Chapter 113

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Initiation of Estate Proceedings

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113.005 Special administrators. (1) If, prior to appointment and qualification of a personal representative, property of a decedent is in danger of loss, injury or deterioration, or disposition of the remains of a decedent is required, the court may appoint a special administrator to take charge of the property or the remains. The petition for appointment shall state the reasons for special administration and specify the property, so far as known, requiring administration, and the danger to which it is subject.

(2) The special administrator shall qualify by filing a bond in the amount set by the court, conditioned upon the special administrator faithfully performing the duties of the trust.

(3) The special administrator may:

(a) Incur expenses for the funeral, burial or other disposition of the remains of decedent in a manner suitable to the condition in life of the decedent;

(b) Incur expenses for the protection of the property of the estate; and

(c) Sell perishable property of the estate, whether or not listed in the petition, if necessary to prevent loss to the estate.

(4) The special administrator shall not approve or reject claims of creditors or pay claims or expenses of administration or take possession of assets of the estate other than those in danger of loss, injury or deterioration pending the appointment of a personal representative.

(5) Upon the appointment and qualification of a personal representative the powers of the special administrator shall cease and the special administrator shall make and file an account and deliver to the personal representative the assets of the estate in the possession of the special administrator. If the personal representative objects to the account of the special administrator, the court shall hear the objections, and, whether or not objections are made, shall examine the account.

(6) To the extent approved by the court, the compensation of the special administrator and expenses properly incurred by the special administrator, including a reasonable fee of the attorney of the special administrator, shall be paid as expenses of administration. [1969 c.591 §80]

113.010 [Repealed by 1969 c.591 §305]

113.015 Venue. (1) The venue for a proceeding seeking the appointment of a personal representative and for a proceeding to probate a will is:

(a) In the county where the decedent had a domicile or where the decedent had a place of abode at the time of death;

(b) In any county where property of the decedent was located at the time of death or is located at the time the proceeding is commenced; or

(c) In the county in which the decedent died.

(2) Filing a proceeding in a county other than specified in subsection (1) of this section does not constitute a jurisdictional defect. [1969 c.591 §81]

113.020 [Repealed by 1969 c 591 §305]

113.025 Proceedings commenced in more than one county. (1) If proceedings seeking the appointment of a personal representative of the same estate or proceedings to probate a will of the same decedent are commenced in more than one county, they shall be stayed except in the county where first commenced until final determination there of venue. A proceeding is considered commenced by the filing of a petition. In determining venue, if the court finds that transfer to another county where a proceeding has been commenced is for the best interest of the estate, it may in its discretion order such transfer.

(2) If the proper venue is determined to be in another county, the clerk of the court shall transmit to the clerk of the court for the other county a transcript of the proceeding with all the original papers filed therein, and the court for the other county thereupon has exclusive jurisdiction of the proceeding to the same extent and with like effect as though the proceeding were in the court on original jurisdiction. [1969 c.591 §82]

113.027 Limitation on admission of will to probate. A will may not be admitted to probate or an estate reopened to admit a will to probate more than one year after the estate of the decedent has been administered in Oregon and closed. [1973 c 506 §21]

113.030 [Amended by 1963 c.308 §1; repealed by 1969 c.591 §305]

113.035 Petition for appointment of personal representative and probate of will. Any interested person or executor named in the will may petition for the appointment of a personal representative and for the probate of a will. The petition shall include the following information, so far as known:

(1) The name, age, domicile, post-office address, date and place of death, and social security account number or taxpayer identification number of the decedent.

(2) Whether the decedent died testate or intestate.

(3) The facts relied upon to establish venue.

(4) The name and post-office address of the person nominated as personal representative and the facts that show the person is qualified to act.

(5) The names, relationship to the decedent and post-office addresses of persons who are or would be the heirs of the decedent upon the death of the decedent intestate, and the ages of any who are minors.

(6) If the decedent died testate, the names and post-office addresses of the devisees, and the ages of any who are minors.

(7) Whether the original of the last will of the decedent is in the possession of the court or accompanies the petition. If the original will is not in the possession of the court or accompanying the petition and an authenticated copy of the will probated in another jurisdiction does not accompany the petition, the petition shall also state the contents of the will and indicate that it is lost, destroyed or otherwise unavailable and that it was not revoked.

