Chapter 112

1975 REPLACEMENT PART
(1977 reprint)

Intestate Succession and Wills

INTESTATE SUCCESSION

112.015 Net intestate estate
112.025 Share of surviving spouse if decedent leaves issue
112.035 Share of surviving spouse if decedent leaves no issue
112.045 Share of others than surviving spouse
112.055 Escheat
112.065 Representation defined
112.075 Time of determining relationships; afterborn heirs
112.085 When person considered to have predeceased decedent
112.095 Persons of the half-blood
112.105 Succession where parents not married
112.115 Persons related to decedent through two lines

ADVANCEMENTS

112.135 When gift is an advancement
112.145 Effect of advancement on distribution
112.155 Death of advancee before decedent

STATUS OF ADOPTED PERSONS

112.175 Adopted persons
112.185 Effect of more than one adoption
112.195 References in wills, deeds and other instruments to accord with law of intestate succession

WILLS

112.225 Who may make a will
112.227 Intention of testator expressed in will as controlling
112.230 Local law of state selected by testator controlling unless against public policy
112.235 Execution of a will
112.245 Witness as beneficiary
112.255 Validity of execution of a will
112.265 Testamentary additions to trusts
112.270 Procedure to establish contract to make will or devise or not to revoke will or devise
112.275 Manner of revocation or alteration exclusive
112.285 Express revocation or alteration
112.295 Revival of revoked or invalid will
112.305 Revocation by marriage
112.315 Revocation by divorce or annulment
112.325 Contract of sale of property devised not a revocation
112.335 Encumbrance or disposition of property after making will
112.345 Devise of life estate
112.355 Devise passes all interest of testator
112.365 Property acquired after making will
112.385 Nonademption of specific devises in certain cases
112.395 When estate passes to issue of devisee; anti-lapse; class gifts
112.400 Effect of failure of devise
112.405 Children born or adopted after execution of will; pretermitted children
112.410 Effect of general disposition or residuary clause on testator's power of appointment
112.415 Persons not entitled to estate of testator
112.425 Delivery of will by custodian; liability
112.435 Disposition of wills deposited with county clerk

EFFECT OF HOMICIDE ON INTESTATE SUCCESSION, WILLS, JOINT ASSETS, LIFE INSURANCE AND BENEFICIARY DESIGNATIONS

112.455 Definitions for ORS 112.455 to 112.555
112.465 Slayer considered to predecease decedent
112.475 Property owned by slayer and decedent
112.485 Property owned by slayer, decedent and others
112.495 Reversions, vested remainders, contingent remainders and future interests
112.505 Property appointed; powers of revocation or appointment
112.515 Proceeds of insurance on life and other benefit plans of decedent
112.525 Proceeds of insurance on life of slayer
112.535 Payment by insurance company, bank, trustee or obligor; no additional liability
112.545 Rights of persons without notice dealing with slayer
112.555 Evidence of felonious and intentional killing; conviction as conclusive

UNIFORM SIMULTANEOUS DEATH ACT

112.575 Disposition of property upon simultaneous death, generally
112.585 Beneficiaries designated to take successively
112.595 Joint tenants or tenants by entirety
112.605 Community property
112.615 Insured and beneficiary
112.625 Law does not apply if decedent provides otherwise
112.635 Construction and interpretation
112.645 Short title

UNIFORM DISCLAIMER OF TRANSFERS BY WILL, INTESTACY OR APPOINTMENT ACT

112.650 **Short title**
112.652 **Right to disclaim interest in property; written disclaimer; contents**
112.655 **When disclaimer filed; where filed; notice**
112.657 **Devolution of disclaimed interest**
112.660 **Bar of right to disclaim; existence of right notwithstanding restriction; effect**
112.662 **Effect of ORS 112.650 to 112.667 on right under other statutes**
112.665 **Application to existing interest**
112.667 **Uniformity in application**

DOWER AND CURTESY ABOLISHED

112.685 **Dower and curtesy abolished**
112.695 **Statute of limitation for recovery of dower or curtesy**

UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT

112.705 **Short title**
112.715 **Application to certain property**
112.725 **Rebuttable presumptions**
112.735 **One-half of property not subject to testamentary disposition or right to elect against will**
112.745 **Proceedings to perfect title**
112.755 **Who may institute proceedings**
112.765 **Rights of purchaser**
112.775 **Application and construction**

CROSS REFERENCES

Bank deposits, disposition on death of depositor, 708.520
Brands, descent, 604.160
Damages for wrongful death, descent, 30.030 to 30.070
Definitions, 111.005
Inheritance tax, determination, 118.171
Retirement fund, state employes' interest, disposition on death, 237.165
Savings association accounts, 722.262
State employe, salary and wages, disposition of deceased, 293.490 to 293.500
Waiver of notices, 111.225

112.015 to 112.115
Survival of wrongful death action, 30.020

112.025
Prenuptial property agreements, 108.140

112.035
Legitimacy of issue of certain void marriages, 106.190, 106 210, 107.142
Paternity, establishment of, 109.070

112.175
Adopted person, relationship to natural and adoptive parents, 109.041, 109.050

112.225
Gift of body or part by decedent, 97.275

112.650 to 112.667
Uniform Disclaimer of Transfers under Nontestamentary Instruments Act, 105.625 to 105.640

