Chapter 115

1969 REPLACEMENT PART

(1971 reprint)

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CLAIMS AGAINST ESTATES

115.005 Presentation of claims; time limitations. (1) Claims against the estate of a decedent, other than claims of the personal representative as a creditor of the decedent, shall be presented to the personal representative.

(2) Claims presented within four months after the date of the first publication of notice to interested persons shall be paid, as provided in ORS 115.115, before claims presented after the four-month period.

(3) Claims not presented before the expiration of 12 months after the date of the first publication of notice to interested persons, or before the date the personal representative files his final account, whichever occurs first, are barred from payment.

(4) If a claim is presented after the expiration of the 12-month period, but before the final account is filed, the claim is not barred if the court finds that the late presentment was caused by mistake, inadvertence, surprise or excusable neglect.
[1969 c. 591 §141]

115.010 [Repealed by 1969 c.591 §305]

115.015 Claims for personal injury, death or property damage covered by insurance. A claim for injury to or death of a person or damage to property, to the extent that the liability of the decedent therefor is covered by insurance, is not barred by failure to present it as provided in subsection (3) of ORS 115.005, but payment of the claim not so presented may be made only from the insurance proceeds. The estate of the decedent may be reopened for the purpose of asserting the claim and payment thereof, if allowed or established, from the insurance proceeds.
[1969 c.591 §141a]

115.020 [Repealed by 1969 c.591 §305]

115.025 Form and verification of claims. Each claim presented shall:

(1) Be in writing.

(2) Describe the nature and the amount thereof, if ascertainable.

(3) State the names and addresses of the claimant and, if any, his attorney.

(4) Be accompanied by the affidavit of the claimant or someone on his behalf who has personal knowledge of the fact, stating that the amount claimed is justly due, or if not due, when it will or may become due; that no payments have been made which are not credited; and that there is no just offset thereto, to the knowledge of the affiant, except as stated.
[1969 c.591 §142]

115.035 Waiver of presentment, defect or insufficiency. The presentment of a claim and any defect of form or insufficiency of a claim presented may be waived by the personal representative or by the court.
[1969 c.591 §143]

115.045 Written evidence of claim. When it appears that there is written evidence of a claim that has been presented to the personal representative, the claimant, upon demand by the personal representative, shall produce the evidence or account for its nonproduction.
[1969 c.591 §144]

115.055 Claims on debts due. If a claim on a debt due is presented and allowed, allowance shall be in the amount of the debt remaining unpaid on the date of allowance.
[1969 c.591 §145]

115.065 Claims on secured debts due. (1) A claim on a debt due for which the creditor holds security may be presented as a claim on an unsecured debt due, or the creditor may elect to rely entirely on the security without presentation of the claim.

(2) If the claim is presented, it shall describe the security. If the security is an encumbrance that is recorded, it is sufficient to describe the encumbrance by reference to the volume, page, date and place of recording.

(3) If the claim is presented and allowed, allowance shall be in the amount of the debt remaining unpaid on the date of allowance.

(4) If the creditor surrenders the security, payment shall be on the basis of the amount allowed.

(5) If the creditor does not surrender the security, payment shall be on the basis of:

(a) If the creditor exhausts the security before receiving payment, the amount allowed, less the amount realized on exhausting the security; or

(b) If the creditor does not exhaust the security before receiving payment or does not have the right to exhaust the security, the amount allowed, less the value of the security determined by agreement or as the court may order.

(6) The creditor shall not exercise remedies reserved under his security until at least 30 days after the date the claim is presented and after notice to the personal representative of his intention to exercise his remedy, but the court, on cause shown, may shorten the period.

(7) The personal representative may convey the secured property to the creditor in consideration of the release of the security and satisfaction or partial satisfaction of the claim.

[1969 c.591 §146]

115.075 Claims on debts not due. A claim on a debt not due, whether or not the creditor holds security therefor, may be presented as a claim on a debt due. If the claim is allowed, allowance shall be in an amount equal to the value of the debt on the date of allowance. The creditor, after allowance of the claim, may withdraw the claim without prejudice to his other remedies. Payment on the basis of the amount allowed discharges the debt and the security, if any, held by the creditor therefor.

