any court, made as provided in ORS 113.610 to 113.660, shall be valid and shall convey all the curtesy and dower interest of the incompetent person in and to the land so conveyed or mortgaged as fully as if such person had been sane and capable of conducting his or her own affairs and executed and acknowledged the same in due form of law.

113.680 Trustee of missing person may join with spouse in conveyance resulting in release of dower or curtesy. Whenever any person, who has been determined to be a missing person pursuant to the provisions of ORS 127.010 to 127.190, has an inchoate right of curtesy or dower in any land located in the state, the trustee appointed pursuant to those sections may join with the spouse of the missing person in a deed of conveyance for the purpose of and which shall result in the releasing of such right of dower or curtesy when authorized by the court so to do.

113.690 Procedure to obtain order authorizing trustee to release missing person's dower or curtesy; receipt of proceeds

after seven years. (1) The spouse of the missing person referred to in ORS 113.680 shall file with the court a petition setting forth a description of the land in which the missing person has a right of dower or curtesy and which it is proposed to convey. The petition shall also state the actual value of the tract of land, the price to be realized from any sale thereof, the age of the missing person and of the petitioner, together with all other facts known to the petitioner affecting the value of the curtesy or dower right in such property.

(2) Thereupon, the court shall determine the actual value of the curtesy or dower interest in the land and shall direct that upon the payment of such amount to the trustee, he shall execute a deed of conveyance on behalf of the missing person, which conveyance shall operate to release the right of curtesy or dower to the same extent as though the deed had been executed by the missing person.

(3) The trustee shall hold the amount so paid to him until ordered by the court to pay it to the spouse of such missing person.

(4) At any time after seven years from the payment of the money to the trustee, the spouse of such missing person may apply to the court for an order authorizing and directing the trustee to pay the same to such spouse. If it appears to the court, upon a hearing, that the person is still missing and his whereabouts wholly unknown, the court shall presume the missing person to be dead and shall authorize and direct the trustee to pay the money to the spouse of the missing person.

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 1, 1963.

Sam R. Haley
Legislative Counsel