112.010 [Amended by 1969 c.591 §69; renumbered 112.575]

INTESTATE SUCCESSION

112.015 Net intestate estate. Any part of the net estate of a decedent not effectively disposed of by his will shall pass as provided in ORS 112.025 to 112.055.
[1969 c.591 §19]

112.020 [Amended by 1969 c.591 §70; renumbered 112.585]

112.025 Share of surviving spouse if decedent leaves issue. If the decedent leaves a surviving spouse and issue, the surviving spouse shall have a one-half interest in the net intestate estate.
[1969 c.591 §20]

112.030 [Amended by 1969 c.591 §71; renumbered 112.595]

112.035 Share of surviving spouse if decedent leaves no issue. If the decedent leaves a surviving spouse and no issue, the surviving spouse shall have all of the net intestate estate.
[1969 c.591 §21]

112.040 [Amended by 1969 c.591 §73; renumbered 112.615]

112.045 Share of others than surviving spouse. The part of the net intestate estate not passing to the surviving spouse shall pass:

(1) To the issue of the decedent. If the issue are all of the same degree of kinship to the decedent, they shall take equally, but if of unequal degree, then those of more remote degrees take by representation.

(2) If there is no surviving issue, to the surviving parents of the decedent.

(3) If there is no surviving issue or parent, to the brothers and sisters of the decedent and the issue of any deceased brother or sister of the decedent by representation. If there is no surviving brother or sister, the issue of brothers and sisters take equally if they are all of the same degree of kinship to the decedent, but if of unequal degree, then those of more remote degrees take by representation.

(4) If there is no surviving issue, parent or issue of a parent, to the grandparents of the decedent and the issue of any deceased grandparent of the decedent by representation. If there is no surviving grandparent, the issue of grandparents take equally if they are all of the same degree of kinship to the decedent, but if of unequal degree, then those of more remote degrees take by representation.

(5) If, at the time of taking, surviving parents or grandparents of the decedent are married to each other, they shall take real property as tenants by the entirety and personal property as joint owners with the right of survivorship.
[1969 c.591 §22]

112.050 [Repealed by 1969 c.591 §305]

112.055 Escheat. If no person takes under ORS 112.025 to 112.045, the net intestate estate shall escheat to the State of Oregon.
[1969 c.591 §23]

112.060 [Amended by 1969 c.591 §74; renumbered 112.625]

112.065 Representation defined. "Representation" means the method of determining the passing of the net intestate estate when the distributees are of unequal degrees of kinship to the decedent. It is accomplished as follows: The estate shall be divided into as many shares as there are surviving heirs of the nearest degree of kinship and deceased persons of the same degree who left issue who survive the decedent, each surviving heir of the nearest degree receiving one share and the share of each deceased person of the same degree being divided among his issue in the same manner.
[1969 c.591 §24]

112.070 [Amended by 1969 c.591 §75; renumbered 112.635]

112.075 Time of determining relationships; afterborn heirs. The relationships existing at the time of the death of the decedent govern the passing of his net intestate estate, but persons conceived before his death and born alive thereafter inherit as though they were alive at the time of his death.
[1969 c.591 §25]

112.080 [Amended by 1969 c.591 §76; renumbered 112.645]

112.085 When person considered to have predeceased decedent. Any person who fails to survive the decedent by 120 hours is considered to have predeceased the decedent for all purposes of intestate succession and taking under the will of the decedent, unless the will of the decedent provides otherwise, and the heirs and devisees of the decedent are determined accordingly.
[1969 c.591 §26; 1973 c.506 §6; 1975 c.244 §1]

112.095 Persons of the half-blood. Persons of the half-blood inherit the same

share that they would inherit if they were of the whole blood.
[1969 c.591 §27]

112.105 Succession where parents not married. (1) For all purposes of intestate succession, full effect shall be given to all relationships as described in ORS 109.060, except as otherwise provided by law in case of adoption.

(2) For all purposes of intestate succession and for those purposes only, before the relationship of father and child and other relationships dependent upon the establishment of paternity shall be given effect under subsection (1) of this section:

(a) The paternity of the child shall have been established under ORS 109.070 during the lifetime of the child or;

(b) The father shall have acknowledged himself to be the father in writing signed by him during the lifetime of the child.
[1969 c.591 §28]

112.115 Persons related to decedent through two lines. A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship which would entitle him to the larger share.
[1969 c.591 §29]

ADVANCEMENTS

112.135 When gift is an advancement. If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir shall be treated as an advancement against the heir's share of the estate if declared in writing by the decedent or acknowledged in writing by the heir to be an advancement. For that purpose the property advanced shall be valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever occurs first.
[1969 c.591 §30]

112.145 Effect of advancement on distribution. (1) If the value of the advancement exceeds the heir's share of the estate, he shall be excluded from any further share of the estate, but he shall not be required to refund any part of the advancement. If the value of the advancement is less than his share, the heir shall be entitled upon distribution of the estate to such additional amount as will give him his share of the estate.