[1969 c.591 §147]

115.085 Claims on contingent and unliquidated debts. (1) A claim on a contingent or unliquidated debt shall be presented as any other claim.

(2) If the debt becomes absolute or liquidated before distribution of the estate, the claim shall be paid in the same manner as a claim on an absolute or liquidated debt.

(3) If the debt does not become absolute or liquidated before distribution of the estate, the court shall provide for payment of the claim by any of the following methods:

(a) The creditor and personal representative may determine, by agreement, arbitration or compromise, the value of the debt, and upon approval thereof by the court, the claim may be allowed and paid in the same manner as a claim on an absolute or liquidated debt.

(b) The court may order the personal representative to make distribution of the estate, but to retain sufficient funds to pay the claim if and when the debt becomes absolute or liquidated. The estate may not be kept open for this purpose more than two years after distribution of the remainder of the estate. If the debt does not become absolute or liquidated within that time, the funds retained, after payment therefrom of any expenses accruing during that time, shall be distributed to the distributees.

(c) The court may order the personal representative to make distribution of the estate as though the claim did not exist.

(d) If after distribution under paragraph (b) or (c) of this subsection the debt becomes absolute or liquidated, the distributees are liable to the creditor to the extent of the estate received by them. Payment of the debt may be arranged by creating a trust, giving a mortgage, securing a bond from a distributee or by such other method as the court may order.

[1969 c.591 §148]

115.095 Compromise of claims. The personal representative may compromise a claim against the estate of a decedent.

[1969 c.591 §149]

115.105 Claims of personal representative. A claim of a personal representative shall be filed with the clerk of the court within the time required by law for presentment of claims. Upon application by the personal representative or by any interested person the claim may be considered by the court on the hearing of the final account of the personal representative.

[1969 c.591 §150]

115.110 [Repealed by 1969 c.591 §305]

115.115 Payment of claims. Upon the expiration of four months after the date of the first publication of notice to interested persons, the personal representative, after making provision for support of spouse and children ordered by the court, for expenses of administration and for claims already presented which have not been allowed or allowance of which has been appealed, shall proceed to pay the claims presented within four months after the date of the first publication of notice to interested persons and allowed against the estate, in the order of priority prescribed by ORS 115.125. After payment of those claims, claims presented after the four-month period shall be paid in the same order.

[1969 c.591 §151]

115.120 [Repealed by 1969 c.591 §305]

115.125 Order of payment of expenses and claims. (1) If the applicable assets of the estate are insufficient to pay all expenses and claims in full, the personal representative shall make payment in the following order:

(a) Support of spouse and children, subject to the limitations imposed by ORS 114.065.

(b) Expenses of administration.

(c) Expenses of a plain and decent funeral and disposition of the remains of the decedent.

(d) Debts and taxes with preference under federal law.

(e) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him.

(f) Taxes with preference under the laws of this state that are due and payable while possession of the estate of the decedent is retained by the personal representative.

(g) Debts owed employes of the decedent for labor performed within 90 days immediately preceding the date of death of the decedent.

(h) The claim of the Public Welfare Division for the net amount of public assistance, as defined in ORS 411.010, paid to or for the decedent, and the claim of the Executive Department for care and maintenance of any decedent who was at a state institution to the extent provided in ORS 179.610 to 179.770.

(i) All other claims against the estate.

(2) If the applicable assets of the estate are insufficient to pay in full all expenses or claims of any one class specified in subsection (1) of this section, each expense or claim of that class shall be paid only in proportion to the amount thereof.

[1969 c.591 §152; 1969 c.597 §279]

115.130 [Repealed by 1969 c.591 §305]

115.135 Allowance and disallowance of claims. (1) A claim presented to the personal representative shall be considered allowed as presented unless within 60 days after the date of presentment of the claim the personal representative mails or delivers a notice of disallowance of the claim in whole or in part to the claimant and, if any, his attorney. The personal representative shall file in the estate proceeding the claim as presented and a copy of the notice of disallowance.

(2) A notice of disallowance of a claim shall inform the claimant that the claim has been disallowed in whole or in part and, to the extent disallowed, will be barred unless the claimant proceeds as provided in ORS 115.145.

