Chapter 114

1973 REPLACEMENT PART

Administration of Estates Generally

SUPPORT OF SPOUSE AND CHILDREN

114.005 Occupancy of family abode by spouse and children
114.015 Support of spouse and children
114.025 Petition for support and answer
114.035 Temporary support
114.045 Modification or termination of support
114.055 Nature of support
114.065 Limitations on support
114.075 Priority of support; treated as administration expense
114.085 Setting apart whole estate for support; termination of administration

ELECTIVE SHARE OF SURVIVING SPOUSE

114.105 Right to elective share; effect of election
114.115 Election barred by agreement
114.125 Elective share limited by total property received
114.135 Denial of election or share reduction when decedent and surviving spouse living apart
114.145 What constitutes election
114.155 Election by court or conservator of surviving spouse
114.165 Payment of elective share

TITLE AND POSSESSION OF PROPERTY

114.205 No distinction between real and personal property
114.215 Devolution of and title to property
114.225 Possession and control of decedent's estate

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

114.255 Commencement of duties and powers of personal representative; prior acts
114.265 General duties of personal representative
114.275 Personal representative to proceed without court order; application for authority, approval or instructions
114.285 Naming or appointment of personal representative does not discharge claim against him
114.295 Discharge or devise in will of claim of testator
114.305 Transactions authorized for personal representative
114.315 Right to perfect lien or security interest
114.325 Power to sell, mortgage, lease and deal with property
114.333 Transfer of title and interest to real property by foreign personal representative
114.335 Court order for sale, mortgage or lease
114.345 Title conveyed free of claims of creditors
114.355 Sale or encumbrance to personal representative voidable; exceptions
114.365 Validation of certain sales
114.375 Nonliability of transfer agents
114.385 Persons dealing with personal representative; protection
114.395 Improper exercise of power; breach of fiduciary duty
114.405 Personal liability of personal representative
114.415 Co-personal representatives; when joint action required
114.425 Discovery of property, writings and information
114.435 Power to avoid transfer

SMALL ESTATES

114.505 Definitions for ORS 114.505 to 114.555
114.515 Affidavit required to be filed with county clerk; filing fee
114.525 Content of affidavit
114.535 Payment or transfer to person entitled to personal property authorized by affidavit; effect of failure
114.545 Liability of person to whom property transferred or delivered or debt paid
114.555 Effect of failure to appoint personal representative

CROSS REFERENCES

Claims, generally, 115.005 to 115.215

Death benefit trusts created by will, administration, 128.460 to 128.500

Definitions, 111.005

Waiver of notices, 111.225

114.205

Conveyance by reversioners and remaindermen to life tenant vests fee, 93.160, 93.810

Fee simple conditional or fee tail estate, conveyance creating establishes fee simple absolute estate, 93.250

Person feloniously causing death shall not take by decedent's will, 112.465

Tenancy in common, devise to two or more construed to be, 93.180

Words of inheritance unnecessary to convey fee, 93.120

114.305

Representative of deceased recipient of public assistance, authority to prosecute dispositions of money or property in violation of certain public assistance laws, 411.620

SUPPORT OF SPOUSE AND CHILDREN

114.005 Occupancy of family abode by spouse and children. The spouse and dependent children of a decedent, or any of them, may continue to occupy the principal place of abode of the decedent until one year after his death or, if his estate therein is an estate of leasehold or an estate for the lifetime of another, until one year after his death or the earlier termination of his estate. During that occupancy:

(1) The occupants shall not commit or permit waste to the abode, or cause or permit mechanics' or materialmen's or other liens to attach thereto.

(2) The occupants shall keep the abode insured, to the extent of the fair market value of the improvements, against fire and other hazards within the extended coverage provided by fire insurance policies. In the event of loss or damage from those hazards, to the extent of the proceeds of the insurance, they shall restore the abode to its former condition.

(3) The occupants shall pay taxes and improvement liens on the abode as payment thereof becomes due.