(2) The property advanced is not a part of the estate, but for the purpose of determining the shares of the heirs the advancement shall be added to the estate, the sum then divided among the heirs and the advancement then deducted from the share of the heir to whom the advancement was made.
[1969 c.591 §31]

112.155 Death of advancee before decedent. If the recipient of the property advanced fails to survive the decedent, the amount of the advancement shall be taken into account in computing the share of the issue of the recipient, whether or not the issue take by representation.
[1969 c.591 §32]

STATUS OF ADOPTED PERSONS

112.175 Adopted persons. (1) An adopted person, his issue and kindred shall take by intestate succession from his adoptive parents, their issue and kindred, and his adoptive parents, their issue and kindred shall take by intestate succession from the adopted person, his issue and kindred, as though the adopted person were the natural child of his adoptive parents.

(2) An adopted person shall cease to be treated as the child of his natural parents for all purposes of intestate succession by the adopted person, his issue and kindred and his natural parents, their issue and kindred, except:

(a) If a natural parent of a person marries or remarries and the person is adopted by his stepparent, the adopted person shall continue also to be treated, for all purposes of intestate succession, as the child of the natural parent who is the spouse of the adoptive parent.

(b) If a natural parent of a person dies, the other natural parent remarries and the person is adopted by his stepparent, the adopted person shall continue also to be treated, for all purposes of intestate succession by any person through the deceased natural parent, as the child of the deceased natural parent.

(3) ORS chapters 111, 112, 113, 114, 115, 116 and 117 apply to adopted persons who were adopted in this state or elsewhere.
[1969 c.591 §33]

112.185 Effect of more than one adoption. For all purposes of intestate succession, a person who has been adopted more than once shall be treated as the child of the parents who have most recently adopted him and, except as otherwise provided in this section, shall cease to be treated as the child of his

previous adoptive parents. He shall continue also to be treated as the child of his natural parent or previous adoptive parent only to the extent provided in subsection (2) of ORS 112.175, and for the purpose of applying that subsection with reference to a previous adoptive parent, "natural parent" in that subsection means the previous adoptive parent.
[1969 c.591 §34]

112.195 References in wills, deeds and other instruments to accord with law of intestate succession. Unless a contrary intent is established by the instrument, all references in a will, deed, trust instrument or other instrument to an individual or member of a class described generically in relation to a particular person as children, issue, grandchildren, descendants, heirs, heirs of the body, next of kin, distributees, grandparents, brothers, nephews or other relatives shall include any person who would be treated as so related for all purposes of intestate succession, except that an adopted person so included must have been adopted as a minor or after having been a member of the household of the adoptive parent while a minor.
[1969 c.591 §35]

WILLS

112.225 Who may make a will. Any person who is 18 years of age or older or who has been lawfully married, and who is of sound mind, may make a will.
[1969 c.591 §36]

112.227 Intention of testator expressed in will as controlling. The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in this section, ORS 112.230 and 112.410 apply unless a contrary intention is indicated by the will.
[1973 c.506 §10]

112.230 Local law of state selected by testator controlling unless against public policy. The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the public policy of this state.
[1973 c.506 §11]

112.235 Execution of a will. A will shall be in writing and shall be executed with the following formalities:

(1) The testator, in the presence of each of the witnesses, shall:

(a) Sign the will; or

(b) Direct one of the witnesses or some other person to sign thereon the name of the testator; or

(c) Acknowledge the signature previously made on the will by him or at his direction.

(2) Any person who signs the name of the testator as provided in paragraph (b) of subsection (1) of this section shall sign his own name on the will and write on the will that he signed the name of the testator at the direction of the testator.

(3) At least two witnesses shall each:

(a) See the testator sign the will; or

(b) Hear the testator acknowledge the signature on the will; and

(c) Attest the will by signing his name to it.
[1969 c.591 §37; 1973 c.506 §7]

112.245 Witness as beneficiary. A will attested by an interested witness is not thereby invalidated. An interested witness is one to whom is devised a personal and beneficial interest in the estate.
[1969 c.591 §38; 1973 c.506 §8]

112.255 Validity of execution of a will. A will is lawfully executed if it is in writing, signed by or at the direction of the testator and otherwise executed in accordance with the law of:

(1) This state at the time of execution or at the time of death of the testator; or

(2) The domicile of the testator at the time of execution or at the time of his death; or

(3) The place of execution at the time of execution.
[1969 c.591 §39]

112.265 Testamentary additions to trusts. (1) A devise may be made by a will to the trustee or trustees of a trust, regardless of the existence, size or character of the corpus of the trust, if:

(a) The trust is established or will be established by the testator, or by the testator and some other person or persons, or by some other person or persons; and

(b) The trust is identified in the testator's will; and

(c) The terms of the trust are set forth in a written instrument, other than a will, executed before or concurrently with the execution of the testator's will, or in the valid last will of a person who has predeceased the testator.

(2) The trust may be a funded or unfunded life insurance trust, although the trustor has reserved any or all of the rights of ownership of the insurance contracts.