(3) The personal representative may rescind his previous allowance of an unpaid claim, if the claim was allowed because of error, misinformation or excusable neglect. Not less than 30 days before the date of the filing of the final account the personal representative shall give notice of rescission of his previous allowance of a claim to the claimant and, if any, his attorney in the same manner and containing the same information as a notice of disallowance.

[1969 c.591 §153]

115.140 [Amended by 1955 c.292 §1; repealed by 1969 c.591 §305]

115.145 Procedure by claimant on disallowance of claim. (1) If the personal representative disallows a claim in whole or in part, the claimant, within 30 days after the date of mailing or delivery of the notice of disallowance, may either:

(a) File in the estate proceeding a request for summary determination of the claim by the probate court, with proof of service of a copy of the request upon the personal representative or his attorney; or

(b) Commence a separate action against the personal representative on the claim in any court of competent jurisdiction. The action shall proceed and be tried as any other action.

(2) If the claimant fails to request a summary determination or fails to commence a separate action as provided in subsection (1) of this section, the claim, to the extent disallowed by the personal representative, is barred.

[1969 c.591 §154]

115.150 [Repealed by 1969 c.591 §305]

115.155 Separate action required by personal representative. If the claimant files a request for summary determination of the claim as provided in ORS 115.145, the personal representative, within 30 days after the date of service of a copy of the request upon the personal representative or his attorney, may notify the claimant in writing that if he desires to prove the claim he must commence a separate action against the personal representative on the claim within 60 days after the date of receipt of such notice. If the claimant fails to commence a separate action within 60 days after the date of receipt of the notice, the claim, to the extent disallowed by the personal representative, is barred.

[1969 c.591 §155]

115.160 [Repealed by 1969 c.591 §305]

115.165 Summary determination procedure. In a proceeding for summary determination by the probate court of a claim disallowed in whole or in part by the personal representative:

(1) The personal representative shall move or plead to the claim as though the claim were a complaint filed in an action.

(2) The court shall hear the matter without a jury, after notice to the claimant and personal representative. Upon the hearing the court shall determine the claim in a summary manner and shall make an order allowing or disallowing the claim in whole or in part.

(3) No appeal may be taken from the order of the court made upon the summary determination.
[1969 c.591 §156]

115.170 [Repealed by 1969 c.591 §305]

115.175 Interested persons heard in summary determination or separate action. Any interested person may be heard in a proceeding for summary determination by the probate court of a claim, and may intervene in a separate action against the personal representative on the claim.
[1969 c.591 §157]

115.180 [Repealed by 1969 c.591 §305]

115.185 Creditor may obtain order for payment. A creditor whose claim has been allowed or established by summary determination or separate action, and who has not received payment within six months after the date of the first publication of notice to interested persons, may apply to the court for an order directing the personal representative to pay the claim to the extent that funds of the estate are available for that payment.
[1969 c.591 §158]

115.190 [Repealed by 1969 c.591 §305]

115.195 Proof for court allowance of disallowed claim. A claim that has been disallowed by the personal representative may not be allowed by any court except upon some competent, satisfactory evidence other than the testimony of the claimant.
[1969 c.591 §159]

115.200 [Repealed by 1969 c.591 §305]

115.205 Waiver of statute of limitations. A claim barred by the statute of limitations may not be allowed by the personal representative or by any court except upon the written direction or consent of those interested persons who would be adversely affected by allowance of the claim.
[1969 c.591 §160]

115.210 [Repealed by 1969 c.591 §305]

115.215 Extension of statute of limitations. If a claim is not barred by the statute of limitations on the date of death of the decedent, the claim is not barred by the statute of limitations thereafter until at least one year after the date of death.
[1969 c.591 §161]

115.220 [1963 c.447 §1; 1965 c.514 §1; repealed by 1969 c.591 §305]

DISCHARGE OF ENCUMBRANCES

115.255 Discharge of encumbrances. (1) As used in this section:

(a) "Voluntary encumbrance" means any mortgage, trust deed, security agreement, pledge or public improvement assessment lien, or any lien arising from labor or services performed or materials supplied or furnished, or any combination thereof, upon or in respect of property.

(b) "Involuntary encumbrance" means any encumbrance upon property other than a voluntary encumbrance.

