

D R A F T

SUMMARY

Updates and modernizes certain laws pertaining to intestacy, wills and estate administration.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to estates; creating new provisions; amending ORS 111.005, 111.015, 111.095, 111.115, 111.175, 111.185, 111.275, 112.025, 112.035, 112.045, 112.058, 112.065, 112.135, 112.145, 112.155, 112.175, 112.238, 113.005, 113.242, 114.305, 115.125 and 179.610; repealing ORS 112.390; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 111.005 is amended to read:

111.005. 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 the inheritance to the extent of the gift]* **or devisee with the intent that the gift satisfy in whole or in part the heir’s share of an intestate estate or the devisee’s share of a testate estate.**

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

1 [(6)] (5) “Assets” includes real, personal and intangible property.

2 [(7)] (6) “Claim” includes liabilities of a decedent, whether arising in
3 contract, in tort or otherwise.

4 [(8)] (7) “Court” or “probate court” means the court in which jurisdiction
5 of probate matters, causes and proceedings is vested as provided in ORS
6 111.075.

7 [(9)] (8) “Decedent” means a person who has died [*leaving property that*
8 *is subject to administration*].

9 (9)(a) **“Descendant” means a person who is descended from a spe-**
10 **cific ancestor.**

11 (b) **When used to refer to persons who take by intestate succession,**
12 **“descendant” does not include a person who is the descendant of a**
13 **living descendant.**

14 (10) “Devise,” when used as a noun, means property disposed of by a
15 will[, *and includes “legacy” and “bequest.”*].

16 (11) “Devise,” when used as a verb, means to dispose of property by a
17 will[, *and includes “bequeath.”*].

18 (12) “Devisee” [*includes “legatee” and “beneficiary.”*] **means a person**
19 **designated in a will to receive a devise.**

20 (13) “Distributee” means a person entitled to any property of a decedent
21 under the will of the decedent or under intestate succession.

22 (14) “Domicile” means the place of abode of a person, where the person
23 intends to remain and to which, if absent, the person intends to return.

24 (15) “Estate” means the real and personal property of a decedent, as from
25 time to time changed in form by sale, reinvestment, **substitutions** or other-
26 wise, [*and*] augmented by any accretions or additions [*thereto and substi-*
27 *tutions therefor*] or diminished by any decreases [*and*] **or** distributions
28 [*therefrom*].

29 (16) “Funeral” includes **the** burial or other disposition of the remains of
30 a decedent, [*including the*] **any** plot or tomb and other necessary incidents
31 to the disposition of the remains, **any memorial ceremony or other**

1 **observance and related expenses.**

2 (17) “General devise” means a devise chargeable generally on the estate
3 of a testator [*and*] **so that the devise is** not distinguishable from other parts
4 [*thereof or not so given as to amount to*] **of the estate and does not con-**
5 **stitute** a specific devise.

6 [(18) “Generation” means a group of human beings, living or deceased, that
7 constitute a single step in the line of descent from an ancestor.]

8 [(19)] (18) “Heir” means any person[, *including the surviving spouse,*] who
9 is **or would be** entitled under intestate succession to [*the property of a*
10 *decendent who died wholly or partially intestate*] **property of a person upon**
11 **that person’s death.**

12 [(20)] (19) “Interested person” includes heirs, devisees, children, spouses,
13 creditors and any others having a property right or claim against the estate
14 of a decedent that may be affected by the proceeding. [*It*] **“Interested per-**
15 **son”** also includes fiduciaries representing interested persons.

16 [(21)] (20) “Intestate” means one who dies without leaving a valid will,
17 or the circumstance of dying without leaving a valid will, effectively dis-
18 posing of all the estate.

19 [(22)] (21) “Intestate succession” means succession to property of a
20 decedent who dies intestate or partially intestate.

21 [(23)] (22) “Issue” [*includes adopted children and their issue and, when*
22 *used to refer to persons who take by intestate succession, includes all lineal*
23 *descendants, except those who are the lineal descendants of living lineal de-*
24 *scendants*] **means a descendant or descendants.**

25 [(24)] (23) “Net estate” means the real and personal property of a
26 decedent, except property used for the support of the surviving spouse and
27 children and for the payment of expenses of administration, funeral expenses,
28 claims and taxes.