(3) The devise shall not be invalid because the trust:

(a) Is amendable or revocable, or both; or

(b) Was amended after the execution of the testator's will or after the death of the testator.

(4) Unless the testator's will provides otherwise, the property so devised:

(a) Shall not be considered to be held under a testamentary trust of the testator, but shall become a part of the trust to which it is given; and

(b) Shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator, regardless of whether made before or after the execution of the testator's will, and, if the testator's will so provides, including any amendments to the trust made after the death of the testator.

(5) A revocation or termination of the trust before the death of the testator shall cause the devise to lapse.

(6) This section shall not be construed as providing an exclusive method for making devises to the trustee or trustees of a trust established otherwise than by the will of the testator making the devise.

(7) This section shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact the same or similar provisions.
[1969 c.591 §40]

112.270 Procedure to establish contract to make will or devise or not to revoke will or devise. (1) A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, executed after January 1, 1974, shall be established only by:

(a) Provisions of a will stating material provisions of the contract;

(b) An express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or

(c) A writing signed by the decedent evidencing the contract.

(2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.
[1973 c.506 §13]

112.275 Manner of revocation or alteration exclusive. A will may be revoked or altered only as provided in ORS 112.285 to 112.315.
[1969 c.591 §41]

112.285 Express revocation or alteration. (1) A will may be revoked or altered by another will.

(2) A will may be revoked by being burned, torn, canceled, obliterated or destroyed, with the intent and purpose of the testator of revoking the will, by the testator, or by another person at the direction of the testator and in the presence of the testator. The injury or destruction by a person other than the testator at the direction and in the presence of the testator shall be proved by at least two witnesses.
[1969 c.591 §42]

112.295 Revival of revoked or invalid will. If a will or a part thereof has been revoked or is invalid, it can be revived only by a re-execution of the will or by the execution of another will in which the revoked or invalid will or part thereof is incorporated by reference.
[1969 c.591 §43]

112.305 Revocation by marriage. A will is revoked by the subsequent marriage of the testator if the testator is survived by his spouse, unless:

(1) The will evidences an intent that it not be revoked by the subsequent marriage or was drafted under circumstances establishing that it was in contemplation of the marriage; or

(2) The testator and his spouse entered into a written contract before the marriage that either makes provision for the spouse or provides that the spouse is to have no rights in the estate of the testator.
[1969 c.591 §44]

112.315 Revocation by divorce or annulment. Unless a will evidences a different intent of the testator, the divorce or annulment of the marriage of the testator after the execution of the will revokes all provisions in the will in favor of the former spouse of the testator and any provision therein naming the former spouse as executor, and the effect of the will is the same as though the former spouse did not survive the testator.
[1969 c.591 §45]

112.325 Contract of sale of property devised not a revocation. An executory contract of sale made by a testator to convey property devised in a will previously made, is

not a revocation of the previous devise, either in law or equity; but the property shall pass by the devise, subject to the same remedies on the agreement, for specific performance or otherwise, against devisees as might be had against the heirs of the testator if the property had descended to them.
[1969 c.591 §46]

112.335 Encumbrance or disposition of property after making will. An encumbrance or disposition of property by a testator after he makes his will does not affect the operation of the will upon a remaining interest therein that is subject to the disposal of the testator at the time of his death.
[1969 c.591 §47]

112.345 Devise of life estate. A devise of property to any person for the term of the life of the person, and after his death to his children or heirs, vests an estate or interest for life only in the devisee and remainder in the children or heirs.
[1969 c.591 §48]

112.355 Devise passes all interest of testator. A devise of property passes all of the interest of the testator therein at the time of his death, unless the will evidences the intent of the testator to devise a lesser interest.
[1969 c.591 §49]

112.365 Property acquired after making will. Any property acquired by the testator after the making of his will passes thereby, and in like manner as if title thereto were vested in him at the time of making the will, unless the intent expressed in the will is clear and explicit to the contrary.
[1969 c.591 §50]

112.375 [1969 c.591 §51; repealed by 1973 c.506 §46]

112.385 Nonademption of specific devises in certain cases. (1) In the situations and under the circumstances provided in and governed by this section, specific devises will not fail or be extinguished by the destruction, damage, sale, condemnation or change in form of the property specifically devised. This section is inapplicable if the intent that the devise fail under the particular circumstances appears in the will or if the testator during his lifetime gives property to the specific devisee with the intent of satisfying the specific devise.

(2) Whenever the subject of a specific devise is property only part of which is destroyed, damaged, sold or condemned, the specific devise of any remaining interest in the property owned by the testator at the time of his death is not affected by this section; but this section applies to the part which would have been adeemed under the common law by the destruction, damage, sale or condemnation.

(3) If insured property that is the subject of a specific devise is destroyed or damaged, the specific devisee has the right to receive, reduced by any amount expended or incurred by the testator in restoration or repair of the property:

(a) Any insurance proceeds paid to the personal representative after the death of the testator, with the incidents of the specific devise; and

(b) A general pecuniary legacy equivalent to any insurance proceeds paid to the testator within six months before his death.

