

# Chapter 117

1993 EDITION

## Estates of Absentees

- |         |   |         |                             |
|---------|---|---------|-----------------------------|
| 117.005 | Petition for administration of estate of absentee             | 117.075 | Rights of absentee          |
| 117.015 | Setting date of hearing on petition; notice of hearing        | 117.085 | Substitution of parties     |
| 117.025 | Appointment of person to represent absentee; directing search | 117.095 | Costs, expenses and charges |
| 117.035 | Hearing on petition   |         |                             |
| 117.045 | Effect of finding of death                                    |         |                             |
| 117.055 | Procedure for administering estate                            |         |                             |
| 117.065 | Revocation of letters; proceedings upon revocation            |         |                             |

### CROSS REFERENCES

Definitions, 111.005

Waiver of notices, 111.225

117.005

Judicial records of foreign jurisdiction, 43.130 to 43.180

**PROBATE LAW**

---

**117.005 Petition for administration of estate of absentee.** Administration may be had upon the estate of an absentee. A petition for administration shall state, in addition to the information required by ORS 113.035:

(1) Whether the absentee, when last heard from, was a resident or nonresident of this state.

(2) The address of the absentee at the last-known domicile of the absentee.

(3)(a) That, to the best knowledge of the petitioner and after diligent search, the whereabouts of the absentee is and has been unknown for a period stated of not less than one year, and that the petitioner has reason to believe and believes the absentee is dead; or

(b) That the death of the absentee at the time, location and in the circumstances stated in the petition is probable, and that the fact of death is in doubt solely by reason of the failure to find or identify the remains of the absentee. [1969 c.591 §203]

117.010 [Repealed by 1969 c.591 §305]

**117.015 Setting date of hearing on petition; notice of hearing.** (1) Upon the filing of a petition under ORS 117.005, the clerk of the court shall set a date for hearing not less than 30 days after the date of filing the petition, unless the court sets an earlier date. A copy of the notice of the hearing shall be sent:

(a) To the absentee at the last-known address of the absentee by registered mail or by certified mail with return receipt.

(b) By ordinary mail to the devisees and heirs named in the petition.

(2) The court may order that additional notice of the hearing be given by publication or by other means. Proof of mailing may be made by the petitioner by affidavit. [1969 c.591 §204; 1973 c.506 §39; 1991 c.249 §15]

117.020 [Repealed by 1969 c.591 §305]

**117.025 Appointment of person to represent absentee; directing search.** The court may appoint some disinterested person as guardian ad litem to appear for the absentee at the hearing on the petition. The court may direct the petitioner or the guardian ad litem to make search for the absentee in any manner the court considers advisable, including any or all of the following methods:

(1) By inserting in one or more suitable publications a notice requesting information from any person having knowledge of the whereabouts of the absentee.

(2) By notifying officers of justice and public welfare agencies in appropriate locations of the disappearance of the absentee.

(3) By engaging the services of an investigation agency. [1969 c.591 §205]

117.030 [Amended by 1959 c.638 §11; repealed by 1969 c.591 §305]

**117.035 Hearing on petition.** Upon the hearing on the petition the court shall determine whether the absentee has died and if so, the date of death and whether the absentee died testate or intestate. Upon finding that the absentee has died, the court shall grant letters accordingly, or, in the absence of that finding, may deny the petition. An appeal may be taken from the order of the court. [1969 c.591 §206]

**117.045 Effect of finding of death.** The finding of the court that the absentee has died is conclusive as to the estate of the absentee only if:

(1) Notice of the hearing on the petition was given as required by ORS 117.015; and

(2) The court finds that diligent search for the absentee was made. [1969 c.591 §207]

**117.055 Procedure for administering estate.** Upon the entry of the order of the court finding that the absentee has died and granting letters, administration of the estate of the absentee, whether testate or intestate, shall proceed as provided for the estates of other decedents, except as otherwise provided in ORS 117.005 to 117.095. [1969 c.591 §208]