(4) The abode is exempt from execution to the extent that it was exempt when the decedent was living.
[1969 c.591 §103]

114.010 [Repealed by 1969 c.591 §305]

114.015 Support of spouse and children. The court by order shall make necessary and reasonable provision from the estate of a decedent for the support of the spouse and dependent children of the decedent, or any of them, upon:

(1) Petition therefor by or on behalf of the spouse or any dependent child;

(2) Service of the petition and notice of hearing thereon to the personal representative, unless the petitioner is the personal representative;

(3) Notice to persons whose distributive shares of the estate may be diminished by the granting of the petition, unless the court by order directs otherwise; and

(4) Hearing.
[1969 c.591 §104]

114.020 [Amended by 1955 c.69 §1; repealed by 1969 c.591 §305]

114.025 Petition for support and answer. (1) The petition for support under ORS 114.015 shall include a description of property, other than property of the estate, available for the support of the spouse and children, and an estimate of the expenses anticipated for their support. If the petitioner is the personal representative, the petition shall also include, so far as known, a statement of the nature and estimated value of the property of the estate and of the nature and estimated amount of claims, taxes and expenses of administration.

(2) If the personal representative is not the petitioner, he shall answer the petition for support. The answer shall include, so far as known, a statement of the nature and estimated value of the property of the estate and of the nature and estimated amount of claims, taxes and expenses of administration.
[1969 c. 591 §105]

114.030 [Repealed by 1969 c.591 §305]

114.035 Temporary support. Pending hearing upon the petition under ORS 114.015, temporary support may be allowed by order of the court in an amount and of a nature the court considers reasonably necessary for the welfare of the surviving spouse and dependent children of the decedent or any of them.
[1969 c.591 §106]

114.040 [Repealed by 1969 c.591 §305]

114.045 Modification or termination of support. Provision for support under ORS 114.015 ordered by the court may be modified or terminated by the court by further order.
[1969 c.591 §107]

114.050 [Repealed by 1969 c.591 §305]

114.055 Nature of support. (1) Provision for support under ORS 114.015 ordered by the court may consist of any one or more of the following:

(a) Transfer of title to personal property.

(b) Transfer of title to real property.

(c) Periodic payment of moneys during administration of the estate, but the payments may not continue for more than two years after the date of death of the decedent.

(2) The court, in determining provision for support, shall take into consideration the solvency of the estate, property available for support other than property of the estate, and property of the estate inherited by or devised to the spouse and children.
[1969 c.591 §108]

114.060 [Repealed by 1969 c.591 §305]

114.065 Limitations on support. If it appears to the court that after provision for support under ORS 114.015 is made the estate will be insolvent, the provision for support ordered by the court shall not exceed one-half of the estimated value of the property of the estate, and any periodic payment of moneys so ordered shall not continue for more than one year after the date of death of the decedent.
[1969 c.591 §109]

114.070 [1957 c.345 §1; repealed by 1969 c.591 §305]

114.075 Priority of support; treated as administration expense. Subject to the limitations imposed by ORS 114.065, provision for support under ORS 114.015 ordered by the court has priority over claims and expenses of administration. The provision shall not be charged against the distributive share of the person receiving support. The provision shall be treated as an expense of administration, but shall not be a deduction for inheritance tax purposes.
[1969 c.591 §110]

114.085 Setting apart whole estate for support; termination of administration. If it appears, after the expiration of four months after the date of the first publication of notice to interested persons, that reasonable provision for support of the spouse and dependent children of the decedent, or any of them, warrants that the whole of the estate, after payment of claims, taxes and expenses of administration, be set apart for such support, the court may so order. There shall be no further proceeding in the administration of the estate, and the estate shall summarily be closed.
[1969 c.591 §111]

ELECTIVE SHARE OF SURVIVING SPOUSE

114.105 Right to elective share; effect of election. (1) If a decedent is domiciled in this state at the time of his death and dies testate, the surviving spouse of the decedent has a right to elect to take the share provided by this section. The elective share consists of one-fourth of the value of the net estate of the decedent, but the elective share shall be reduced by the value of the following property given to the surviving spouse under the will of the decedent:

(a) Property given outright;

(b) The present value of legal life estates; and

(c) The present value of the right of the surviving spouse to income or an annuity, or a right of withdrawal, from any property transferred in trust by the will that is capable of valuation with reasonable certainty without regard to the powers forfeited under subsection (2) of this section.

