Chapter 117

1965 REPLACEMENT PART

Settlement and Distribution

PERIODIC ACCOUNTING

117.010 Semiannual accounts; matters to be shown
117.020 Proceeding if representative neglects to file an account
117.030 Order for payment of the expenses, charges and claims

PAYMENT OF CLAIMS AGAINST ESTATE

117.110 Order of payment of charges and claims
117.120 Secured debts; preference restricted to proceeds of property
117.130 Satisfaction of secured debt obtained by judgment or decree in lifetime of deceased
117.140 Estate insufficient to pay claims of one class
117.150 Funeral charges, who may incur; payment of charges
117.160 Priority of administrator's compensation and expenses
117.170 Debts not due or contingent; how paid
117.180 Administrator's personal liability to creditor

DISTRIBUTION TO LEGATEES, DEVISEES AND HEIRS

117.310 Payment of personalty; escheat
117.315 Distribution of personal property under $1,000 to minor who has no guardian
117.320 When realty is discharged from administration; distribution of surplus
117.330 Bequests and legacies; when liable for debts
117.340 Contribution among legatees, devisees and heirs
117.350 Application for distribution of share of realty or personalty
117.361 Notice to interested persons; hearing on application; distribution; undertaking of distributee
117.370 Qualification and justification of sureties; costs
117.380 Application by representative for refund by distributee
117.390 Decree for refund

DETERMINATION OF HEIRSHIP

117.510 Order for determination of heirship; petition; appointment of guardian
117.520 Order for hearing; citation to persons interested
117.530 Service and return of citation and petition
117.540 Trial of issues; stay of proceedings and notice to Governor if deceased died without heirs
117.550 Missing heirs or distributees
117.560 Decree, conclusiveness; appeal; reopening of proceedings

FINAL ACCOUNT

117.610 Filing final account; hearing thereon
117.612 Notifying heirs or legatees and devisees of hearing on final account
117.615 Notice to State Public Welfare Commission
117.620 Objections to final account, by whom and when made
117.630 Effect of decree upon final account; order setting forth heirs and legatees
117.640 Representative chargeable with the amount of inventory
117.650 Representative not to profit or suffer through change in values or inability to collect
117.660 Expenses and compensation of representative
117.670 When court to reduce compensation provided by will
117.680 Compensation of representative
117.690 Proceedings in case of neglect to file final account

REOPENING ESTATES

117.710 Reopening estate of decedent

CROSS REFERENCES

Descent and distribution where parents not married, 111.231
Fees in probate proceedings, 21.310 to 21.320
Records in probate matters, 7.240
Unclaimed property, disposition of, 98.302 to 98.436

117.110

Aid from counties, claim for against estate of recipient, 416.310, 416.320
Blind, aid to, as a claim against estate of recipient, 416.310
Cost of care of person at state institution, responsibility for, 179.620, 179.740
Disabled, aid to, as a claim against estate of recipient, 412.600
Indigent injured in motor vehicle accident, claims against estate, 445.250
Industrial Accident Fund, amount due, as a preferred claim, 656.562
Inheritance tax is lien on property, 118.230, 118.280
Medical assistance to the aged, 413.200
Old-age assistance, claim for against estate of recipient, 413.200

117.310

Advancements, Ch. 111
Boat, transfer of interest in, 488.772
Community property, 108.540
Distributees, liability for debts of decedent, Ch. 121
Escheats, Ch. 119
Guardianship estate, distribution, 126.530
Inheritance tax, deducted by representative before distribution of shares to heirs, 118.240
Inheritance tax is lien on property, 118.230, 118.280
Liquor licensee, disposition of stock of deceased, 471.301, 472.141
Motor vehicle, transfer of interest in, 481.415

117.320

Advancements, Ch. 111
Registered land, devolution as personalty, 94.405 to 94.445

117.330

Distributees, liability for debts of decedent, Ch. 121

117.340

Contribution from next of kin, suit for, 121.220, 121.250

117.361

Bonds and undertakings, deposits in lieu thereof, Ch. 22

Representative to report any levy made on distributee's share of personalty when petition for distribution filed, 29.175