(4) If property that is the subject of a specific devise is sold by the testator, the specific devisee has the right to receive:

(a) Any balance of the purchase price unpaid at the time of the death of the testator, including any security interest in the property and interest accruing before the death, if part of the estate, with the incidents of the specific devise; and

(b) A general pecuniary legacy equivalent to the amount of the purchase price paid to the testator within six months before his death. Acceptance of a promissory note of the purchaser or a third party is not considered payment, but payment on the note is payment on the purchase price. Sale by an agent of the testator or by a trustee under a revocable living trust created by the testator, the principal of which is to be paid to the personal representative or estate of the testator on his death, is a sale by the testator for purposes of this section.

(5) If property that is the subject of a specific devise is taken by condemnation before the death of the testator, the specific devisee has the right to receive:

(a) Any amount of the condemnation award unpaid at the time of the death, with the incidents of the specific devise; and

(b) A general pecuniary legacy equivalent to the amount of an award paid to the testator within six months before his death. In the event of an appeal in a condemnation proceeding, the award, for purposes of this section, is limited to the amount established on the appeal.

(6) If property that is the subject of a specific devise is sold by a guardian or conservator of the testator, or insurance proceeds or

a condemnation award are paid to a guardian or conservator of the testator, the specific devisee has the right to receive a general pecuniary legacy equivalent to the proceeds of the sale, the insurance proceeds or the condemnation award, reduced by any amount expended or incurred in restoration or repair of the property. This subsection does not apply if the testator, after the sale, receipt of insurance proceeds or award, is adjudicated competent and survives such adjudication by six months.

(7) If securities are specifically devised, and after the execution of the will other securities in the same or another entity are distributed to the testator by reason of his ownership of the specifically devised securities and as a result of a partial liquidation, stock dividend, stock split, merger, consolidation, reorganization, recapitalization, redemption, exchange or any other similar transaction, and if the other securities are part of the estate of the testator at his death, the specific devise is considered to include the additional or substituted securities. Distributions prior to death with respect to a specifically devised security not provided for in this subsection are not part of the specific devise. As used in this subsection, "securities" means the same as defined in ORS 59.015.

(8) The amount a specific devisee receives as provided in this section is reduced by any expenses of the sale or of collection of proceeds of insurance, sale or condemnation award and by any amount by which the income tax of the decedent or his estate is increased by reason of items provided for in this section. Expenses include legal fees paid or incurred.
[1969 c.591 §52; 1973 c.506 §14; 1975 c.491 §6]

112.395 When estate passes to issue of devisee; anti-lapse; class gifts. When property is devised to any person who is related by blood or adoption to the testator and who dies before the testator leaving lineal descendants, the descendants take by representation the property the devisee would have taken if he had survived the testator, unless otherwise provided in the will of the testator. Unless otherwise provided in the will of the testator, one who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section if his death occurred after execution of the will.
[1969 c.591 §53; 1973 c.506 §15]

112.400 Effect of failure of devise. Except as provided in ORS 112.395:

(1) If a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(2) If the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee or to other residuary devisees in proportion to their interests in the residue.
[1973 c.506 §17]

112.405 Children born or adopted after execution of will; pretermitted children. (1) As used in this section, "pretermitted child" means a child of a testator who is born or adopted after the execution of the will of the testator, who is neither provided for in the will nor in any way mentioned in the will and who survives the testator.

(2) If a testator has one or more children living when he executes his will and no provision is made in the will for any such living child, a pretermitted child shall not take a share of the estate of the testator disposed of by the will.

(3) If a testator has one or more children living when he executes his will and provision is made in the will for one or more of such living children, a pretermitted child is entitled to share in the estate of the testator disposed of by the will as follows:

(a) The pretermitted child may share only in the portion of the estate devised to the living children by the will.

(b) The share of each pretermitted child shall be the total value of the portion of the estate devised to the living children by the will divided by the number of pretermitted children plus the number of living children for whom provision, other than nominal provision, is made in the will.

(c) To the extent feasible, the interest of a pretermitted child in the estate shall be of the same character, whether equitable or legal, as the interest the testator gave to the living children by the will.

(4) If a testator has no child living when he executes his will, a pretermitted child shall take a share of the estate as though the testator had died intestate.

(5) A pretermitted child may recover the share of the estate to which he is entitled, as provided in this section, either from the other children under subsection (3) of this section or from the testamentary beneficiaries under subsection (4) of this section, ratably, out of the portions of the estate passing to those persons under the will. In abating the interests of those beneficiaries, the character of the

testamentary plan adopted by the testator shall be preserved so far as possible.
[1969 c.591 §54]

112.410 Effect of general disposition or residuary clause on testator's power of appointment. A general residuary clause in a will or a will making general disposition of all of the testator's property does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.
[1973 c.506 §12]

112.415 Persons not entitled to estate of testator. Except as otherwise expressly provided by law, a person, including a child of the testator and a descendant of that child, shall not take or be entitled to take any portion of the estate of a testator disposed of by his will other than as provided in the will.
[1969 c.591 §55]

112.425 Delivery of will by custodian; liability. (1) A person having custody of a will, other than an executor named therein, shall deliver the will, within 30 days after the date of receiving information that the testator is dead, to a court having jurisdiction of the estate of the testator or to an executor named in the will.