(2) Except as to property applied under subsection (1) of this section to reduce the elective share, an election to take under this section forfeits any other right to take under the will and under the law of intestate succession. If the will would otherwise create a power of appointment in the surviving spouse, the spouse by electing to take under this section retains the power only if it is not a general power of appointment as defined in subsection (5) of ORS 118.010 and the testator has not provided otherwise, but the spouse forfeits any general power of appointment. A power to pay more than the income or annuity or withdrawals, the value of which reduced the elective share under paragraph (c) of subsection (1) of this section, or to apply additional principal or income in behalf of the electing spouse, may not be exercised in favor of the electing spouse.

(3) The right to elect may be barred under ORS 114.115, the share limited by ORS 114.125 or the right denied or the share reduced under ORS 114.135.
[1969 c.591 §112]

114.110 [Repealed by 1969 c.591 §305]

114.115 Election barred by agreement. The right of the surviving spouse to elect under ORS 114.105 may be barred by the terms of a written agreement signed by both spouses. The agreement may be entered into before or after marriage.
[1969 c.591 §113]

114.120 [Repealed by 1969 c.591 §305]

114.125 Elective share limited by total property received. (1) The surviving spouse may not receive by election under ORS 114.105 any amount which, together with any of the following property received by him, exceeds one-half of the total of the following property, such property to be reduced by the amount of the federal estate tax payable by reason of the property:

(a) The property passing under the will;

(b) Joint annuities furnished by the decedent;

(c) Proceeds of insurance on the life of the decedent, whether or not he had any of the incidents of ownership at his death;

(d) Transfers by the decedent within three years before the date of his death, to the extent the decedent did not receive full consideration in money or money's worth;

(e) Transfers by the decedent during his lifetime as to which he retained power, alone or in conjunction with any other person, to alter, amend, revoke or terminate or to designate a beneficiary;

(f) Payments from the employer of the decedent or from a plan created by the employer or under a contract between the decedent and his employer, excluding workmen's compensation and social security payments;

(g) Property appointed by the decedent by will or by deed executed within three years before the date of his death, whether the power is general or special, but only if the property is effectively appointed in favor of the surviving spouse; and

(h) Property in the joint names of the decedent and one or more other persons, except such proportion as is attributable to consideration furnished by persons other than the decedent.

(2) For the purpose of subsection (1) of this section, the surviving spouse is considered to receive:

(a) Any property as to which the spouse is given all the income and a general power to appoint the principal.

(b) Life insurance proceeds settled by the decedent on option, if the spouse is entitled to the interest and has a general power to appoint the proceeds or to withdraw proceeds, or if the spouse is entitled to an annuity for life or instalments of the entire principal and interest for any period equal to or less than the normal life expectancy of the spouse.

(3) As used in subsection (1) of this section, "property in the joint names" means all property held or owned under any form of ownership with right of survivorship, including cotenancy with remainder to the survivor; stocks, bonds or bank accounts in the name of two or more persons payable to the survivor; United States Government bonds in coownership form or payable on death to a designated person; and shares in credit unions or savings and loan associations payable on death to a designated person or in joint form.
[1969 c.591 §114]

114.130 [Amended by 1955 c.266 §1; 1965 c.506 §1; repealed by 1969 c.591 §305]

114.135 Denial of election or share reduction when decedent and surviving spouse living apart. If the decedent and the surviving spouse were living apart at the time of the death of the decedent, whether or not there was a decree for legal separation, the court in its discretion may deny any right to elect against the will, may reduce the elective share of the spouse to such amount as the court determines reasonable and proper or may grant the full elective share in accordance with the circumstances of the particular case. The court, in deciding what elective share, if any, should be granted, shall consider the length of the marriage, whether the marriage was a first or subsequent marriage for either or both of the spouses, the contribution of the surviving spouse to the property of the decedent in the form of services or transfers of property, the length and cause of the separation and any other relevant circumstances.
[1969 c.591 §115]