117.510

Declaratory judgment available to executor or administrator, 28.040

Falsely pretending heirship as a crime, 165.240

117.550

Estates of persons presumed dead, Ch. 120

Missing persons, conserving property, Ch. 127

Presumption of death of person not heard from for seven years, 41.360(26)

117.610

Closing agreements concerning income tax liability, 305.150

Discharge of representative, conditioned, 116.195

Inheritance tax, receipt for, necessity of before discharge, 118.250, 118.840

Notice when estate does not exceed minimum sum, 116.765

Personal income taxes must be paid before final account allowed, 316.530

Personal property taxes, 311.415

Representative's claim, determination of, 116.585

117.660

Inheritance tax on excess of bequest to representative over a reasonable compensation, 118.030

117.680

Trust deed, trustee of, compensation, 86.795

PERIODIC ACCOUNTING

117.010 Semiannual accounts; matters to be shown. An executor or administrator shall, within the first 10 days of April and of October of each year, until the administration is completed and he is discharged from his trust, render an account verified by his oath, and file the same with the clerk, showing the amount of money received and expended by him, from whom received and to whom paid, with the proper vouchers for such payments, the amount of the claims presented against the estate and allowed or disallowed, and the name of the claimants of each, and any other matter necessary to show the condition of the affairs thereof. However, if the date of the notice of the appointment of the executor or administrator is within 60 days next preceding the first day of April or October, the filing of such account shall be omitted until the succeeding April or October.

117.020 Proceeding if representative neglects to file an account. An executor or administrator who fails to file an account, as required in ORS 117.010, may be required by a citation, ordered by the court or judge, to appear and do so, either upon the application of an heir, creditor or other person interested in the estate, or without it. If the executor or administrator refuses or neglects to appear when cited, or to file the account as required, he may be punished for a contempt, or by warrant of the judge be committed at once to close custody in the jail of the county until he consents to do so.

117.030 Order for payment of the expenses, charges and claims. As soon as practicable after the filing of the first semiannual account and each semiannual account thereafter, the court shall ascertain and determine if the estate is sufficient to satisfy the claims presented and allowed by the executor or administrator, within the first six months or any succeeding period of six months thereafter, after the date of the notice of his appointment, after paying the funeral charges and expenses of administration; and if so, it shall so order and direct; but if the estate is insufficient for that purpose, it shall ascertain what percent of such claims it is sufficient to satisfy, and order and direct accordingly.
[Amended by 1959 c.638 §11]

117.040 to 117.100 [Reserved for expansion]

PAYMENT OF CLAIMS AGAINST ESTATE

117.110 Order of payment of charges and claims. The charges and claims against the estate which have been presented and allowed, or presented and disallowed, but subsequently established by judgment or decree within the first six months after the date of the notice of appointment of the executor or administrator, shall be paid in the following order, and those presented and allowed or established in like manner within each succeeding period of six months thereafter, during the continuance of the administration, in the same manner:

(1) Funeral charges and expenses of last sickness.

(2) Taxes of whatever nature due the United States.

(3) Taxes of whatever nature due the state, or any county or other public corporation therein.

(4) Debts preferred by the laws of the United States.

(5) Debts which, at the death of the deceased, were a lien upon his property, or any right or interest therein, according to the priority of their several liens.

(6) Debts due employes of decedent for wages earned within the 90 days immediately preceding the death of the decedent.

(7) The claim of the State Public Welfare Commission for the net amount of public assistance, as defined in ORS 411.010, paid to or for the decedent and the claim of the Oregon State Board of Control for care and maintenance of any decedent who was at a state institution to the extent provided in ORS 179.610 to 179.770.

(8) All other claims against the estate.
[Amended by 1953 c.441 §3; 1955 c.597 §1; 1959 c.652 §21]

117.120 Secured debts; preference restricted to proceeds of property. The preference given by subsection (5) of ORS 117.110 only extends to the proceeds of the property upon which the lien exists, and as to such proceeds, such debt is to be preferred to any of the classes mentioned in such section other than the taxes upon such property.

