# TITLE 12

# PROBATE LAW


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## DEFINITIONS AND APPLICATION OF PROBATE LAW

**111.005 Definitions for probate law.** As used in ORS chapters 111, 112, 113, 114, 115, 116 and 117, unless the context requires otherwise:

(1) "Abate" means to reduce a devise on account of the insufficiency of the estate to pay all claims, expenses and devises in full.

(2) "Action" includes suits and legal proceedings.

(3) "Administration" means any proceeding relating to the estate of a decedent, whether the decedent died testate, intestate or partially intestate.

(4) "Advancement" means a gift by a decedent to an heir to enable the donee to anticipate his inheritance to the extent of the gift.

(5) "All purposes of intestate succession" means succession by, through or from a person, both lineal and collateral.

(6) "Assets" includes real, personal and intangible property.

(7) "Claim" includes liabilities of a decedent, whether arising in contract, in tort or otherwise.

(8) "Court" or "probate court" means the court in which jurisdiction of probate matters, causes and proceedings is vested as provided in ORS 111.075.

(9) "Decedent" means a person who has died leaving property that is subject to administration.

(10) "Devise," when used as a noun, means property disposed of by a will, and includes "legacy" and "bequest."

(11) "Devise," when used as a verb, means to dispose of property by a will, and includes "bequeath."

(12) "Devisee" includes "legatee" and "beneficiary."

(13) "Distributee" means a person entitled to any property of a decedent under his will or under intestate succession.

(14) "Domicile" means the place of abode of a person, where he intends to remain and to which, if absent, he intends to return.

(15) "Estate" means the real and personal property of a decedent, as from time to time changed in form by sale, reinvestment or otherwise, and augmented by any accretions or additions thereto and substitutions therefor or diminished by any decreases and distributions therefrom.

(16) "Funeral" includes burial or other disposition of the remains of a decedent, including the plot or tomb and other necessary incidents to the disposition of the remains.

(17) "General devise" means a devise chargeable generally on the estate of a testator and not distinguishable from other parts thereof or not so given as to amount to a specific devise

(18) "Heir" means any person, including the surviving spouse, who is entitled under intestate succession to the property of a decedent who died wholly or partially intestate.

(19) "Interested person" includes heirs, devisees, children, spouses, creditors and any others having a property right or claim against the estate of a decedent that may be affected by the proceeding. It also includes fiduciaries representing interested persons.

(20) "Intestate" means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all his estate.

(21) "Intestate succession" means succession to property of a decedent who dies intestate or partially intestate.

(22) "Issue" includes adopted children and their issue and, when used to refer to persons who take by intestate succession, includes all lineal descendants, except those who are the lineal descendants of living lineal descendants.

(23) "Net estate" means the real and personal property of a decedent, except property used for the support of his surviving spouse and children and for the payment of expenses of administration, funeral expenses, claims and taxes.

(24) "Net intestate estate" means any part of the net estate of a decedent not effectively disposed of by his will.

(25) "Personal property" includes all property other than real property.

(26) "Personal representative" includes executor, administrator, administrator with will annexed and administrator de bonis non, but does not include special administrator.

(27) "Property" includes both real and personal property.

(28) "Real property" includes all legal and equitable interests in land, in fee and for life.

(29) "Settlement" includes, as to the estate of a decedent, the full process of administration, distribution and closing.

(30) "Specific devise" means a devise of a specific thing or specified part of the estate of a testator that is so described as to be capable of identification. It is a gift of a part of the estate identified and differentiated from all other parts.

(31) "Will" includes codicil; it also includes a testamentary instrument that merely appoints an executor or that merely revokes or revives another will. [1969 c 591 §1]

**111.010** [Repealed by 1969 c 591 §305]

**111.015 Application of chapter 591, Oregon Laws 1969.** Except as specifically provided otherwise in chapter 591, Oregon Laws 1969, on July 1, 1970:

(1) Chapter 591, Oregon Laws 1969, applies to wills of decedents dying thereon or thereafter, and a will executed before July 1, 1970, shall be considered lawfully executed if the application of ORS 112.255 would make it so, but the construction of a will executed before July 1, 1970, shall be governed by the law in effect on the date of execution unless a contrary intent is established by the will.

(2) The procedure prescribed by chapter 591, Oregon Laws 1969, applies to any proceedings commenced thereon or thereafter regardless of the time of the death of a decedent, and also as to any further procedure in proceedings then pending except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure prescribed by chapter 591, Oregon Laws 1969.