114.140 [Repealed by 1969 c.591 §305]

114.145 What constitutes election. The surviving spouse is considered to have elected to take under the will unless, within 90 days after the date of the admission of the will to probate or 30 days after the date of the filing of the inventory, whichever is later, he serves on the personal representative or his attorney and files in the estate proceeding a statement that he elects to take under ORS 114.105 instead of under the will. The surviving spouse may bar any right to take under ORS 114.105 by filing in the estate proceeding a writing, signed by the spouse, electing to take under the will.
[1969 c.591 §116]

114.150 [Repealed by 1969 c.591 §305]

114.155 Election by court or conservator of surviving spouse. An election under ORS 114.105 may be filed on behalf of an incompetent surviving spouse by a court acting under ORS 126.217 or the conservator of the estate of the spouse. The court or conservator may elect against the will only if additional assets are needed for the reasonable support of the surviving spouse, taking into account the probable needs of the spouse, the provisions of the will, any nonprobate property arrangements made by the decedent for the support of the spouse and any other assets, whether or not owned by the spouse, available for such support. The election is subject to the approval of the court, with or without notice to other interested persons.
[1969 c.591 §117; 1973 c.823 §109]

Note. See note preceding 126.003.

114.165 Payment of elective share. Estate property shall be applied in satisfaction of the elective share in the following order, unless the will provides otherwise:

(1) Any intestate property;

(2) After the intestate property is exhausted, each devisee shall contribute ratably to the elective share out of the portion of the estate passing to him under the will, except that in abating the interests of the devisees the character of the testamentary plan adopted by the testator shall be preserved so far as possible.

[1969 c.591 §118]

TITLE AND POSSESSION OF PROPERTY

114.205 No distinction between real and personal property. ORS chapters 111, 112, 113, 114, 115, 116 and 117 apply without distinction between real and personal property.

[1969 c.591 §119]

114.210 [Repealed by 1969 c.591 §305]

114.215 Devolution of and title to property. (1) Upon the death of a decedent, title to his property vests:

(a) In the absence of testamentary disposition, in his heirs, subject to support of spouse and children, rights of creditors, administration and sale by the personal representative; or

(b) In the persons to whom it is devised by his will, subject to support of spouse and children, rights of creditors, right of the surviving spouse to elect against the will, administration and sale by the personal representative.

(2) The power of a person to leave property by will, and the rights of creditors, devisees and heirs to his property, are subject to the restrictions and limitations expressed or implicit in ORS chapters 111, 112, 113, 114, 115, 116 and 117 to facilitate the prompt settlement of estates.

[1969 c.591 §120]

114.220 [Repealed by 1969 c.591 §305]

114.225 Possession and control of decedent's estate. A personal representative has a right to and shall take possession and control of the estate of the decedent, but he is not required to take possession of or be accountable for property in the possession of an heir or devisee unless in his opinion possession by the personal representative is reasonably required for purposes of administration.

[1969 c.591 §121]

114.230 [Repealed by 1969 c.591 §305]

114.240 [Repealed by 1969 c.591 §305]

114.250 [Repealed by 1969 c.591 §305]

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

114.255 Commencement of duties and powers of personal representative; prior acts. The duties and powers of a personal representative commence upon the issuance of his letters. The powers of a personal representative relate back in time to give his acts occurring prior to appointment the same effect as those occurring thereafter. A personal representative may ratify and accept acts on behalf of the estate done by others where those acts would have been proper for a personal representative.

[1969 c.591 §122]

114.260 [Repealed by 1969 c.591 §305]

114.265 General duties of personal representative. A personal representative is a fiduciary who is under a general duty to and shall collect the income from property of the estate in his possession and preserve, settle and distribute the estate in accordance with the terms of the will and ORS chapters 111, 112, 113, 114, 115, 116 and 117 as expeditiously and with as little sacrifice of value as is reasonable under the circumstances.

