Chapter 114

1965 REPLACEMENT PART

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FORMALITIES

114.010 Term "will" includes codicil. The term "will," as used in this chapter includes all codicils.

114.020 Who may make wills; limitations. Every person of 21 years of age and upward, or who has attained the age of majority as provided in ORS 109.520, of sound mind, may, by will, devise and bequeath all his or her estate, real and personal, saving to the widow, if any, her dower, and to the widower, if any, his curtesy.
[Amended by 1955 c.69 §1]

114.030 Will to be in writing; execution; attestation. Every will shall be in writing, signed by the testator, or by some other person under his direction, in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will, in the presence of the testator.

114.040 Person signing testator's name to sign his own name as witness. Any person who signs the testator's name to any will by his direction shall subscribe his own name as a witness to such will, and state that he subscribed the testator's name at his request.

114.050 Will of mariner or soldier. Any mariner at sea or soldier in the military service may dispose of his wages or other personal property as he might have done by common law, or by reducing the same to writing.

114.060 Nonresident's will affecting local property; law governing. Any person not an inhabitant of, but owning property, real or personal, in this state may devise or bequeath such property by last will executed, if realty is devised, according to the laws of this state or, if personalty is bequeathed, according to the laws of this state or of the country, state or territory in which the will is executed.

114.070 Devise or bequest to trustee of an existing trust. A devise or bequest in a will duly executed pursuant to the provisions of this chapter may be made in form or substance to the trustee of a trust in existence at the date of the testator's death and established by written instrument executed prior to the execution of such will. Such devise or bequest shall not be invalid because the trust is amendable by the settlor or any other person or persons, provided that the will or the last codicil thereto was executed subsequent to the time of execution of the trust instrument and all amendments thereto.
[1957 c.345 §1]

114.080 to 114.100 [Reserved for expansion]

REVOCATION

114.110 Express revocation or alteration. A written will cannot be revoked or altered otherwise than by another written will, or another writing of the testator, declaring such revocation or alteration and executed with the same formalities required by law for the will itself; or unless the will is burnt, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by another person, in his presence, by his direction and consent; and when so done by another person, the direction and consent of the testator, and the fact of such injury or destruction, shall be proved by at least two witnesses.

114.120 When cancellation of will revives prior will. If, after making any will, the testator shall duly make and execute a second will, the destruction, canceling or revocation of such second will shall not revive the first will unless it appears by the terms of such revocation that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

114.130 Subsequent marriage, divorce or annulment of testator as a revocation. A will made by any person is deemed revoked by his or her subsequent marriage, divorce, or annulment of marriage, unless the will expressly declares the intention of the testator that the will shall not be revoked by such action.
[Amended by 1955 c.266 §1; 1965 c.506 §1]

114.140 Bond or agreement to convey property devised as a revocation. A bond, covenant or agreement made for a valuable consideration by a testator to convey any property devised or bequeathed in any will previously made, is not deemed a revocation of such previous devise or bequest, either in law or equity; but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant or agreement, for the specific performance or otherwise, against devisees or legatees as might be had by law against the heirs of the testator or his next of kin, if the same had descended to them.

114.150 Encumbrance as a revocation of previous will. A charge or encumbrance upon any real or personal estate, for the purpose of securing the payment of money or the performance of any covenant or agreement, is not deemed a revocation of any will previously executed relating to the same estate. The devises and legacies therein contained shall pass and take effect subject to such charge or encumbrance.

114.160 to 114.200 [Reserved for expansion]

RULES OF CONSTRUCTION

114.210 Testator's intent. All courts and others concerned in the execution of wills shall have due regard to the directions of the will and the true intent and meaning of the testator in all matters brought before them.

114.220 Construction of devise for life with remainder in fee to children. If any person by will devises any real estate to any person for the term of such person's life, and after his death, to his or her children or heirs, or right heirs in fee, such devise shall vest an estate for life only in such devisee, and remainder in fee simple in such children.

114.230 Presumption of devise of fee; passing of interest acquired after making of will; effect of conveyance by testator after will made. (1) A devise of real property is deemed a devise of all the estate or interest of the testator therein subject to his disposal, unless it clearly appears from the will that he intended to devise a less estate or interest.

(2) Any estate or interest in real property acquired by anyone after the making of his or her will shall pass thereby, unless it clearly appears therefrom that such was not the intention of the testator.