29 [(25)] (24) “Net intestate estate” means any part of the net estate of a
30 decedent not effectively disposed of by the will.

31 [(26)] (25) “Personal property” includes all property other than real

1 property.

2 [(27)] (26) “Personal representative” includes executor, administrator, ad-
3 ministrator with will annexed and administrator de bonis non, but does not
4 include special administrator.

5 [(28)] (27) “Property” includes both real and personal property.

6 [(29)] (28) “Real property” includes all legal and equitable interests in
7 land, in fee and for life.

8 [(30)] (29) “Settlement” includes, as to the estate of a decedent, the full
9 process of administration, distribution and closing.

10 [(31)] (30) “Specific devise” means a devise of a specific thing or specified
11 part of the estate of a testator that is so described as to be capable of iden-
12 tification. *[It]* **A specific devise** is a gift of a part of the estate identified
13 and differentiated from all other parts.

14 [(32)] (31) “Will” includes codicil[; *it*] **and** also includes a testamentary
15 instrument that merely appoints an executor or that merely revokes or re-
16 vives another will.

17 **SECTION 2.** ORS 112.025 is amended to read:

18 112.025. If the decedent leaves a surviving spouse and [*issue*] **one or more**
19 **descendants**, the intestate share of the surviving spouse is:

20 (1) If there are [*surviving issue*] **one or more surviving descendants** of
21 the decedent all of whom are [*issue*] **descendants** of the surviving spouse
22 also, the entire net intestate estate.

23 (2) If there are [*surviving issue*] **one or more surviving descendants** of
24 the decedent one or more of whom are not [*issue*] **descendants** of the sur-
25 viving spouse, one-half of the net intestate estate.

26 **SECTION 3.** ORS 112.035 is amended to read:

27 112.035. If the decedent leaves a surviving spouse and no [*issue, the sur-*
28 *living spouse shall have all of the net intestate estate*] **descendant, the**
29 **intestate share of the surviving spouse is the entire net intestate es-**
30 **tate.**

31 **SECTION 4.** ORS 112.045 is amended to read:

1 112.045. The part of the net intestate estate not passing to the surviving
2 spouse shall pass:

3 (1) To the *[issue]* **descendants** of the decedent **by representation as**
4 **described in ORS 112.065.** *[Issue of different generations in relation to the*
5 *decedent take by representation as defined in ORS 112.065.]*

6 (2) If there is no surviving *[issue or spouse]* **descendant**, to the surviving
7 parents of the decedent.

8 (3) If there is no surviving *[issue, spouse]* **descendant** or parent, **equally**
9 to the brothers and sisters of the decedent and *[the issue]* **by representation**
10 **as described in ORS 112.065 to the descendants** of any deceased brother
11 or sister of the decedent *[by representation as defined in ORS 112.065]*. If
12 there is no surviving brother or sister, the *[issue]* **descendants** of brothers
13 and sisters take equally if they are all of the same generation in relation to
14 the decedent, but if of different generations, then those of later generations
15 take by representation as *[defined]* **described** in ORS 112.065.

16 (4)(a) If there is no surviving *[issue, spouse, parent or issue]* **descendant,**
17 **parent or descendant** of a parent, equally to the grandparents of the
18 decedent and *[the issue]* **by representation as described in ORS 112.065**
19 **to the descendants** of any deceased grandparent of the decedent *[by repre-*
20 *sentation as defined in ORS 112.065]* **who left descendants surviving at the**
21 **time of the decedent's death.** If one or more grandparents of the decedent
22 do not survive the decedent, the *[issue of the]* **descendants of each of the**
23 **deceased** grandparents take equally if they are all of the same generation
24 in relation to the decedent, but if of different generations, then those of later
25 generations take by representation as *[defined]* **described** in ORS 112.065.

26 (b) If there is no surviving grandparent, the *[issue]* **descendants** of
27 grandparents take equally if they are all of the same generation in relation
28 to the decedent, but if of different generations, then those of later gener-
29 ations take by representation as *[defined]* **described** in ORS 112.065.