[1969 c.591 §123]

114.270 [Repealed by 1969 c.591 §305]

114.275 Personal representative to proceed without court order; application for authority, approval or instructions. A personal representative shall proceed with the administration, settlement and distribution of the estate without adjudication, order or direction of the court, except as otherwise provided in ORS chapters 111, 112, 113, 114, 115, 116 and 117. However, a personal representative or any interested person may apply to the court for authority, approval or instructions on any matter concerning the administration, settlement or distribution of the estate, and the court, without hearing or upon such hearing as it may prescribe, shall instruct the personal representative or rule on the matter as may be appropriate.

[1969 c.591 §124]

114.285 Naming or appointment of personal representative does not discharge claim against him. The naming or appointment of any person as personal representative does

not discharge any claim which the decedent had against that person. The claim shall be included in the inventory. If the person agrees to act as personal representative, he is liable for the claim as for so much money in his hands at the time the claim becomes due and payable; otherwise he is liable for the claim as any other debtor of the decedent.
[1969 c.591 §125]

114.295 Discharge or devise in will of claim of testator. The discharge or devise in a will of a claim of the testator against a personal representative or against any other person is of no effect as against creditors of the decedent. The claim shall be included in the inventory and for purposes of administration shall be regarded and treated as a specific devise of the amount of the claim.
[1969 c.591 §126]

114.305 Transactions authorized for personal representative. Except as restricted or otherwise provided by the will or by court order, a personal representative, acting reasonably for the benefit of interested persons, is authorized to:

(1) Direct and authorize disposition of the remains of the decedent pursuant to ORS 97.130 and incur expenses for the funeral, burial or other disposition of the remains in a manner suitable to the condition in life of the decedent. Only those funeral expenses necessary for a plain and decent funeral and disposition of the remains of the decedent may be paid from the estate if the assets are insufficient to pay the claims of the Public Welfare Division and the Executive Department.

(2) Retain assets owned by the decedent pending distribution or liquidation.

(3) Receive assets from fiduciaries or other sources.

(4) Complete, compromise or refuse performance of contracts of the decedent that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease real property, the personal representative, among other courses of action, may:

(a) Execute and deliver a deed upon satisfaction of any sum remaining unpaid or upon receipt of the note of the purchaser adequately secured; or

(b) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.

(5) Satisfy written pledges of the decedent for contributions, whether or not the pledges constituted binding obligations of the decedent or were properly presented as claims.

(6) Deposit funds not needed to meet currently payable debts and expenses, and not immediately distributable, in bank or savings and loan association accounts, or invest the funds in short-term United States Government obligations.

(7) Abandon burdensome property when it is valueless, or is so encumbered or is in a condition that it is of no benefit to the estate.

(8) Vote stocks or other securities in person or by general or limited proxy.

(9) Pay calls, assessments and other sums chargeable or accruing against or on account of securities.

(10) Sell or exercise stock subscription or conversion rights.

(11) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise.

(12) Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held.

(13) Insure the assets of the estate against damage and loss, and insure himself against liability to third persons.

(14) Advance or borrow money with or without security.

(15) Compromise, extend, renew or otherwise modify an obligation owing to the estate. If the personal representative holds a mortgage, pledge, lien or other security interest, he may accept a conveyance or transfer of the encumbered asset in lieu of foreclosure in full or partial satisfaction of the indebtedness.

(16) Accept other real property in part payment of the purchase price of real property sold by him.

(17) Pay taxes, assessments and expenses incident to the administration of the estate.

(18) Employ qualified persons, including attorneys, accountants and investment advisers, to advise and assist the personal representative and to perform acts of administration, whether or not discretionary, on behalf of the personal representative.

(19) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties.

(20) Continue any business or venture in which the decedent was engaged at the time of his death to preserve the value of the business or venture.

(21) Incorporate or otherwise change the business form of any business or venture in which the decedent was engaged at the time of his death.