(8) A statement of the extent and nature of assets of the estate, to enable the court to set the amount of bond of the personal representative. [1969 c.591 §83; 1973 c.506 §19]

113.040 [Amended by 1963 c.308 §2, repealed by 1969 c 591 §305]

113.045 Information of escheat to Division of State Lands. If it appears from a petition for the appointment of a personal representative that there is no known person to take by descent the net intestate estate, the petitioner shall deliver or mail to the Director of the Division of State Lands a copy of the petition, and shall file in the estate proceeding proof by an affidavit of the delivery or mailing. [1969 c.591 §84]

113.050 [Amended by 1963 c.272 §1; repealed by 1969 c.591 §305]

113.055 Testimony of attesting witnesses to will. (1) Upon an ex parte hearing of a petition for the probate of a will, an affidavit of an attesting witness may be used instead of the personal presence of the witness in court. The witness may give evidence of the execution of the will by attaching the affidavit to the will or to a photographic or other facsimile copy of the will, and may identify the signature of the testator and witnesses to the will by use of the will or the copy. The affidavit shall be received in evidence by the court and have the same weight as to matters contained in the affidavit as if the testimony were given by the witness in open court. The affidavit of the attesting witness may be made at the time of execution of the will or at any time thereafter.

(2) However, upon motion of any person interested in the estate filed within 30 days after the order admitting the will to probate is made, the court may require that the witness making the affidavit be brought before the court. If the witness is outside the reach of a subpena, the court may order that the deposition of the witness be taken.

(3) If the evidence of none of the attesting witnesses is available, the court may allow proof of the will by testimony or other evidence that the signature of the testator or at least one of the witnesses is genuine.

(4) In the event of contest of the will or of probate thereof in solemn form, proof of any facts shall be made in the same manner as in an action tried without a jury. [1969 c.591 §85; 1979 c.284 §105]

113.060 [Amended by 1963 c.271 §1; repealed by 1969 c 591 §305]

113.065 Establishing foreign wills. (1) The written will of a testator who died domiciled outside this state, which upon probate may operate upon property in this state, may be admitted to probate upon petition therefor, by filing a certified copy of the will and a certified copy of the order admitting the will to probate or evidencing its establishment in the jurisdiction where the testator died domiciled.

(2) A will offered for probate under this section may be contested for a cause which would be grounds for rejection of a will of a testator who died domiciled in this state. [1969 c.591 §86]

113.070 [Repealed by 1969 c.591 §305]

113.075 Contest of will. When a will has been admitted to probate, any interested person may, at any time within four months after the date of the filing of the affidavit under ORS 113.145 or four months after the first publication of notice to interested persons, whichever is later, contest the probate of the will or the validity of the will. [1969 c.591 §87; 1973 c.506 §23]

113.080 [Repealed by 1969 c.591 §305]

113.085 Preference in appointing personal representative. (1) Except as provided in subsection (2) of this section, upon the filing of the petition, if there is no will or there is a will and it has been proved, the court shall appoint a qualified person it finds suitable as personal representative, giving preference in the following order:

(a) To the executor named in the will.

(b) To the surviving spouse of the decedent or the nominee of the decedent.

(c) To the nearest of kin of the decedent or the nominee of the decedent.

(d) To the Assistant Director for Adult and Family Services or the designated representative of the assistant director, if it appears the decedent received public assistance pursuant to ORS chapter 411, 412, 413 or 414 and that such assistance is a claim against the estate.

(e) To the Director of Veterans' Affairs, if the decedent was a ward under the provisions of ORS 406.050 (5), and the director has joined in the petition for such appointment.

(f) To any other person.

(2) If it appears that the decedent died wholly intestate and without heirs, the court shall appoint the Director of the Division of State Lands as personal representative. The Attorney General shall represent the director in the administration of the estate. [1969 c.591 §88; 1971 c.421 §1; 1971 c 675 §1; 1973 c.370 §1]

113.087 Effect of accepting appointment as personal representative; notices to be sent to representative. (1) By accepting appointment, a personal representative, whether a resident or nonresident of this state, submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person.

(2) Notice of any proceeding shall be delivered to the personal representative or mailed to the personal representative by ordinary first class mail at the address as listed in the petition for appointment or as thereafter reported to the court. If the personal representative has an address different from that listed in the petition or reported to the court, the person giving the notice shall also mail the notice to that address if it is known to the person. [1973 c 506 §22]

113.090 [Amended by 1969 c.591 §79; renumbered 112.695]

113.092 Convicted felon as nominated personal representative. (1) A person nominated as personal representative who has been convicted of a felony shall inform the court of the conviction. The conviction shall not disqualify the nominee from acting as personal representative unless the court finds that the facts underlying the conviction are substantially similar to facts which would constitute grounds for removal of a personal representative under ORS 113.195 (2), and the court has reasonable grounds to believe that such person will be unfaithful to or neglectful of the trust.