(2) If it appears to a court having jurisdiction of the estate of a decedent that a person has custody of a will made by the decedent, the court may issue an order requiring that person to deliver the will to the court.

(3) A person having custody of a will who fails to deliver the will as provided in this section is liable to any person injured by that failure for damages sustained thereby.
[1969 c.591 §56]

112.435 Disposition of wills deposited with county clerk. So far as he is able, the county clerk of each county shall deliver to the testator, or to the person to whom the will is to be delivered after the death of the testator, each will deposited in his office for safekeeping pursuant to ORS 114.410 (1965 Replacement Part). Any will he has been unable to so deliver before January 1, 2010, may be destroyed by the county clerk.
[1969 c.591 §57]

EFFECT OF HOMICIDE ON INTESTATE SUCCESSION, WILLS, JOINT ASSETS, LIFE INSURANCE AND BENEFICIARY DESIGNATIONS

112.455 Definitions for ORS 112.455 to 112.555. As used in ORS 112.455 to 112.555:

(1) "Decedent" means a person whose life is taken by a slayer.

(2) "Slayer" means a person who, with felonious intent, takes or procures the taking of the life of another.
[1969 c.591 §58]

112.465 Slayer considered to predecease decedent. Property that would have passed from the decedent or his estate to the slayer by intestate succession, by will or by trust shall pass and be vested as if the slayer had predeceased the decedent.
[1969 c.591 §59]

112.475 Property owned by slayer and decedent. If the slayer and the decedent owned property as tenants by the entirety or with a right of survivorship, upon the death of the decedent an undivided one-half interest shall remain in the slayer for his lifetime and, subject thereto, the property shall pass to and be vested in the heirs of devisees of the decedent other than the slayer.
[1969 c.591 §60]

112.485 Property owned by slayer, decedent and others. If the slayer, the decedent and another or others owned property with a right of survivorship, upon the death of the decedent the interest of the slayer shall remain as an undivided interest in the slayer for his lifetime and, subject thereto, the property shall pass to and be vested in the other surviving owner or owners.
[1969 c.591 §61]

112.495 Reversions, vested remainders, contingent remainders and future interests. (1) Property in which the slayer owns a reversion or vested remainder subject to an estate for the lifetime of decedent shall pass to the heirs or devisees of the decedent for a period of time equal to the normal life expectancy of a person of the sex and age of the decedent at the time of his death. If the particular estate is owned by a third person for the lifetime of the decedent, it shall continue in such person for a period of time equal to the normal life expectancy of a person of the sex and age of the decedent at the time of his death.

(2) As to a contingent remainder or executory or other future interest owned by the slayer subject to become vested in him or increased in any way for him upon the condition of the death of the decedent:

(a) If the interest would not have become vested or increased if he had predeceased the decedent, the slayer shall be considered to have so predeceased the decedent; and

(b) In any case, the interest shall not be so vested or increased during a period of time equal to the normal life expectancy of a person of the sex and age of the decedent at the time of his death.
[1969 c.591 §62]

112.505 Property appointed; powers of revocation or appointment. (1) Property appointed by the will of the decedent to or for the benefit of the slayer shall be distributed as if the slayer had predeceased the decedent.

(2) Property owned either presently or in remainder by the slayer, subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment, shall pass to and be vested in the heirs or devisees of the decedent other than the slayer. Property so owned by the slayer, subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons, shall pass to such person or persons or in equal shares to the members of such class of persons to the exclusion of the slayer.
[1969 c.591 §63]

112.515 Proceeds of insurance on life and other benefit plans of decedent. Proceeds payable to or for the benefit of the slayer as beneficiary or assignee of the decedent of the following interests shall be paid to the secondary beneficiary, or if there is no secondary beneficiary, to the personal representative of the decedent's estate:

(1) A policy or certificate of insurance on the life of the decedent.

(2) A certificate of membership in any benevolent association or organization on the life of the decedent.

(3) Rights of the decedent as survivor of a joint life policy.

(4) Proceeds under any pension, profit-sharing or other plan.
[1969 c.591 §64]

112.525 Proceeds of insurance on life of slayer. If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer, the proceeds shall be paid to the personal representative of the decedent's estate unless:

(1) The policy or certificate names some person other than the slayer or his personal representative as the secondary beneficiary.

(2) The slayer, by naming a new beneficiary or assignee, performs an act which would have deprived the decedent of his interest if the decedent had been living.
[1969 c.591 §65]

112.535 Payment by insurance company, bank, trustee or obligor; no additional liability. Any insurance company making payment according to the terms of its policy, or any bank, trustee or other person performing an obligation to the slayer shall not be subjected to additional liability because of ORS 112.455 to 112.555 if the payment or performance is made without written notice by a claimant of a claim arising under those sections. Upon receipt of written notice the person to whom it is directed may withhold any disposition of the property pending determination of his duties.
[1969 c.591 §66]