(3) A personal representative, guardian or conservator holding an appointment on that date shall continue to hold the appointment, but shall have only the powers conferred and be subject to the duties imposed by chapter 591, Oregon Laws 1969, with respect to any act occurring or done thereon or thereafter, other than acts pursuant to powers or duties validly conferred or imposed by a will executed before July 1, 1970.

(4) An act done before July 1, 1970, in any proceeding and any accrued right shall not be impaired by chapter 591, Oregon Laws 1969. When a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before July 1, 1970, those provisions shall remain in force with respect to that right. [1969 c 591 §303]

**111.020** [Repealed by 1969 c 591 §305]

**111.025 Oregon Tax Court has no probate jurisdiction; limited to trial of inheritance and gift tax appeals.** For purposes of ORS chapters 111 to 116, the Oregon Tax Court is not a court having probate jurisdiction and is limited to the trial of appeals on inheritance and gift tax matters. [1971 c 567 §3]

**111.030** [Repealed by 1969 c 591 §305]

**111.040** [Repealed by 1969 c 591 §305]

**111.050** [Repealed by 1969 c 591 §305]

## PROBATE COURTS AND COMMISSIONERS

**111.055 Transfer of probate jurisdiction.** (1) All probate jurisdiction, authority, powers, functions and duties of the county courts and the judges thereof and the district courts and the judges thereof are transferred to the circuit courts and the judges thereof in all counties except Gilliam, Grant, Harney, Malheur, Sherman and Wheeler Counties.

(2) All probate jurisdiction, authority, powers, functions and duties of the circuit courts and the judges thereof are transferred to the county courts and the judges thereof in Gilliam, Grant, Harney, Malheur, Sherman and Wheeler Counties. [1969 c 591 §2]

**111.060** [Repealed by 1969 c 591 §305]

**111.065 Transfer of pending proceedings; contested matters; appeals.** (1) Except as otherwise provided in this section, all matters, causes and proceedings relating to probate jurisdiction, authority, powers, functions and duties pending on July 1, 1970, in a court from which the jurisdiction, authority, powers, functions and duties are transferred by ORS 111.055 are transferred to the court to which the jurisdiction, authority, powers, functions and duties are so transferred.

(2) Contested matters pending in the circuit court for Gilliam, Grant, Harney, Malheur, Sherman or Wheeler County under ORS 5.050, and pending appeals therefrom, on July 1, 1970, shall be conducted and completed pursuant to the provisions of law in effect immediately before that date.

(3) Appeals pending in a circuit court under ORS 5.120, 109.370, 118.500 or 179.650

(1) on July 1, 1970, shall be conducted and completed pursuant to the provisions of law in effect immediately before that date. [1969 c 591 §3, 1979 c 683 §34]

**111.070** [Repealed by 1969 c 591 §305]

**111.075 Probate jurisdiction vested.** Jurisdiction of all probate matters, causes and proceedings is vested in the county courts of Gilliam, Grant, Harney, Malheur, Sherman and Wheeler Counties and in the circuit court for each other county and as provided in ORS 111.115. [1969 c 591 §4]

**111.085 Probate jurisdiction described.** The jurisdiction of the probate court includes, but is not limited to:

(1) Appointment and qualification of personal representatives.

(2) Probate and contest of wills.

(3) Determination of heirship.

(4) Determination of title to and rights in property claimed by or against personal representatives, guardians and conservators.

(5) Administration, settlement and distribution of estates of decedents.

(6) Construction of wills, whether incident to the administration or distribution of an estate or as a separate proceeding.

(7) Guardianships and conservatorships, including the appointment and qualification of guardians and conservators and the administration, settlement and closing of guardianships and conservatorships.

(8) Supervision and disciplining of personal representatives, guardians and conservators.

(9) Appointment of a successor testamentary trustee where the vacancy occurs prior to, or during the pendency of, the probate proceeding. [1969 c 591 §5; 1973 c 177 §1]

**111.095 Powers of probate court.** (1) The general legal and equitable powers of a circuit court are applicable to effectuate the jurisdiction of a probate court, punish contempts and carry out its determinations, orders and judgments as a court of record with general jurisdiction, and the same validity, finality and presumption of regularity shall be accorded to its determinations, orders and judgments, including determinations of its own jurisdiction, as to those of a court of record with general jurisdiction.