(2) A nominee who fails to inform the court of a felony conviction may be disqualified from acting as personal representative. A personal representative who so fails to inform the court may be removed. [1975 c.781 §8]

113.095 Persons not qualified to act as personal representatives. A person is not qualified to act as personal representative who is:

(1) An incompetent.

(2) A minor.

(3) A person suspended for misconduct or disbarred from the practice of law, during the period of suspension or disbarment.

(4) A person who has resigned from the Oregon State Bar when charges of professional misconduct are under investigation or when disciplinary proceedings are pending against the person, until the person is reinstated.

(5) A judge of the district court, circuit court, Oregon Tax Court, Court of Appeals or Supreme Court of this state. [1969 c.591 §89; 1973 c 308 §1, 1973 c.506 §24; 1975 c.781 §6]

113.105 Necessity and amount of bond; exceptions; bond notwithstanding will. (1) Unless a testator provides in a will that no bond shall be required of the executor of the estate, or unless the personal representative is the sole heir or devisee or is the Director of the Division of State Lands, or is the Assistant Director for Adult and Family Services or a designated representative, or is the Director of Veterans' Affairs, the personal representative shall not act nor shall letters be issued to the personal representative until the personal representative files with the clerk of the court a bond. The bond shall be executed by a surety company authorized to transact surety business in this state, or by one or more sufficient personal sureties approved by the court. A personal surety must be a resident of this state. The court may, in its discretion, require a bond notwithstanding any provision in a will that no bond is required. The bond shall be for the security and benefit of all interested persons and shall be conditioned upon the personal representative faithfully performing the duties of the trust.

(2) The amount of the bond set by the court shall be adequate to protect interested persons, but in no event shall it be less than $1,000. In setting the amount of the bond the court shall consider:

(a) The nature, liquidity and apparent value of the assets of the estate.

(b) The anticipated income during administration.

(c) The probable indebtedness and taxes.

(3) Nothing in this section affects the provisions of ORS 709.240, relating to a trust company acting as personal representative. [1969 c 591 §90; 1971 c 421 §2, 1973 c.369 §1; 1973 c.797 §425]

113.110 [Repealed by 1969 c.591 §305]

113.115 Increasing, reducing or requiring new bond. The court may increase or reduce the amount of the bond of a personal representative, or require a new bond, if it appears to the court that the bond was inadequate or excessive or a new bond is necessary. The surety on the bond may be discharged from liability by an order made pursuant to ORS 33.510 and 33.520. [1969 c.591 §91]

113.120 [Repealed by 1969 c.591 §305]

113.125 Letters testamentary or of administration. (1) Letters testamentary or letters of administration shall be issued to the personal representative appointed by the court upon the filing with the clerk of the court the bond, if any, required by the court.

(2) Letters testamentary may be in the following form:

LETTERS TESTAMENTARY

No. ————————————————

THIS CERTIFIES that the will of ————————————————, deceased, has been proved and ———————————————— has (have) been appointed and is (are) at the date hereof the duly appointed, qualified and acting ———————————————— (Executor(s) or Administrator(s) with the Will Annexed) of the will and estate of the decedent.

IN WITNESS WHEREOF, I, as Clerk of the Circuit Court of the State of Oregon for the County of ————————————————, in which proceedings for administration upon the estate are pending, do hereby subscribe my name and affix the seal of the court this —— day of ————, 19—.

———————————————— Clerk of the Court

By ————————————————Deputy

(Seal)

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(3) Letters of administration may be in the following form:

LETTERS OF ADMINISTRATION

No. ————————————————

THIS CERTIFIES that ————— has (have) been appointed and is (are) at the date hereof the duly appointed, qualified and acting administrator(s) of the estate of ————, deceased, and that no will of the decedent has been proved in this court.

IN WITNESS WHEREOF, I, as Clerk of the Circuit Court of the State of Oregon for the County of ————, in which proceedings for administration upon the estate are pending, do hereby subscribe my name and affix the seal of the court this —— day of ————, 19—.

