TITLE 12

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Chapter 111

1957 REPLACEMENT PART

(1963 reprint)

Descent and Distribution

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IN GENERAL

111.010 Definitions and rules of construction for chapter. For the purposes of this chapter:

(1) "Issue" includes all the lawful and lineal descendants of the ancestor.

(2) "Real property" includes all lands, tenements and hereditaments, and rights thereto and all interest therein, whether in fee simple or for the life of another.

(3) "Personal property" includes all goods, chattels, money, credits and effects of any nature not included in the term real property.

(4) Inheritance "by right of representation" takes place when the lineal descendant of any deceased heir takes the same share or portion of the estate of an intestate that the parent of such descendant would have taken if living.

(5) A posthumous child is to be deemed living at the death of its parent.

111.020 Descent of real property. When any person dies seised of any real property, or entitled to any interest therein, in fee simple or for the life of another, not having lawfully devised the same, such real property shall descend subject to his debts, expenses of administration and to being sold for the best interest of the estate or of the heirs, devisees or legatees or for the purpose of distribution, as follows:

(1) In equal shares to his or her children, and to the issue of any deceased child by right of representation; and if there is no child of the intestate living at the time of his or her death, such real property shall descend to all his or her other lineal descendants; and if all such descendants are in the same degree of kindred to the intestate, they shall take such real property equally, or otherwise they shall take according to the right of representation.

(2) If the intestate leaves no lineal descendants, such real property shall descend to the surviving spouse; and if the intestate leaves no surviving spouse, then such real property shall descend in equal proportions to his or her father and mother.

(3) If the intestate leaves no lineal descendants, surviving spouse or father, such real property shall descend to his or her mother; if the intestate leaves no lineal descendants, surviving spouse or mother, such real property shall descend to his or her father; if the intestate leaves no lineal descendants, surviving spouse, father or mother, such real property shall descend in equal shares to the brothers and sisters of the intestate, and to the issue of any deceased brother or sister by right of representation.

(4) If the intestate leaves no lineal descendants, surviving spouse, father, mother, brother or sister, such real property shall descend to his or her next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred.

(5) When any child dies under the age of 21 years and leaves no surviving spouse or children, any real estate which descended to such child shall descend to the heirs of the ancestor from which such real property descended the same as if such child died before the death of such ancestor.

(6) If the intestate leaves no lineal descendants or kindred, such real property shall escheat to the State of Oregon.

111.030 Distribution of personal property. When any person dies possessed of any personal property, or of any right to or interest therein, not having lawfully bequeathed the same, such personal property shall be applied and distributed as follows:

(1) If the intestate leaves a widow, she shall be allowed all articles of her apparel and ornament, according to the degree and estate of the intestate, and such property and provision for the use and support of herself and minor children as shall be allowed and ordered in pursuance of ORS 116.005 to 116.020; and this allowance shall be made as well when the widow waives the provision made for her in the will of her husband as when he dies intestate.

(2) The personal property of the intestate remaining after such allowance shall be applied to the payment of the debts of the deceased and the charges and expenses of administration as provided by law.

(3) The residue, if any, of the personal property shall be distributed among the persons who would be entitled to the real property of the intestate, and in the like proportion or share, except as in this section otherwise provided.

(4) If the intestate leaves a surviving spouse and issue, such surviving spouse is entitled to receive one-half of the residue of the personal property; but if the intestate leaves a surviving spouse and no issue, the surviving spouse shall be entitled to receive

the whole of the residue of the personal property.

(5) If there is no surviving spouse or kindred of the intestate, the whole of the residue shall escheat to the State of Oregon.

111.040 Computation of degrees of kindred; kindred of half blood. The degrees of kindred shall be computed according to the rules of the civil law; and the kindred of the half blood shall inherit or receive equally with those of the whole blood in the same degree.

111.050 Estates by curtesy and dower not affected. Except as provided in ORS 111.060, nothing contained in this chapter shall affect or impair the estate of a widower as tenant by the curtesy, nor that of a widow as tenant in dower.

111.060 Person causing death not to benefit therefrom; rule as to insurance and benefits. (1) No person who feloniously takes or causes or procures another so to take the life of another shall inherit from such person, or receive any interest whatsoever in the estate of the decedent as surviving spouse, or take by devise or legacy from the deceased person any portion of his or her estate.

(2) No beneficiary of any policy of insurance or certificate of membership issued by any benevolent association or organization payable upon the death or disability of any person who in like manner takes or causes or procures to be taken the life upon which such policy or certificate is issued, or who causes or procures a disability of such person, shall take the proceeds of such policy or certificate. However, an insurance company shall be discharged of all liability under a policy issued by it upon payment of the proceeds in accordance with the terms thereof unless before such payment the company shall have written notice by or on behalf of some claimant other than the beneficiary named in the policy that a claim to the proceeds of the policy will be made by the heirs of the deceased or disabled person under the provisions of this section.