117.130 Satisfaction of secured debt obtained by judgment or decree in lifetime of deceased. If the debt referred to in ORS 117.120 has been established by judgment or decree against the deceased in his lifetime and if the proceeds of the personal property are not sufficient to satisfy it, the judgment

or decree may, in the discretion of the court or judge thereof, be either satisfied from the proceeds of the sale of the property upon which it is a lien by the executor or administrator or enforced by execution against such property. Such sale by the executor or administrator discharges the property from the lien of the judgment or decree, but the same attaches to the proceeds thereof after deducting therefrom the expenses of sale.

117.140 Estate insufficient to pay claims of one class. Except as specially provided in ORS 117.110 to 117.140, if the estate is insufficient to pay all the claims and charges of any one class, payable within any period of six months, as provided in ORS 117.110, each creditor of such class shall be paid in proportion to the amount of his claim, and not otherwise.

117.150 Funeral charges, who may incur; payment of charges. The executor named in the will, the surviving spouse or next of kin are authorized to incur funeral charges on account of the estate in the burial of the decedent before the administration of the estate is granted. The burial of the decedent may be in a manner and at a cost according to his circumstances and condition in life; but no funeral charges, except those necessary to give the decedent a plain and decent burial shall be allowed out of the estate where the assets are not sufficient to satisfy all other claims against it, including legacies and devises, if there are any.

117.160 Priority of administrator's compensation and expenses. The executor or administrator may retain in his hands, in preference to any claim or charge against the estate, the amount of his own compensation and the necessary expenses of administration.

117.170 Debts not due or contingent; how paid. A debt due and payable is not entitled to preference over one of the same class not due, if the latter is presented within the same period. A debt not due upon being presented shall, if absolute, be satisfied by the payment of such sum as the court or judge thereof may prescribe by order to be equal to its present value, and if contingent, by the payment into court for the benefit of the creditor, subject to the contingency, of a sum to be ascertained in like manner, equal to its present value.

117.180 Administrator's personal liability to creditor. When, upon the filing of a semiannual account, an order is made, as provided in ORS 117.030, thereafter the executor or administrator is personally liable to each creditor included in such order for such amount.

117.190 to 117.300 [Reserved for expansion]

DISTRIBUTION TO LEGATEES, DEVISEES AND HEIRS

117.310 Payment of personalty; escheat. (1) If all the charges and claims have been satisfied upon the first distribution of the assets, or as soon thereafter as they may be, the court or judge thereof shall direct the payment of legacies and the distribution of the remaining proceeds of the personal property among the heirs or other persons entitled thereto.

(2) If upon such distribution any heir, devisee or other person entitled to any of such proceeds fails to apply for his or her portion of the proceeds, for a period of three months after the making and entering of an order of distribution by the court having probate jurisdiction of the estate, such court may, at any time thereafter, upon a showing to that effect being made, by the executor or administrator, make an order directing such executor or administrator to pay the portion which such person is entitled to receive to the county treasurer of the county. The county treasurer shall keep the same in a special fund, subject to the further order of the court, for the payment of it to the person entitled to receive it, upon application therefor. If no such order is made and the same is not applied for by the person entitled to receive it for a period of one year from the date when the county treasurer receives it, the sum shall be paid by the county treasurer to the State Land Board, and the same shall be placed in the escheat fund of the state. The person entitled thereto may thereafter and within 10 years from the date of the payment thereof to the State Land Board, apply for and recover the same as provided for the recovery of escheat funds in ORS 120.130 to 120.150.