(22) Discontinue and wind up any business or venture in which the decedent was engaged at the time of his death.

(23) Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.

(24) Satisfy and settle claims and distribute the estate as provided in ORS chapters 111, 112, 113, 114, 115, 116 and 117.

(25) Perform all other acts required or permitted by law or by the will of the decedent.

[1969 c.591 §127; 1969 c.597 §278]

114.310 [Repealed by 1969 c.591 §305]

114.315 Right to perfect lien or security interest. A personal representative has the same rights to perfect a lien or security interest as the decedent would have had if he were living.

[1969 c.591 §128]

114.320 [Repealed by 1969 c.591 §305]

114.325 Power to sell, mortgage, lease and deal with property. (1) A personal representative has power to sell, mortgage, lease or otherwise deal with property of the estate without notice, hearing or court order.

(2) Exercise of the power of sale by the personal representative is improper, except after notice, hearing and order of the court, if:

(a) The sale is in contravention of the provisions of the will; or

(b) The property is specifically devised and the will does not authorize its sale; or

(c) A bond of the personal representative has been required and filed, the sale price of the property to be sold exceeds $5,000 and the bond of the personal representative has not been increased by the amount of cash to be realized on the sale, unless the court has directed otherwise.

[1969 c.591 §129]

114.330 [Repealed by 1969 c.591 §305]

114.333 Transfer of title and interest to real property by foreign personal representative. Upon performance of a recorded contract of sale of real property the foreign personal representative of a deceased vendor whose estate is being administered in a foreign jurisdiction may convey the title and interest of the vendor in the property to the vendee or his assignee upon recording in the deed records of the county where the property is located a certified copy of his letters testamentary or of administration. The certificate shall include a statement that the letters are in effect.

[1973 c.506 §28]

Note: See note preceding 111.005.

114.335 Court order for sale, mortgage or lease. Upon proof satisfactory to the court by an interested person that a sale, mortgage or lease of property of the estate is required for paying support of spouse and children, elective share of surviving spouse, claims or expenses of administration, or for distribution, and that the personal representative has failed or declined to act, the court may order the personal representative to make the sale, mortgage or lease.

[1969 c.591 §130]

114.340 [Repealed by 1969 c.591 §305]

114.345 Title conveyed free of claims of creditors. Property sold, mortgaged or leased by a personal representative is subject to liens and encumbrances against the decedent or his estate, but is not subject to rights of creditors of the decedent or liens or encumbrances against his heirs or devisees. The filing and allowance of a claim in an estate proceeding does not make the claimant a secured creditor.

[1969 c.591 §131]

114.350 [Repealed by 1963 c.287 §1]

114.355 Sale or encumbrance to personal representative voidable; exceptions. (1) Any sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has more than a one-third beneficial interest, is voidable unless:

(a) The transaction was consented to by all interested persons affected thereby; or

(b) The will expressly authorizes the transaction by the personal representative with himself; or

(c) The transaction was made in compliance with another statute or with a contract or other instrument executed by the decedent.

(2) The title of a purchaser for value without notice of the circumstances of the transaction with the personal representative is not affected unless the purchaser should have known of the defect in the title of his seller.
[1969 c.591 §132]

114.360 [Repealed by 1963 c.287 §1]

114.365 Validation of certain sales. The following are the subject of validating Acts:

(1) Certain sales of decedent's real property made prior to 1903 where confirmation of sale was premature, validated by page 133, section 2, General Laws of Oregon 1903.

(2) Certain sales of decedent's property made prior to 1907 under power in will, validated by chapter 175, General Laws of Oregon 1907.

(3) Certain sales of decedent's real property made prior to 1917 where publication of the notice of sale was improper, validated by section 2, chapter 114, General Laws of Oregon 1917.