(2) A probate court has full, legal and equitable powers to make declaratory judgments, as provided in ORS 28.010 to 28.160, in all matters involved in the administration of an estate, including those pertaining to the title of real property, the determination of heirship and the distribution of the estate. [1969 c 591 §6; 1979 c 284 §102]

**111.105 Appeals from probate court; reexamination of issues.** (1) Except as otherwise provided in this section, no issue determined in a probate court shall be tried again on appeal or otherwise reexamined in a manner other than those appropriate to issues determined by a court of record with general jurisdiction.

(2) Appeals from a circuit court sitting in probate shall be taken to the Court of Appeals in the manner provided by law for appeals from the circuit court.

(3) Appeals from a county court sitting in probate shall be taken to the circuit court and Court of Appeals in the manner provided by ORS 5.120. [1969 c 591 §7; 1979 c 284 §103]

**111.110** [Repealed by 1969 c 591 §305]

**111.115 Transfer of estate proceeding from county court to circuit court.** (1) An estate proceeding, including all probate matters, causes and proceedings pertaining thereto, may be transferred at any time from a county court sitting in probate to the circuit court for the county by order of the county court.

(2) An estate proceeding, including all probate matters, causes and proceedings pertaining thereto, commenced in a county court sitting in probate and in which the county judge is a party or directly interested shall be transferred from the county court to the circuit court for the county by order of the county court.

(3) Upon transfer of an estate proceeding from a county court to the circuit court under this section, the county clerk shall certify and cause to be filed in the records of the circuit court all original papers and proceedings pertaining to the estate proceeding, and thereafter jurisdiction of all probate matters, causes and proceedings pertaining to the estate proceeding is vested in the circuit court as if that jurisdiction had been originally and exclusively vested in the circuit court. [1969 c 591 §8]

**111.120** [Repealed by 1969 c 591 §305]

**111.130** [Repealed by 1969 c.591 §305]

**111.140** [Repealed by 1969 c 591 §305]

**111.150** [Repealed by 1969 c 591 §305]

**111.160** [Repealed by 1969 c 591 §305]

**111.165 District court judge acting as probate court judge.** (1) In Benton, Clatsop, Coos, Curry, Deschutes, Hood River, Lincoln, Wasco and Washington Counties, a judge of the district court for the county may exercise the powers and duties of judge of the circuit court for the county in any matter, cause or proceeding in probate pending in the county. In any other county, a judge of the district court for the county may exercise any power or duty of judge of the circuit court in any matter, cause or proceeding in probate pending in the circuit court of the judicial district in which the district court is located, which is assigned to him by a judge of the circuit court of the judicial district.

(2) Whenever by reason of absence, illness or injury there is not within a county a judge of the probate court able to preside over and conduct the business of the probate court, any judge of a district court located in the judicial district may exercise the powers and duties of judge of the probate court for the county in any matter, cause or proceeding in probate pending in the county.

(3) If the district judge is not a party to, or directly interested in, the matter, cause or proceeding, and if the question or matter passed upon by him has not been presented to, or passed upon by, any probate court judge, any decree, judgment or order given and made by a district court judge pursuant to his powers and duties under this section, when filed and entered in the matter, cause or proceeding, has the same effect as though given and made by a probate court judge. [1969 c 591 §9]

**111.170** [Repealed by 1969 c 591 §305]

**111.175 Appointment of probate commissioner.** The court may appoint the clerk of the probate court or some other suitable person at the county seat to act as probate commissioner within the county. If the clerk of the probate court is appointed probate commissioner, his deputy has the power to perform any act as probate commissioner that the clerk has, and the clerk is responsible for conduct of the deputy so acting. [1969 c 591 §10]

**111.185 Powers of probate commissioner.** (1) A probate commissioner may act upon uncontested petitions for appointment of special administrators, for probate of wills and for appointment of personal representatives, guardians and conservators, to the extent authorized by rule of the court. Pursuant thereto he may make and enter orders on behalf of the court admitting wills to probate and appointing and setting the amount of the bonds of special administrators, personal representatives, guardians and conservators, subject to his orders being set aside or modified by the judge of the court within 30 days after the date an order is entered.

(2) Any matter presented to the probate commissioner may be referred by him to the judge.