117.315 Distribution of personal property under $1,000 to minor who has no guardian. Where a minor child residing in this state or in any other state is entitled to distribution of any personal property, including money, of a value of less than $1,000 from the estate of a decedent and has no

guardian of his estate, the executor or administrator may, with the approval of the court, pay or transfer such personal property to a parent of the child who is entitled to the custody of the child.
[1955 c.183 §2; 1957 c.662 §1]

117.320 When realty is discharged from administration; distribution of surplus. The real property of the deceased is the property of those to whom it descends by law or is devised by will, subject to the possession of the executor or administrator and to be applied to the satisfaction of claims against the estate, expenses of administration or sold, as by ORS 116.705 to 116.830 provided; but upon the settlement of the estate, and the termination of the administration thereof, so much of such real property as remains unsold or unappropriated is discharged from such possession and liability without any order or decree therefor; but if there is any surplus of the proceeds of the sale of such real property, or any part thereof, the court or judge thereof shall order and direct a distribution of such surplus among those who would have been entitled to the real property if it had not been sold.

117.330 Bequests and legacies; when liable for debts. The property, real and personal, given by the will to any devisee or legatee is liable for the payment of the funeral charges, expenses of administration and claims against the estate, and if there is more than one such devisee or legatee, then in proportion to the value or amount of the several devises or legacies; except that specific devises and legacies shall be exempt from such liability, if such appears to have been the intention of the testator, and there is other sufficient property to satisfy such charges, expenses and claims.

117.340 Contribution among legatees, devisees and heirs. When any testator in his will gives any chattel or real estate to any person, and the same is taken in execution for the payment of the testator's debts, then all the other legatees, devisees and heirs shall refund their proportional part of such loss to the person from whom the bequest was taken.

117.350 Application for distribution of share of realty or personalty. At any time after the filing of the first semiannual account and the expiration of at least six months from the date of first publication of notice to creditors, and when all uncontested claims filed with the executor or administrator have been paid or are sufficiently secured by a mortgage, or otherwise, but the estate is not in a condition to be finally closed and distributed, the executor or administrator, any heir, devisee, legatee or beneficiary of any trust created by will may apply to the court, by petition, for an order authorizing the distribution of a legacy, devise or share of the estate, or of any portion or portions thereof, to the heir, legatee or devisee entitled thereto.
[Amended by 1957 c.363 §1]

117.360 [Repealed by 1957 c.363 §2 (ORS 117.361 enacted in lieu of ORS 117.360)]

117.361 Notice to interested persons; hearing on application; distribution; undertaking of distributee. (1) Upon the filing of an application pursuant to ORS 117.350, the court shall set a date for hearing thereon and shall direct written notice of the application and of the hearing date to be given, not less than 10 days before the date set for such hearing, to the executor or administrator, unless the application was filed by the executor or the administrator, to the State Treasurer, unless the inheritance tax liability of the estate has been fully settled, to all known heirs, devisees and legatees at their last-known address, and to such other persons interested as the court may designate. At any time after the filing of the application, any person may waive in writing the notice to which he is entitled under this section.

(2) Any person interested in the estate, including the executor or administrator or any coexecutor or coadministrator, may resist the allowance of the petition.

(3) If upon the hearing it appears that the estate is but little in debt, that all inheritance taxes payable to the state have been paid, or that the State Treasurer has consented in writing to the partial distribution in question, and that the legacy, devise or share of the estate, or a portion thereof, may be distributed without loss to the creditors or injury to the estate or any person interested therein, the court, in its discretion, may grant the petition or some part thereof, either with or without bond of the distributee as the court may determine. If the distribution is to be made upon bond, the order of the court shall authorize the distri-

bution upon the condition that the distributee files with the court, within a time specified in the order, an undertaking, with one or more sufficient sureties, any of whom may be required to justify, for the benefit of whom it may concern, in such sum as the court may designate, to be void upon the condition that such distributee will pay, when required, his proportion toward satisfying any claim against the estate, including determined and undetermined state and federal tax liability, not exceeding the amount of the legacy or portion of the estate so ordered to be distributed.

(4) The distribution and delivery of the assets in accordance with an order of the court issued pursuant hereto shall be a full discharge of the executor or administrator with relation to all property embraced in such order.