**117.065 Revocation of letters; proceedings upon revocation.** Upon proof that the absentee is alive, letters theretofore granted shall be revoked. Acts of the personal representative before revocation of letters are as valid as though the letters had not been revoked, but after revocation the personal representative has no further power in the capacity of personal representative except as provided in this section. The personal representative shall pay claims allowed and proved, file an account of administration for the period of time before revocation of letters and transfer any property in the possession of the personal representative to the person for whose estate the personal representative acted or to the authorized agent of that person. [1969 c.591 §209]

**117.075 Rights of absentee.** (1) If property of the absentee has been sold by the personal representative, the absentee has no right, title or interest in or to the property sold, but only to the proceeds realized therefrom or so much thereof as may remain in the possession of the personal representative upon the closing of the estate.

(2) The absentee, for a period of five years after distribution of the estate, has a right to recover from the distributees any of the estate or proceeds of the estate of the

absentee that remain in their possession, but there is no right of recovery from purchasers of property sold by the distributees. [1969 c.591 §210]

**117.085 Substitution of parties.** After revocation of letters the absentee may be substituted as plaintiff in actions brought by the personal representative. The absentee may be substituted as defendant, upon application by the absentee or application by the plaintiff, in actions brought against the personal representative. [1969 c.591 §211]

**117.095 Costs, expenses and charges.** The costs, expenses and charges attending the granting of letters and their revocation shall be paid out of the estate of the absentee. If the petition for administration is not granted, the petitioner shall pay the costs, expenses and charges. [1969 c.591 §212]

117.110 [Amended by 1953 c.441 §3; 1955 c.597 §1; 1959 c.652 §21; repealed by 1969 c.591 §305]

117.120 [Repealed by 1969 c.591 §305]

117.130 [Repealed by 1969 c.591 §305]

117.140 [Repealed by 1969 c.591 §305]

117.150 [Repealed by 1969 c.591 §305]

117.160 [Repealed by 1969 c.591 §305]

117.170 [Repealed by 1969 c.591 §305]

117.180 [Repealed by 1969 c.591 §305]

117.310 [Repealed by 1969 c.591 §305]

117.315 [1955 c.183 §2; 1957 c.662 §1; repealed by 1969 c.591 §305]

117.320 [Repealed by 1969 c.591 §305]

117.330 [Repealed by 1969 c.591 §305]

117.340 [Repealed by 1969 c.591 §305]

117.350 [Amended by 1957 c.363 §1; repealed by 1969 c.591 §305]

117.360 [Repealed by 1957 c.363 §2 (117.361 enacted in lieu of 117.360)]

117.361 [1957 c.363 §3 (enacted in lieu of 117.360); repealed by 1969 c.591 §305]

117.370 [Repealed by 1969 c.591 §305]

117.380 [Amended by 1959 c.638 §12; repealed by 1969 c.591 §305]

117.390 [Repealed by 1969 c.591 §305]

117.510 [Repealed by 1969 c.591 §305]

117.520 [Repealed by 1969 c.591 §305]

117.530 [Repealed by 1969 c.591 §305]

117.540 [Repealed by 1969 c.591 §305]

117.550 [Repealed by 1969 c.591 §305]

117.560 [Repealed by 1969 c.591 §305]

117.610 [Repealed by 1969 c.591 §305]

117.612 [1961 c.515 §1; 1965 c.514 §2; repealed by 1969 c.591 §305]

117.615 [1959 c.62 §1; repealed by 1969 c.591 §305]

117.620 [Repealed by 1969 c.591 §305]

117.630 [Repealed by 1969 c.591 §305]

117.640 [Repealed by 1969 c.591 §305]

117.650 [Repealed by 1969 c.591 §305]

117.660 [Repealed by 1969 c.591 §305]

117.670 [Repealed by 1969 c.591 §305]

117.680 [Amended by 1969 c.591 §184; renumbered 116.173]

117.690 [Repealed by 1969 c.591 §305]

117.710 [1965 c.345 §1; repealed by 1969 c.591 §305]