(3) No conveyance or disposition of real property by anyone after the making of his or her will shall prevent or affect the operation of such will upon any estate or interest therein subject to the disposal of the testator at his or her death.

114.240 When issue of deceased devisee takes estate. When any estate is devised to any child, grandchild or other relative of the testator, and such devisee dies before the testator, leaving lineal descendants, such descendants shall take the estate, real and personal, as such devisee would have done if he had survived the testator.

114.250 Pretermitted heirs to have portion of estate. If any person makes his will and dies, leaving a child or children, or, in case of their death, descendants of such child or children, not named or provided for in such will, although born after the making of such will or the death of the testator, every such testator, so far as regards such child or children or their descendants, not provided for, shall be deemed to die intestate; and such child or children, or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate; and the same shall be assigned to them, and all the other heirs, devisees and legatees shall refund their proportional part.

114.260 Effect of advancement to pretermitted heir. If the child or children, or their descendants, referred to in ORS 114.250, has had an equal proportion of the testator's estate bestowed on them in the testator's lifetime by way of advancement, they shall take nothing by virtue of the provisions of ORS 114.250.

114.270 Payment and ownership of proceeds of United States bonds. Where any United States savings bond or United States war-savings bond, heretofore or hereafter issued, is payable to a designated person, whether as owner, co-owner or beneficiary, and such bond is not transferable, the right of such person to receive payment of such bond according to its terms, and the ownership of the money so received, shall not be defeated or impaired by any statute or rule of law governing transfer of property by will or gift or an intestacy. However, nothing in this section shall limit ORS 41.560 or ORS chapter 95, relating to fraudulent conveyances and transfers.

114.280 to 114.300 [Reserved for expansion]

WITNESSES AS BENEFICIARIES

114.310 Invalidity of devise or legacy to person attesting will. Any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any real or personal estate, except charges in lands, tenements or hereditaments for the payment of any debt, given or made by will to any person who attested the execution of the will is, so far

only as concerns such person or any person claiming under him, void; and such person shall be admitted as a witness to the execution of the will.

114.320 Attesting legatee may take intestate share. If any attesting witness described in ORS 114.310 would be entitled to any share in the testator's estate in case the will should not be established, then so much of the estate as would have descended or been distributed to such witness shall be saved to him as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will in proportion to and out of the parts devised and bequeathed to him.

114.330 Result if there are sufficient other witnesses. If the execution of the will described in ORS 114.310 is attested by a sufficient number of other competent witnesses, as required by ORS 114.030, 114.050 and 114.060, then such devise, legacy, interest, estate, gift or appointment is valid.

114.340 Creditor as witness. If by any will any real estate is charged with any debt, and any creditor whose debt is so charged has attested the execution of such will, every such creditor shall be admitted as a witness to the execution of such will.

114.350 [Repealed by 1963 c.287 §1]

114.360 [Repealed by 1963 c.287 §1]

114.370 [Repealed by 1963 c.287 §1]

114.380 to 114.400 [Reserved for expansion]

DEPOSIT OF WILLS WITH COUNTY CLERK

114.410 Deposit of will with county clerk. A testator may deposit his will for safekeeping in the office of the county clerk for the county in which he resides, upon paying the clerk a fee of $1. The clerk shall give to the testator a certificate of such deposit and shall safely keep every will so deposited. He shall keep an index of all such wills.

114.420 Inclosure in sealed wrapper; inscription. Every will deposited pursuant to ORS 114.410 shall be inclosed in a sealed wrapper, having inscribed upon it the name and residence of the testator, the day when and the person by whom it was deposited. The wrapper may also have indorsed upon it the name of a person to whom the will is to be delivered after the death of the testator. The wrapper shall not be opened until it is delivered to a person entitled to receive it, or until it is otherwise disposed of in accordance with ORS 114.430 to 114.440.

114.430 Delivery to testator during his lifetime; delivery after death. During the lifetime of the testator the will shall be delivered only to him, or in accordance with his order in writing, signed by him and duly acknowledged or with his signature satisfactorily proved to the county clerk. After the death of the testator it shall be delivered to the person named in the indorsement, if he demands it.

114.440 Public opening in court; procedure when jurisdiction is in another court. If the will is not called for by the person, if any, named in the indorsement, it shall be publicly opened in court after notice of the testator's death. If the jurisdiction of the case belongs to another court it shall be delivered to the executors named in the will, or shall be filed in the office of the county clerk of such other court.

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 November 15, 1965.

Sam R. Haley
Legislative Counsel