(5) If the application is made by the executor or administrator, the cost of the proceeding must be paid by the estate; but, if the executor or administrator is not the applicant, the cost must be paid by the applicant, or if there are more than one, must be apportioned among them.
[1957 c.363 §3 (enacted in lieu of ORS 117.360)]

117.370 Qualification and justification of sureties; costs. The sureties in the undertaking mentioned in ORS 117.361 shall have the same qualifications as sureties in bail upon arrest, and shall justify before the court or judge thereof in like manner. The costs of the proceeding shall be paid by the applicant.

117.380 Application by representative for refund by distributee. If, after the giving of the undertaking mentioned in ORS 117.361, it becomes necessary to require the payment of all or any part of the sum therein specified to satisfy any claim against the estate, the executor or administrator shall apply by petition to the court for a decree to that effect. Notice of the application shall be given to the party filing the undertaking 10 days before the application is made.
[Amended by 1959 c.638 §12]

117.390 Decree for refund. If, upon the hearing it appears necessary and proper that the payment mentioned in ORS 117.380 be made, the court shall decree accordingly, specifying therein the amount to be paid, and within what time. If the amount is not paid within the time specified, the decree may be enforced against such party and the sureties in the undertaking, by execution, in the same manner as a decree in the circuit court.

117.400 to 117.500 [Reserved for expansion]

DETERMINATION OF HEIRSHIP

117.510 Order for determination of heirship; petition; appointment of guardian. (1) In all estates being administered in this state, where the court in which the estate is being administered considers that reasonable doubt or uncertainty exists on the showing submitted as to who are the heirs or persons entitled to distribution in whole or in part of such estate, or where any person claiming to be an heir or distributee shall request such action, the court shall, after six months from the issuance of letters testamentary or of administration, order that the question of heirship or right to distribution, or both, be determined under the provisions of ORS 117.510 to 117.560.

(2) Any person claiming to be an heir of the deceased, or to be entitled to distribution, in whole or in part, of such estate may, as plaintiff, thereupon file a petition in the matter of such estate, setting forth with reasonable particularity the facts constituting his claim of heirship or interests as distributee. Any number of persons claiming to be heirs or distributees, or both, may join in the petition, which shall be verified as a pleading. The date and place of birth of the decedent, and the names of his parents, if known to the plaintiffs, shall be stated in the petition, together with such facts as are known to the plaintiffs respecting his past residence, and the full name, age, birthplace, residence and relationship to the deceased, of each plaintiff, shall be given therein; and the petition shall set forth facts sufficient to show that prima facie each plaintiff is entitled to be declared an heir or distributee of a share in the estate and the proportionate share to which he is entitled. If no such petition is filed by any heir or claimant within 30 days after the order for the determination of heirship or the right to distribution, the administrator or executor may petition the court for a hearing and order upon the question of heirship and distributive rights. Such petition shall set forth facts showing the appointment and qualifications of the petitioner and such other information within his knowledge as may be pertinent to the question involved.

(3) Any persons who have not joined as plaintiffs in the petition, but who appear from the facts therein stated to have or claim rights as heirs or distributees, and all persons not plaintiffs who have filed in the matter of the estate written claims to be heirs or distributees, stating therein respectively their names, ages, residences, places of birth and relationship to the deceased, and all other persons known to the plaintiffs, or any of them, to have or claim rights as heirs or distributees of the estate, shall be made defendants. It shall be stated also in the petition that none of the plaintiffs knows of any person not made a party therein who is or claims to be an heir or distributee of such estate. The name, age, residence and relationship to the decedent of each defendant shall be stated in the petition or otherwise it shall be stated therein that the same is not known to the plaintiffs, or any of them, and that the plaintiffs have not been able to ascertain the same by reasonable diligence.

(4) The petition shall also be directed against all persons unnamed or unknown having or claiming any interest in such estate as heirs or distributees, and they shall be designated as defendants therein. If a minor is a defendant, his guardian shall be joined with him, if he has one within this state; and otherwise a guardian ad litem shall be appointed by the court to appear for such minor after the court has acquired jurisdiction through the service of citation, by publication or otherwise, against such minor; but no guardian ad litem shall be required for an unknown defendant.