112.545 Rights of persons without notice dealing with slayer. ORS 112.455 to 112.555 do not affect the rights of any person who for value and without notice purchases or agrees to purchase property that the slayer would have acquired except for those sections, but all proceeds received by the slayer from the sale shall be held by him in trust for the persons entitled to the property as provided in those sections. The slayer shall be liable for any portion of the proceeds of the sale that he may have expended and for the difference, if any, between the amount received from the sale and the actual value of the property.
[1969 c.591 §67]

112.555 Evidence of felonious and intentional killing; conviction as conclusive. A final judgment of conviction of felonious and intentional killing is conclusive for purposes of ORS 112.455 to 112.555. In the absence of a conviction of felonious and intentional killing the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of ORS 112.455 to 112.555.
[1969 c.591 §68; 1973 c.506 §18]

UNIFORM SIMULTANEOUS DEATH ACT

112.575 Disposition of property upon simultaneous death, generally. Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in ORS 112.575 to 112.645.
[Formerly 112.010]

112.585 Beneficiaries designated to take successively. If property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, and both persons die, and there is no sufficient evidence that the two have died otherwise than simultaneously, the beneficiary shall be deemed not to have survived. If there is no sufficient evidence that all of two or more beneficiaries have died otherwise than simultaneously and property has been disposed of in such a way that at the time of their death each of such beneficiaries would have been entitled to the property if he had survived the others, the property shall be divided into as many equal portions as there were such beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each of such beneficiaries had survived.
[Formerly 112.020]

112.595 Joint tenants or tenants by entirety. (1) Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(2) The term "joint tenants" includes owners of property held under circumstances which entitled one or more to the whole of the property on the death of the other or others.
[Formerly 112.030]

112.605 Community property. Where a husband and wife had died, leaving community property, and there is no sufficient evidence that they have died otherwise than simultaneously, one-half of all the community property shall pass as if the husband survived and the other one-half thereof shall pass as if the wife had survived.
[1969 c.591 §72]

112.615 Insured and beneficiary. Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary, except if the policy or any interest therein is community property of the insured and his spouse, and there is no alternative beneficiary except the estate or personal representatives of the insured, the proceeds of such interest shall be distributed as community property under ORS 112.605.
[Formerly 112.040]

112.625 Law does not apply if decedent provides otherwise. ORS 112.575 to 112.645 shall not apply in the case of wills, living trusts, deeds, contracts of insurance or any other situation where provision is made for distribution of property different from the provisions of ORS 112.575 to 112.645 or where provision is made for a presumption as to survivorship which results in a distribution of property different from that so provided.
[Formerly 112.060]

112.635 Construction and interpretation. ORS 112.575 to 112.645 shall be so construed and interpreted as to effectuate their general purpose to make uniform the law in those states which enact the Uniform Simultaneous Death Act.
[Formerly 112.070]

112.645 Short title. ORS 112.575 to 112.645 may be cited as the "Uniform Simultaneous Death Act."
[Formerly 112.080]

UNIFORM DISCLAIMER OF TRANSFERS BY WILL, INTESTACY OR APPOINTMENT ACT

112.650 Short title. ORS 112.650 to 112.667 may be cited as the "Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act."
[1975 c.480 §9 (enacted in lieu of 112.675)]

112.652 Right to disclaim interest in property; written disclaimer; contents. A person, or the representative of an incapacitated or protected person, who is an heir, next of kin, devisee, legatee, person succeeding to a disclaimed interest, beneficiary under a

testamentary instrument, or appointee under a power of appointment exercised by a testamentary instrument, may disclaim in whole or in part the right of succession to any property or interest therein, including a future interest, by filing a written disclaimer under ORS 112.650 to 112.667. The right to disclaim does not survive the death of the person having it. The instrument shall describe the property or interest disclaimed, declare the disclaimer and extent thereof, and be signed by the disclaimant.
[1975 c.480 §2 (enacted in lieu of 112.675)]

112.655 When disclaimer filed; where filed; notice. (1) An instrument disclaiming a present interest shall be filed not later than six months after the death of the decedent or the donee of the power.

(2) An instrument disclaiming a future interest shall be filed not later than six months after the event that determines that the taker of the property or interest is finally ascertained and his interest indefeasibly vested.

(3) The disclaimer shall be filed in the court exercising probate jurisdiction of the county in which proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be commenced. A copy of the disclaimer shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the decedent or donee of the power. If real property or an interest therein is disclaimed, a copy of the disclaimer may be recorded in the office of the recorder of the county in which the real estate is situated.
[1975 c.480 §3 (enacted in lieu of 112.675)]

112.657 Devolution of disclaimed interest. Unless the decedent or donee of the power has otherwise provided, the property or interest disclaimed devolves as if the disclaimant had predeceased the decedent or, if the disclaimant is designated to take under a power of appointment exercised by a testamentary instrument, as if the disclaimant had predeceased the donee of the power. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had predeceased the decedent or the donee of the power. A disclaimer relates back for all purposes to the date of the death of the decedent or the donee of the power.
[1975 c.480 §4 (enacted in lieu of 112.675)]

112.660 Bar of right to disclaim; existence of right notwithstanding restriction; effect. (1) The right to disclaim property or an interest therein is barred by:

(a) An assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor;

(b) A written waiver of the right to disclaim;

(c) An acceptance of the property or interest or benefit thereunder; or

(d) A sale of the property or interest under judicial sale made before the disclaimer is effected.