(4) Certain sales by executors or administrators made prior to 1943, validated by chapter 26, Oregon Laws 1943.
[Formerly 116.835]

114.370 [Repealed by 1963 c.287 §1]

114.375 Nonliability of transfer agents. A transfer agent or a corporation transferring its own securities incurs no liability to any person by making a transfer of securities of an estate as requested or directed by a personal representative.
[1969 c.591 §134]

114.385 Persons dealing with personal representative; protection. A person dealing with or assisting a personal representative without actual knowledge that the personal representative is improperly exercising his power is protected as if the personal representative properly exercised the power. The person is not bound to inquire whether the personal representative is properly exercising his power, and is not bound to inquire concerning the provisions of any will or any order of court that may affect the propriety of the acts of the personal representative. No provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection expressed in this section extends to a person dealing with or assisting a personal representative appointed under ORS 113.085 without actual knowledge that the personal representative was not qualified as provided in ORS 113.095 or that the appointment of the personal representative involved procedural irregularity.
[1969 c.591 §135]

114.395 Improper exercise of power; breach of fiduciary duty. If the exercise of power by a personal representative in the administration of an estate is improper, he is liable for breach of his fiduciary duty to interested persons for resulting damage or loss to the same extent as a trustee of an express trust. Exercise of power in violation of a court order is a breach of duty. Exercise of power contrary to the provisions of the will may be a breach of duty.
[1969 c.591 §136]

114.405 Personal liability of personal representative. (1) The personal liability of a personal representative to third parties, as distinguished from his fiduciary accountability to the estate, arising from the administration of the estate is that of an agent for a disclosed principal.

(2) A personal representative is not personally liable on contracts properly entered into in his fiduciary capacity in the course of administration of the estate unless he expressly agrees to be personally liable.

(3) A personal representative is not personally liable for obligations arising from possession or control of property of the estate or for torts committed in the course of administration of the estate unless he is personally at fault.

(4) Claims based upon contracts, obligations and torts of the types described in subsections (2) and (3) of this section may be allowed against the estate whether or not the personal representative is personally liable therefor.
[1969 c.591 §137]

114.410 [Repealed by 1969 c.591 §305]

114.415 Co-personal representatives; when joint action required. (1) When two or more persons are appointed co-personal representatives, the concurrence of all is required for all acts connected with the administration and distribution of the estate, except:

(a) Any co-personal representative may receive and receipt for property due the estate.

(b) When the concurrence of all cannot readily be obtained in the time reasonably available for emergency action.

(c) Where any others have delegated their power to act.

(d) Where the will provides otherwise.

(e) Where the court otherwise directs.

(2) Persons dealing with a co-personal representative who are actually unaware that another has been appointed to serve with him are as fully protected as if the person with whom they dealt had been the sole personal representative.

[1969 c.591 §138]

114.420 [Repealed by 1969 c.591 §305]

114.425 Discovery of property, writings and information. (1) The court may order any person to appear and give testimony as provided in ORS chapter 45 if it appears probable:

(a) That he has concealed, secreted or disposed of any property of the estate of a decedent;

(b) That he has been intrusted with property of the estate of a decedent and fails to account therefor to the personal representative.

(c) That he has concealed, secreted or disposed of any writing, instrument or document pertaining to the estate;

(d) That he has knowledge or information that is necessary to the administration of the estate; or

(e) That, as an officer or agent of a corporation, he has refused to allow examination of the books and records of the corporation that the decedent had the right to examine.

(2) If the person cited as provided in subsection (1) of this section fails to appear or to answer questions asked of him as authorized by the order of the court, he is in contempt and may be punished as for other contempts.

[1969 c.591 §139]

114.430 [Repealed by 1969 c.591 §305]

114.435 Power to avoid transfers. The property liable for the payment of expenses of administration, funeral expenses, claims and taxes shall include property transferred by the decedent with intent to defraud his creditors or transferred by any means which is in law void or voidable as against his creditors. The right to recover that property so far as necessary for the payment of those expenses, claims and taxes is in the personal representative, who shall take necessary steps to recover it. That property constitutes general assets for the payment of creditors.