(5) The petition shall pray the court to ascertain and declare the rights of all persons to the estate and all interests therein, and to enter a decree in accordance with the facts therein shown as to who are the heirs, and directing to whom distribution shall be made.

(6) Before setting the petition down for hearing, the court shall examine it and may order that it be made more definite and certain in any respect deemed proper, and that any other persons whom it may deem proper be added as defendants.

117.520 Order for hearing; citation to persons interested. Upon the filing and presentation of such petition the court shall make an order setting the same down for hearing at a time fixed therein, not less than 90 days nor more than six months from the date of such order, and directing the issuance and the service at least 20 days in advance of the hearing of a citation against all persons named or designated as defendants in the petition, requiring them to appear before the court at the time set for the hearing and show cause, if there is any, why the facts should not be found and the rights of heirship and distribution to the estate decreed as set forth and prayed for in the petition of the plaintiffs on file therein. It is not necessary to set forth in the order or citation the allegations of the petition as to the facts nor the relief prayed for, otherwise than by such reference thereto. The citation shall further require the defendants and all persons named or unnamed, having or claiming any interest in the estate of the decedent, to appear before the court at the time and place specified in the order and file answers setting up their respective claims of heirship, ownership or interest in the estate.

117.530 Service and return of citation and petition. Upon all defendants known and resident within this state, such citation shall be served and returned as a summons, and a copy of the petition shall be served therewith. Upon all defendants unknown or nonresident such citation may be served by publication in a newspaper, published in the county and designated by the court, not less than once each week for six successive weeks. A copy of the order for hearing, together with a copy of the petition, shall be, forthwith after the making of such order, deposited in the postoffice, directed postpaid to each known defendant residing outside this state at his place of residence, unless it appears from the petition that such place of residence is neither known to the plaintiffs nor can with reasonable diligence be ascertained by them. Proof of service of the citation and of the deposit thereof in the postoffice shall be the same as in case of a summons. Upon proof of such service to the satisfaction of the court, the court shall acquire jurisdiction to ascertain and determine the heirship, ownership and interest of all persons in and to the property of the decedent.

117.540 Trial of issues; stay of proceedings and notice to Governor if deceased died without heirs. Any person appearing at or before the time fixed for the hearing may file in the matter his verified answer to the petition, in which he may put in issue any

of the facts therein stated, and shall set forth the facts constituting his claim of heirship, ownership or interest in the estate with such particularity as the court may require, and serve a copy thereof on the plaintiff or his attorney. The plaintiff may reply thereto. Evidence may be taken orally or by deposition in the same manner as in civil actions. The issues of law and of fact arising in the proceeding shall be disposed of as in civil suits. Any order determining either affirmatively or negatively the rights of any person as an heir or distributee is a final order and an appeal therefrom by any party aggrieved shall lie as from any other final order of the court in a probate proceeding. The court shall enter the default of all persons failing to appear, plead, prosecute or defend their rights; and upon the trial of the issues arising upon the pleadings or upon the facts stated in the petition in case of a default, the court shall determine who are the heirs of the deceased, who are entitled to distribution of his personal estate on final settlement and the interest of each respective claimant therein. The court shall not decree any person to be an heir or distributee of an estate unless satisfied from the proofs submitted that such person bears the relationship to the deceased which he claims to bear, in which connection the verified petition and any affidavits, depositions, oral testimony and transcripts of church or official records, or other evidence submitted, may be considered. When the court has reason to believe that the deceased has died without heirs, the proceeding shall be stayed for 60 days and the court shall cause immediate notice to be given to the Governor.