(2) If property upon which an encumbrance exists on the date of the death of the testator is specifically devised, the devisee takes it subject to the encumbrance, and the personal representative is not required to make any payment on account of the obligation secured by the encumbrance, whether or not the testator was personally liable on the obligation secured by the encumbrance, except as provided otherwise in the will or in subsection (3) or (4) of this section.

(3) Unless the will provides otherwise, the devisee of specifically devised property may require that an encumbrance thereon be fully or partially discharged out of other assets of the estate not specifically devised, if:

(a) The encumbrance is an involuntary encumbrance; or

(b) The encumbrance is a voluntary encumbrance and:

(A) The will specifically directs full or partial discharge of the encumbrance out of other assets; or

(B) The personal representative receives rents or profits, or both, from the property and the devisee requests that he apply all or part of the rents or profits, or both, in full or partial discharge of the obligation secured by the encumbrance, in which event the personal representative shall apply the rents or profits, or both, upon principal or interest, or both, owing upon the obligation, as requested; or

(C) Any devisee requests, in a writing signed by the devisee and delivered to the personal representative, that the obligation secured by the encumbrance be fully or partially discharged out of property, or the proceeds of the sale thereof, which otherwise would pass to the devisee.

(4) If a claim based upon an obligation secured by a voluntary encumbrance upon specifically devised property is presented and paid, or if specifically devised real property subject to a voluntary encumbrance is redeemed, and the devisee is not entitled to exoneration pursuant to subsection (3) of this section, the personal representative has a lien upon the property in the amount paid, and the lien shall be administered upon as an asset of the estate.

(5) If property is specifically devised by a will executed before the effective date of this section, and if an encumbrance upon that property exists on the date of the death of the testator, the rights of the devisee of that property in respect of exoneration thereof out of other assets of the estate shall be determined in accordance with the law in effect on the date the will was executed.
[1969 c.591 §162]

115.265 Power to redeem estate property. Unless otherwise provided by the will, the personal representative may redeem property of the estate sold on foreclosure of mortgage or upon execution if it appears that the redemption would be for the benefit of the estate and would not be prejudicial to creditors.
[1969 c.591 §163]

115.275 Encumbered assets; powers of personal representative. When any assets of the estate are encumbered by an involuntary or voluntary encumbrance, the personal representative may discharge the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate. Discharge of an encumbrance shall not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration under subsection (3) of ORS 115.255.
[1969 c.591 §164]

ACTIONS AND SUITS

115.305 Survival of causes of action. All causes of action or suit, by one person against another, survive to the personal representative of the former and against the personal representative of the latter.
[Formerly 121.020]

115.310 [Repealed by 1969 c.591 §305]

115.315 Continuation of action without claim presentation. An action against a decedent commenced before and pending on the date of his death may be continued as provided in paragraph (b) of subsection (2) of ORS 13.080 without presentation of a claim against the estate of the decedent.
[1969 c.591 §166]

115.320 [Repealed by 1969 c.591 §305]

115.325 Action not to be commenced until claim presented and disallowed; liability on claim presented after four months from notice. No action against a personal representative shall be commenced until the claim of the plaintiff has been presented to the personal representative and by him disallowed. If the claim is presented after the expiration of four months after the date of the first publication of notice to interested persons, the personal representative, in an action therefor, is liable only to the extent of the assets in his hands at the time the summons is served upon him and allocable to the payment of the claim pursuant to ORS 115.115 and 115.125.
[Formerly 121.090]

115.330 [Repealed by 1969 c.591 §305]
115.340 [Repealed by 1969 c.591 §305]
115.350 [Repealed by 1969 c.591 §305]
115.410 [Repealed by 1969 c.591 §305]
115.420 [Repealed by 1969 c.591 §305]
115.430 [Repealed by 1969 c.591 §305]
115.440 [Repealed by 1969 c.591 §305]
115.450 [Repealed by 1969 c.591 §305]
115.460 [Repealed by 1969 c.591 §305]
115.470 [Repealed by 1969 c.591 §305]
115.480 [Repealed by 1969 c.591 §305]
115.490 [Repealed by 1969 c.591 §305]
115.500 [Repealed by 1969 c.591 §305]
115.510 [Repealed by 1969 c.591 §305]
115.520 [Repealed by 1969 c.591 §305]
115.990 [Repealed by 1969 c.591 §305]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, 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, 1969.

Robert W. Lundy
Legislative Counsel