(3) In every instance mentioned in this section, all benefits that would accrue to any person upon the death or disability of the person whose life is thus taken or who is thus disabled shall become subject to distribution among the other heirs of the deceased person according to the rules of descent and distribution in case of death as provided by law, and in case of disability the benefits thereunder shall be paid to the disabled person.

111.070 Right of nonresident alien to take property by succession or testamentary disposition. (1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:

(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;

(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

(c) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in this state without confiscation, in whole or in part, by the governments of such foreign countries.

(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

(3) If such reciprocal rights are not found to exist and if no heir, devisee or legatee other than such alien is found eligible to take such property, the property shall be disposed of as escheated property.

111.080 to 111.100 [Reserved for expansion]

ADVANCEMENTS

111.110 Advancements considered as part of estate and of distributive share of descendant. Any property, real or personal, that may have been given by the intestate in his lifetime as an advancement to any child, or other lineal descendant, shall be considered a part of the intestate's estate, so far as regards the division and distribution thereof among his issue, and shall be taken by such child, or other descendant, toward his share of the intestate's estate.

111.120 What grants and gifts deemed advancements. All grants and gifts are deemed made in advancement if so expressed in the grant or gift or if so charged in writing by the intestate or acknowledged in writing to be so made by the child or other descendant to whom it is made, and not otherwise.

111.130 Nonconsideration of advancement in computing widow's part. If the intestate leaves a widow and issue, and any of such issue has received an advancement from the intestate in his lifetime, the value of such advancement shall not be taken into consideration in computing the part to be given to the widow, but the widow shall only be entitled to receive the one-half of the residue, after deducting the value of the advancement.

111.140 Effect of advancement on distribution. If the amount of an advancement exceeds the share of the heir so advanced, such heir shall be excluded from any further share or portion in the division or distribution of the estate, but shall not be required to refund any part of the advancement. If the amount so received is less than his share he shall be entitled to so much more as will give him his full share or portion of the estate of the intestate.

111.150 How advancement of realty considered; advancement of realty or personalty of less than descendant's share. If any advancement is made in real property, the value thereof shall, for the purposes of ORS 111.140, be considered as part of the real property to be divided. If the advancement is either in real or personal property, and shall in either case not exceed the share or portion of such real or personal property that would come to the heir so advanced, such heir shall not refund any part of it, but shall take or receive so much less of the whole part of the estate as will make the whole share equal to those of the other heirs who are in the same degree with the heir so advanced.

111.160 Determination of value of advancement. If the value of the property, real or personal, so advanced is expressed in the conveyance or writing whereby the same is granted or given, or in the charge thereof made by the intestate, or in the acknowledgement by the party receiving it, in the division and distribution of the estate, such advancement shall be considered of the value so expressed; otherwise, it shall be estimated at its value when granted or given.

111.170 Death of child to whom advancement is made. If any child or lineal descendant to whom an advancement is made dies before the intestate, leaving issue, such advancement shall be deemed made to such issue, and the division and distribution of the estate shall be made accordingly.

111.180 to 111.200 [Reserved for expansion]

EFFECT OF ADOPTION AND ILLEGITIMACY

111.210 Inheritance rights of adopted child from adopting parents; death under age or intestate. An adopted child shall bear the same relation to his adopting parents and their kindred in respect to the inheritance of property as he would if he were the natural child of such parents, and if he dies under age or intestate leaving property, such property shall be distributed as if he were the natural child of such parents.

111.212 Place and time of adoption as affecting inheritance by and from adopted person. In applying the laws of descent and distribution of this state, the same effect shall be given to an adoption as is set forth in ORS 109.041 irrespective of whether the adoption was granted heretofore or hereafter, and irrespective of whether the adoption was consummated in Oregon.
[1953 c.650 §2]

111.220 [Repealed by 1957 c.411 §7]

111.230 [Repealed by 1957 c.411 §7]

111.231 Descent and distribution where parents not married. In applying the laws of descent and distribution of this state, full effect shall be given to all relationships as described in ORS 109.060. Before the relationship of father and child and other relationships dependent upon the establishment of paternity shall be given effect in determining inheritance rights, heirship must be established prior to the closing of the administration of the decedent's estate, or, if the decedent's estate is not administered in this or any other state, then within three years after the decedent's death. In the event that such heirship be established subsequent to proceedings for the sale of

real property in the decedent's estate, the sale proceedings shall be valid, notwithstanding that citation was not issued to such heir. [1957 c.411 §3]

111.240 [Repealed by 1957 c.411 §7]

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