117.550 Missing heirs or distributees. In proceedings under ORS 117.510 to 117.560 the probate court shall not refuse to find who are the heirs or distributees entitled to any estate being administred therein because of the supposed or possible existence of an unknown or missing heir or distributee who has failed to appear at the time fixed in the order of the court for the hearing of the petition, unless it affirmatively appears that such missing or unknown heir or distributee has been seen or heard from within a period extending back not more than seven years prior to the death of the person whose estate is under administration; nor shall it be presumed without affirmative proof thereof, that any such missing or unknown heir or distributee left issue; but the court shall in such a case presume and adjudge that such heir or distributee has died without issue prior to the death of the decedent and shall ascertain the heirs and order distribution accordingly.

117.560 Decree, conclusiveness; appeal; reopening of proceedings. (1) The order or decree of the court made under ORS 117.510 to 117.560 determining who are the heirs or distributees entitled to the property of any decedent which may remain on hand at the close of administration and the shares therein to which such persons are entitled, is final and conclusive, subject only to the right of appeal, and the executor or administrator is protected in making distribution in accordance therewith.

(2) However any defendant or claimant, known or unknown, against whom service of citation has been made by publication, and who has not had actual knowledge of the pendency of such proceedings prior to the entry of a decree therein, or his representatives, may upon good cause shown and upon such terms as may be proper, be allowed to answer and set up his rights and to defend after the decree and within three years from the entry thereof. If the defense is successful and his claim is established there shall be decreed to him the share in the real property of the decedent to which he is entitled. If distribution of the personal property, or any part thereof, has been made, such restitution may thereupon be compelled as the court shall direct, and judgment may be given and execution may be issued against each of the distributees for the part he should refund. All persons who have appeared in the original proceedings, or who have been adjudged heirs or distributees, or accepted any distributive share, are deemed to be before the court, and the court has jurisdiction of their persons, for the space of three years from the date of the original decree, for the purpose of any proceedings to reopen the same or order restitution. The application to reopen the decree shall be personally served upon each of them, if within this state; and otherwise such services by citation and notice as the court may direct shall be given to each of them.

117.570 to 117.600 [Reserved for expansion]

FINAL ACCOUNT

117.610 Filing final account; hearing thereon. (1) When the estate is fully administered, the executor or administrator shall file his final account. Such account shall be verified by his own oath, and contain a detailed statement of the amount of money received and expended by him, from whom received and to whom paid, and refer to the vouchers for such payments, and the amount of money and property, if any, remaining unexpended or appropriated. The account shall affirmatively show that all personal income taxes and inheritance taxes which have become payable have been paid, and that all such taxes which will become due are secured by bond, deposit or otherwise.

(2) Upon the filing of the final account, the court or judge thereof shall appoint a day at some time subsequent thereto for the hearing of objections to such final account and the settlement thereof, and shall direct the administrator or executor to give notice thereof in some newspaper published in the county, and designated by the administrator or executor, if there is one, or otherwise in such newspaper as may be designated by the court or judge, as often as once a week for four successive weeks, and oftener if the court or judge shall so direct. Before the time appointed for the hearing and settlement of a final account, the executor or administrator shall file with the clerk a copy of the notice thereof with the proper proof of its publication as directed.

117.612 Notifying heirs or legatees and devisees of hearing on final account. Whenever the final account of an administrator or an executor shall have been filed, and a day fixed for the hearing of objections thereto, the executor or administrator shall, not less than 20 days before the time fixed for such hearing, cause a copy of the published or posted notice of the time and place for such hearing to be mailed to each heir at his last-known address, if such decedent died intestate, or to each legatee and devisee at his last-known address, if such decedent died testate. If the administrator or executor is also an heir, legatee or devisee, notice need not be mailed to such administrator or executor. Proof of such mailing shall be made by affidavit and filed at or before the hearing of the final account.
[1961 c.515 §1; 1965 c.514 §2]

117.615 Notice to State Public Welfare Commission. If the State Public Welfare Commission or its authorized agent during the administration of the estate of a decedent files a claim, pursuant to ORS 412.170, 412.600 or 413.200, against the estate, and the claim has not been settled or paid in full, the executor or administrator of the estate shall, not less than 10 days before the hearing for the settlement of the final account, deliver by mail or in person to the State Public Welfare Commission a copy of the final account and a notice of the time and place of the hearing for the settlement of the final account.
[1959 c.62 §1]

117.620 Objections to final account, by whom and when made. An heir, creditor or other person interested in the estate may, on or before the day appointed for such hearing and settlement, file his objections thereto, or to any particular item thereof, specifying the particulars of such objections; but no creditor is allowed to object to such account whose claim has been satisfied, as allowed by the executor or administrator, or established by judgment or decree.