(2) The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

(3) The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under him.
[1975 c.480 §5 (enacted in lieu of 112.675)]

112.662 Effect of ORS 112.650 to 112.667 on rights under other statutes. ORS 112.650 to 112.667 do not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any other statute.
[1975 c.480 §6 (enacted in lieu of 112.675)]

112.665 Application to existing interest. An interest in property existing on January 1, 1976, as to which, if a present interest, the time for filing a disclaimer under ORS 112.650 to 112.667 has not expired, or if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be disclaimed within six months after January 1, 1976.
[1975 c.480 §7 (enacted in lieu of 112.675)]

112.667 Uniformity in application. ORS 112.650 to 112.667 shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of ORS 112.650 to 112.667 among states enacting it.
[1975 c.480 §8 (enacted in lieu of 112.675)]

112.675 [1969 c.591 §77; repealed by 1975 c.480 §1 (112.650 to 112.667 enacted in lieu of 112.675)]

DOWER AND CURTESY ABOLISHED

112.685 Dower and curtesy abolished. Dower and curtesy, including inchoate dower and curtesy, are abolished, but any right to or estate of dower or curtesy of the surviving spouse of any person who died before July 1, 1970, shall continue and be governed by the law in effect immediately before that date.
[1969 c.591 §78]

112.695 Statute of limitation for recovery of dower or curtesy. No action or suit shall be brought after 10 years from the death of a decedent to recover or reduce to possession curtesy or dower by the surviving spouse of the decedent.
[Formerly 113.090]

UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT

112.705 Short Title. ORS 112.705 to 112.775 may be cited as the Unform Disposition of Community Property Rights at Death Act.
[1973 c.205 §11]

112.715 Application to certain property. ORS 112.705 to 112.775 apply to the disposition at death of the following property acquired by a married person:

(1) All personal property, wherever situated:

(a) Which was acquired as or became, and remained, community property under the laws of another jurisdiction; or

(b) All or the proportionate part of that property acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, that community property; or

(c) Traceable to that community property.

(2) All or the proportionate part of any real property situated in this state which was acquired with the rents, issues or income of, the proceeds from, or in exchange for, property acquired as or which became, and remained, community property under the laws of another jurisdiction, or property traceable to that community property.
[1973 c.205 §1]

112.725 Rebuttable presumptions. In determining whether ORS 112.705 to 112.775 apply to specific property the following rebuttable presumptions apply:

(1) Property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as or to have become, and remained, property to which ORS 112.705 to 112.775 apply; and

(2) Real property situated in this state and personal property wherever situated acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be property to which ORS 112.705 to 112.775 apply.
[1973 c.205 §2]

112.735 One-half of property not subject to testamentary disposition or right to elect against will. Upon death of a married person, one-half of the property to which ORS 112.705 to 112.775 apply is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this state. With respect to property to which ORS 112.705 to 112.775 apply, the one-half of the property which is the property of the decedent is not subject to the surviving spouse's right to elect against the will.
[1973 c.205 §3]

112.745 Proceedings to perfect title. If the title to any property to which ORS 112.705 to 112.775 apply was held by the decedent at the time of death, title of the surviving spouse may be perfected by an order of the probate court or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the court. Neither the personal representative nor the court in which the decedent's estate is being administered has a duty to discover or attempt to discover whether property held by the decedent is property to which ORS 112.705 to 112.775 apply, unless a written demand is made by the surviving spouse or the spouse's successor in interest.
[1973 c.205 §4]

112.755 Who may institute proceedings. If the title to any property to which ORS 112.705 to 112.775 apply is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty

to discover or attempt to discover whether any property held by the surviving spouse is property to which ORS 112.705 to 112.775 apply, unless a written demand is made by an heir, devisee, or creditor of the decedent.
[1973 c.205 §5]

112.765 Rights of purchaser. (1) If a surviving spouse has apparent title to property to which ORS 112.705 to 112.775 apply, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the personal representative or an heir or devisee of the decedent.

(2) If a personal representative or an heir or devisee of the decedent has apparent title to property to which ORS 112.705 to 112.775 apply, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the surviving spouse.

(3) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.

(4) The proceeds of a sale or creation of a security interest shall be treated in the same manner as the property transferred to the purchaser for value or a lender.
[1973 c.205 §6]

112.775 Application and construction. (1) ORS 112.705 to 112.775 do not affect rights of creditors with respect to property to which ORS 112.705 to 112.775 apply.

(2) ORS 112.705 to 112.775 do not prevent married persons from severing or altering their interests in property to which ORS 112.705 to 112.775 apply.

(3) ORS 112.705 to 112.775 do not authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

(4) ORS 112.705 to 112.775 shall be so applied and construed as to effectuate their general purpose to make uniform the law with respect to the subject of ORS 112.705 to 112.775 among those states which enact it.
[1973 c.205 §§7, 8, 9, 10]

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,
October 1, 1975.

Thomas G. Clifford
Legislative Counsel