(3) Unless set aside or modified by the judge, the orders of the probate commissioner have the same effect as if made by the judge. [1969 c 591 §11]

## PROBATE PROCEDURE GENERALLY

**111.205 Pleadings and mode of procedure.** No particular pleadings or forms thereof are required in the exercise of jurisdiction of probate courts. The mode of procedure in the exercise of jurisdiction is in the nature of an action not triable by right to a jury except as otherwise provided by statute. The proceedings shall be in writing and upon the petition of a party in interest or the order of the court. All petitions, reports and accounts shall be verified by at least one of the persons making them or by the attorney for the person, or in case of a corporation by its agent. The court exercises its powers by means of:

(1) A petition of a party in interest.

(2) A notice to a party.

(3) A subpena to a witness.

(4) Orders and judgments.

(5) An execution or warrant to enforce its orders and judgments. [1969 c 591 §12, 1979 c 284 §104]

**111.210** [Repealed by 1969 c 591 §305]

**111.212** [1953 c 650 §2; repealed by 1969 c.591 §305]

**111.215 Notice; method and time of giving.** (1) Except as otherwise specifically provided in ORS chapters 111, 112, 113, 114, 115, 116 and 117, whenever notice is required to be given of a hearing on any petition or other matter upon which an order is sought, the petitioner or other person filing the matter shall cause notice of the date, time and place of the hearing to be given to each person interested in the subject of the hearing or to his attorney, if he has appeared by attorney or

requested that notice be sent to his attorney, in any one or more of the following ways and within the following times:

(a) By mailing a copy thereof addressed to him or his attorney at least 14 days before the date set for the hearing.

(b) By delivering a copy thereof to him personally or to his attorney at least five days before the date set for the hearing.

(c) If the address of any person is not known or cannot be ascertained with reasonable diligence, by publishing a copy thereof once in each of three consecutive weeks in a newspaper of general circulation in the county where the hearing is to be held, the last publication of which shall be at least 10 days before the date set for the hearing.

(2) Upon good cause shown the court may change the requirements as to the method or time of giving notice for any hearing.

(3) Proof of the giving of notice must be made at or before the hearing and filed in the proceeding. Proof shall be by an admission of service, a return receipt from the postal authorities or an affidavit or certificate of the person giving notice or the publisher, or one of his employes, of the newspaper publishing the notice. [1969 c 591 §13]

**111.220** [Repealed by 1957 c 411 §7]

**111.225 Waiver of notice.** When any notice or information is required to be given under ORS chapters 111, 112, 113, 114, 115, 116 and 117, a guardian, a guardian ad litem, a conservator or a person who is neither incompetent nor a minor may waive notice by a writing signed by him or his attorney and filed in the proceeding, or by his appearance at the hearing. [1969 c 591 §14; 1973 c 506 §5]

**111.230** [Repealed by 1957 c 411 §7]

**111.231** [1957 c 411 §3, repealed by 1969 c 591 §305]

**111.235 Filing objections to petition.** Any interested person, on or before the date set for a hearing, may file written objections to a petition previously filed. [1969 c 591 §15]

**111.240** [Repealed by 1957 c 411 §7]

**111.245 Proof of documents; certification.** (1) Proof of documents pursuant to ORS chapters 111, 112, 113, 114, 115, 116 and 117 may be made as follows:

(a) Of a will, by a certified copy thereof.

(b) That a will has been probated or established in a foreign jurisdiction, by a certified copy of the order admitting the will to probate or evidencing its establishment.

(c) Of letters testamentary or of administration, by a certified copy thereof. The certification may include a statement that the letters have not been revoked.

(2) A document or order filed or entered in a foreign jurisdiction may be proved by a copy thereof, certified by a clerk of the court in which the document or order was filed or entered or by any other official having legal custody of the original document or order. [1969 c 591 §16]

**111.255 Translation of documents.** If a document or part thereof is not in the English language, a translation certified by the translator to be accurate may be attached thereto and shall be regarded as sufficient evidence of the contents of the document, unless objection is made thereto. In the absence of objection, if any person relies in good faith on the accuracy of the translation he shall not be prejudiced thereafter because of its inaccuracy. [1969 c 591 §17]

**111.265 Stenographic record.** The judge of the court may, on his own motion or on the request of an interested person, direct the reporter of his court to attend any hearing and make a stenographic record of the same. [1969 c.591 §18]