———————————————— Clerk of the Court

By ————————————————Deputy

(Seal)

[1969 c.591 §92]

113.130 [Repealed by 1969 c.591 §305]

113.135 Designation of attorney to be filed. If the personal representative has employed an attorney to represent the personal representative in the administration of the estate, the personal representative shall file in the estate proceeding the name and post-office address of the attorney unless that information appears in the petition or the order appointing the personal representative. [1969 c.591 §93]

113.140 [Repealed by 1969 c.591 §305]

113.145 Information to devisees and heirs. (1) Upon appointment a personal representative shall deliver or mail to the devisees and heirs named in the petition for appointment of a personal representative, at the addresses therein shown, information that shall include:

(a) The title of the court in which the estate proceeding is pending and the clerk's file number;

(b) The name of the decedent and the place and date of the death of the decedent;

(c) Whether or not a will of the decedent has been admitted to probate;

(d) The name and address of the personal representative and the attorney of the personal representative;

(e) The date of the appointment of the personal representative; and

(f) A statement advising the devisee or heir that the rights of the devisee or heir may be affected by the proceeding and that additional information may be obtained from the records of the court, the personal representative or the attorney for the personal representative.

(2) If the personal representative is a devisee or heir named in the petition the personal representative is not required to deliver or mail the information under this section to the personal representative.

(3) The failure of the personal representative to give information under this section is a breach of duty to the persons concerned, but does not

affect the validity of appointment, duties or powers or the exercise of duties or powers.

(4) Within 30 days after the date of appointment a personal representative shall cause to be filed in the estate proceeding proof by an affidavit of the delivery or mailing required by this section or a waiver of notice as provided under ORS 111.225. The affidavit shall include a copy of the information delivered or mailed and the names of the persons to whom it was delivered or mailed. [1969 c.591 §94, 1973 c.506 §25]

113.150 [Repealed by 1969 c.591 §305]

113.155 Publication of notice to interested persons. (1) Upon appointment a personal representative shall cause a notice to interested persons to be published once in each of three consecutive weeks in:

(a) A newspaper published in the county in which the estate proceeding is pending; or

(b) If no newspaper is published in the county in which the estate proceeding is pending, a newspaper designated by the court.

(2) The notice shall include:

(a) The title of the court in which the estate proceeding is pending;

(b) The name of the decedent;

(c) The name of the personal representative and the address at which claims are to be presented;

(d) A statement requiring all persons having claims against the estate to present them, within four months after the date of the first publication of the notice to the personal representative at the address designated in the notice for the presentation of claims or they may be barred;

(e) The date of the first publication of the notice; and

(f) A statement advising all persons whose rights may be affected by the proceeding that additional information may be obtained from the records of the court, the personal representative or the attorney for the personal representative.

(3) The failure of the personal representative to cause a notice to be published under this section is a breach of duty to the persons concerned, but does not affect the validity of appointment, duties or powers or the exercise of duties or powers.

(4) A personal representative shall file in the estate proceeding proof by an affidavit of the publication of notice required by this section. The affidavit shall include a copy of the published notice. [1969 c.591 §95; 1973 c 506 §26]

113.160 [Repealed by 1969 c.591 §305]

113.165 Inventory; filing; contents. Within 60 days after the date of appointment, unless a longer time is granted by the court, a personal representative shall file in the estate proceeding an inventory of all the property of the estate that has come into the possession or knowledge of the personal representative. The inventory shall show the estimates by the personal representative of the respective true cash values as of the date of the death of the decedent of the properties described in the inventory. [1969 c.591 §96]

113.175 Property discovered after inventory filed. Whenever any property of the estate not included in the inventory comes into the possession or knowledge of the personal representative, the personal representative shall either file in the estate proceeding a supplemental inventory within 30 days after the date of receiving possession or knowledge, or include the property in the next accounting. [1969 c.591 §97]

113.185 Appraisement; employment and appointment of appraisers. (1) The personal representative may employ a qualified and disinterested appraiser to assist the personal representative in the appraisal of any property of the estate the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of property.

(2) The court in its discretion may direct that all or any part of the property of the estate be appraised by one or more appraisers appointed by the court.

(3) Property for which appraisement is required shall be appraised at its true cash value as of the date of the death of the decedent. Each appraisement shall be in writing and shall be signed by the appraiser making it.