117.630 Effect of decree upon final account; order setting forth heirs and legatees. Upon the final hearing, the court shall give a decree allowing or disallowing the final account, either in whole or in part, as may be just and right. Such decree in any other action, suit or proceeding between the parties interested or their representatives is primary evidence of the correctness of the account as thereby allowed and settled. The court shall also make an order setting forth the names and ages of the heirs and legatees of such estate and such order shall be prima facie evidence of the facts set forth therein.

117.640 Representative chargeable with the amount of inventory. An executor or administrator is chargeable in his account with all the property of the estate which may come into his possession, at the value of the appraisement contained in the inventory, except as in ORS 117.650 otherwise provided.

117.650 Representative not to profit or suffer through change in values or inability to collect. An executor or administrator shall not make profit by the increase in value of the property of the estate, nor suffer loss

for the decrease in value or the destruction thereof, without his fault. If any of the property of the estate sells for more than its appraised value, he shall account for the excess. If any such property sells for less than its appraised value, he shall not be responsible for the loss, unless occasioned by his fault. He shall not be accountable for the debts due the estate, if it appears that they remain uncollected without his fault. He shall not purchase any claim against the estate which he represents, and if he satisfies any such claim for less than its nominal value, he is only entitled to charge in his account the sum actually paid.

117.660 Expenses and compensation of representative. An executor or administrator is allowed, in the settlement of his account, all necessary expenses incurred in the care, management and settlement of the estate, including reasonable attorney fees in any necessary litigation or matter requiring legal advice or counsel. For his services he shall receive such compensation as the law provides; but when the deceased, by his will, has made special provision for the compensation of his executor, such executor is not entitled to any other compensation for his services, unless, within 10 days after his appointment, he subscribes and files with the clerk a written declaration renouncing the compensation provided by the will.

117.670 When court to reduce compensation provided by will. Notwithstanding the provision in the will for the compensation of an executor, if the estate is insufficient to satisfy the claims against it, the court shall reduce such compensation, so far as may be necessary to satisfy such claims, to an amount equal to what the executor would have been entitled if no such provision had been made.

117.680 Compensation of representative. (1) The compensation provided by law for an executor or administrator is a commission upon the whole estate accounted for by him, as follows:

(a) Seven percent of any sum up to $1,000.

(b) Four percent of all above $1,000 and not exceeding $10,000.

(c) Three percent of all above $10,000 and not exceeding $50,000.

(d) Two percent of all above $50,000.

(2) In all cases, such further compensation as is just and reasonable may be allowed by the court or judge thereof, for any extraordinary and unusual services not ordinarily required of an executor or administrator in the discharge of his trust.

117.690 Proceedings in case of neglect to file final account. An executor or administrator who fails to file his final account as provided in ORS 117.610 may be proceeded against in like manner and with like effect as provided in ORS 117.020 in case of failure to file a semiannual account.

REOPENING ESTATES

117.710 Reopening estate of decedent. Upon the petition of any interested person, the court, with such notice as it may prescribe, may order the estate of a decedent reopened if other property is discovered, if any necessary act remains unperformed or for any other proper cause appearing to the court. The court may reappoint the former personal representative, or appoint another personal representative, to administer any additional property or to perform such other acts as are considered necessary. The provisions of law as to original administration apply, in so far as applicable, to accomplish the purpose for which the estate is reopened, but a claim that already is adjudicated or barred may not be asserted in the reopened administration.
[1965 c.345 §1]

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