[1969 c.591 §140]

114.440 [Repealed by 1969 c.591 §305]

SMALL ESTATES

114.505 Definitions for ORS 114.505 to 114.555. As used in ORS 114.505 to 114.555:

(1) "Appraised value" of real property means the true cash value of real property as appraised for ad valorem tax purposes.

(2) "Claiming successor" means the heirs or heir and devisees or devisee of the decedent.

[1973 c.710 §2]

114.515 Affidavit required to be filed with county clerk; filing fee. (1) If the estate consists of personal property, having a fair market value of $5,000 or less, or real property having an appraised value of $10,000 or less, or personal property having a fair market value of $5,000 or less and real property which, together, have an aggregate value of $10,000 or less, not less than 30 days after the death of the decedent, the claiming successor may file an affidavit with the county clerk in the county where the decedent died or was domiciled or resided at the time of his death or in the county where the property of the decedent was located at the time of his death or is located at the time the affidavit is filed, to be made a part of the probate records. The affidavit shall contain the information required in ORS 114.525.

(2) The county clerks may charge the minimum probate fee for the filing of the affidavit.

[1973 c.710 §3, 8]

114.525 Content of affidavit. The affidavit required under subsection (1) of ORS 114.515 shall:

(1) Describe all of the property of the decedent, including a legal description of any real property and its assessed value, and the fair market value of the personal property;

(2) State that to the best knowledge of the affiant there are no debts of the decedent remaining unpaid;

(3) State the date of the death of the decedent and attach a certified copy of the death certificate to the affidavit;

(4) State that an application or petition for the appointment of a personal representative has not been granted in any jurisdiction;

(5) List the heirs of the decedent, the last address of each heir as known to the affiant, and state that a copy of the affidavit has been delivered to each heir or mailed to the heir at the last-known address;

(6) State whether the decedent died testate or intestate, and if the decedent died testate, the will shall be attached to the affidavit;

(7) State that a copy of the affidavit, including a copy of the death certificate and the will, has been delivered to each devisee or mailed to the devisee at his last address known to the affiant, which address shall also be stated in the affidavit;

(8) State the interest in the property described in the affidavit to which each heir or devisee is entitled; and

(9) State that a copy of the affidavit has been mailed to the Public Welfare Division, Salem, Oregon.

[1973 c.710 §6]

114.535 Payment or transfer to person entitled to personal property authorized by affidavit; effect of failure. (1) Any person, indebted to the decedent or having possession of personal property belonging to the decedent, to whom a certified copy of the affidavit is delivered, shall pay, transfer or deliver the personal property to the person shown by the affidavit to be entitled thereto. The transferor is discharged and released from any liability or responsibility for the transfer in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the decedent.

(2) A transfer agent of any corporate security registered in the name of the decedent shall change the registered ownership on the books of the corporation to the person entitled thereto on presentation of a certified copy of the affidavit filed under subsection (1) of ORS 114.515.

(3) If a person to whom an affidavit is delivered refuses to pay, deliver or transfer any personal property to the person entitled thereto as disclosed in the affidavit filed under subsection (1) of ORS 114.515, the property may be recovered or its payment, delivery or transfer compelled upon proof of the transferee's entitlement in a proceeding brought for the purpose by or on behalf of the person entitled thereto.

[1973 c.710 §4]

114.545 Liability of person to whom property transferred or delivered or debt paid. Any persons to whom payment, delivery or transfer is made under ORS 114.505 to 114.555 are personally answerable and accountable:

(1) To the extent of the value of the property received, to creditors of the decedent that present their claims to him within four months after the filing of the affidavit; and

(2) To any personal representative of the estate of the decedent thereafter appointed.

[1973 c.710 §7]

114.555 Effect of failure to appoint personal representative. If a personal representative is not appointed within four months after the filing of the affidavit authorized by subsection (1) of ORS 114.515, the interest of the decedent in all of the property described in the affidavit is transferred to the person shown by the affidavit to be entitled thereto, and any other claims against the property described in the affidavit are barred.

[1973 c.710 §5]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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 1, 1973.

Thomas G. Clifford
Legislative Counsel