(4) Each appraiser is entitled to be paid a reasonable fee from the estate for services and to be reimbursed from the estate for necessary expenses. [1969 c.591 §98]

113.195 Removal of personal representative. (1) When a personal representative ceases to be qualified as provided in ORS 113.095, or becomes incapable of discharging duties, the court shall remove the personal representative.

(2) When a personal representative has been unfaithful to or neglectful of the trust, the court may remove the personal representative.

(3) When a personal representative has failed to comply with ORS 113.092, the court may remove the personal representative.

(4) When grounds for removal of a personal representative appear to exist, the court, on its own motion or on the petition of any interested person, shall order the personal representative to appear and show cause why the personal representative should not be removed. A copy of the order to show cause and of the petition, if any, shall be served upon the personal representative and upon the surety of the personal representative as provided in ORS 111.215. [1969 c.591 §99; 1975 c.781 §9]

113.205 Powers of surviving personal representative. (1) Every power exercisable by copersonal representatives may be exercised by the survivors or survivor of them when the appointment of one is terminated, unless the will provides otherwise.

(2) Where one of two or more persons named as coexecutors is not appointed, those appointed may exercise all the powers incident to the office, unless the will provides otherwise. [1969 c.591 §100]

113.210 [Repealed by 1969 c.591 §305]

113.215 Appointment of successor personal representative. (1) When a personal representative dies, is removed by the court, or resigns and the resignation is accepted by the court, the court may appoint, and, if the personal representative was the sole or the last surviving personal representative and administration is not completed, the court shall appoint another personal representative in place of the personal representative.

(2) If, after a will has been proven and letters testamentary or of administration with the will annexed have been issued, the will is set aside, declared void or inoperative, the letters testamentary or of administration with the will annexed shall be revoked and letters of administration issued.

(3) If, after administration has been granted, a will of the decedent is found and proven, the letters of administration shall be revoked and letters testamentary or of administration with the will annexed shall be issued.

(4) When a successor personal representative is appointed, the successor has all the rights and powers of the predecessor or of the executor named in the will, except that the successor shall not exercise powers given in the will which by its terms are personal to the personal representative named therein. [1969 c.591 §101]

113.220 [Repealed by 1969 c.591 §305]

113.225 Notice to interested persons by successor personal representative. (1) If the personal representative dies, is removed by the court or resigns after the notice to interested persons required by ORS 113.155 has been published but before the expiration of four months from the date of first publication, the successor personal representative shall cause notice to interested persons to be published as if the successor were the original personal representative. The republished notice shall state that the original personal representative died, was removed by the court or resigned, the date of death, removal or resignation and the date of appointment of the new personal representative. It also shall state that all persons having claims against the estate shall present them, within four months after the date of the first publication of the republished notice, to the new personal representative, at the address designated in the republished notice for the presentation of claims, or they may be barred.

(2) No notice by the successor personal representative shall be required under subsection (1) of this section if the original personal representative dies, is removed by the court, or resigns after the expiration of four months from the date of the first publication of the notice to interested persons. [1969 c 591 §102, 1977 c.187 §1]

113.230 [Repealed by 1969 c.591 §305]

113.240 [Repealed by 1969 c 591 §305]

113.250 [Repealed by 1969 c.591 §305]

113.260 [Repealed by 1969 c.591 §305]

113.270 [Repealed by 1969 c.591 §305]

113.280 [Repealed by 1969 c 591 §305]

113.290 [Amended by 1953 c.601 §1; repealed by 1969 c.591 §305]

113.410 [Repealed by 1969 c.591 §305]

113.420 [Repealed by 1969 c.591 §305]

113.430 [Repealed by 1969 c.591 §305]

113.440 [Repealed by 1969 c 591 §305]

113.450 [Repealed by 1969 c 591 §305]

113.510 [Repealed by 1969 c 591 §305]

113.520 [Repealed by 1969 c.591 §305]

113.530 [Repealed by 1969 c.591 §305]

113.540 [Repealed by 1969 c.591 §305]

113.610 [Repealed by 1969 c 591 §305]

113.620 [Repealed by 1969 c.591 §305]

113.630 [Repealed by 1969 c.591 §305]

113.640 [Repealed by 1969 c.591 §305]

113.650 [Repealed by 1969 c.591 §305]

113.660 [Repealed by 1969 c.591 §305]

113.670 [Repealed by 1969 c.591 §305]

113.680 [Repealed by 1969 c.591 §305]

113.690 [Repealed by 1969 c 591 §305]