30 (5) If, at the time of taking, surviving parents or grandparents of the
31 decedent are married to each other, they shall take real property as tenants

1 by the entirety and personal property as joint owners with the right of
2 survivorship.

3 **SECTION 5.** ORS 112.058 is amended to read:

4 112.058. (1) In any proceeding to determine the escheat share of the estate
5 of a decedent whose estate is wholly or partially subject to probate in this
6 state:

7 (a) No preference shall be given to any person over escheat; and

8 (b) After diligent search and inquiry appropriate to the circumstances, the
9 following presumptions apply in a proceeding to determine whether a missing
10 person has died:

11 (A) A missing person whose death cannot be proved by other means lives
12 to 100 years of age.

13 (B) A missing person who was exposed to a specific peril at the time the
14 person became missing has died if it is reasonable to expect from the nature
15 of the peril that proof of death would be impractical.

16 (C) A missing person whose absence is unexplained has died if the char-
17 acter and habits of the person are inconsistent with a voluntary absence for
18 the time that the person has been missing.

19 (D) A missing person known to have been alive who has not been seen
20 or heard from for seven years has died if the person has been absent from
21 the person's usual residence, the absence is unexplained, there are other
22 persons who would have been likely to have heard from the missing person
23 during that period were the missing person alive, and those other persons
24 have not heard from the missing person.

25 (2) In any proceeding described by subsection (1) of this section, a missing
26 person who is presumed to be dead is also presumed to have had two children
27 in addition to any known *[issue]* **descendants** of the person unless the
28 presumption of death arises by reason of the application of subsection
29 (1)(b)(B) or (C) of this section.

30 **SECTION 6.** ORS 112.065 is amended to read:

31 112.065. "Representation" means the method of determining the passing

1 of the net intestate estate when the distributees are of different generations
2 in relation to the decedent. Representation is accomplished as follows: [*The*
3 *estate shall be divided into as many shares as there are surviving heirs of the*
4 *generation closest in relation to the decedent and deceased persons of the same*
5 *generation who left issue who survive the decedent, each surviving heir of the*
6 *nearest generation in relation to the decedent receiving one share and the share*
7 *of each deceased person of the same generation being divided among the issue*
8 *of the deceased person in the same manner.*]

9 **(1) If a distributive share of a wholly or partially intestate estate**
10 **passes by representation to a person's descendants, the share is di-**
11 **vided into as many equal shares as there are:**

12 **(a) Surviving descendants in the generation nearest to the person**
13 **that contains one or more surviving descendants; and**

14 **(b) Deceased descendants, in the generation nearest to the person**
15 **that contains one or more surviving descendants, who left surviving**
16 **descendants, if any.**

17 **(2) Each share created for a surviving descendant in the nearest**
18 **generation is distributed to that descendant. Each share created for a**
19 **deceased descendant is distributed to the descendants of the deceased**
20 **descendant by representation as described in this section.**

21 **SECTION 7.** ORS 112.390 is repealed.

22 **SECTION 8.** ORS 112.135 is amended to read:

23 112.135. **(1)(a)** If a person dies intestate as to all **or part of** the estate
24 of the person, property [*which*] **that** the person [*gave in*] **gives during** the
25 lifetime of the person to an heir [*shall be*] **is** treated as an advancement
26 against the heir's share of the estate if declared in writing by the decedent
27 or acknowledged in writing by the heir to be an advancement.

28 **(b)** [*For that purpose*] **For purposes of applying the gift against the**
29 **heir's share of the intestate estate,** the property advanced [*shall*] **must**
30 be valued as of the time the heir came into possession or enjoyment of the
31 property or as of the time of death of the decedent, whichever occurs first,

1 unless otherwise directed in the decedent's writing.

2 (2)(a) Except as provided in ORS 112.385, property that a testator
3 gives during the testator's lifetime to a devisee is treated as an ad-
4 vancement of the devisee's share in whole or in part if:

5 (A) The will provides for deduction of the gift;

6 (B) The testator declared in writing that the gift is in satisfaction
7 of the devise or that its value is to be deducted from the value of the
8 devise; or

9 (C) The devisee acknowledges in writing, before or after the
10 testator's death, that the gift was made in satisfaction of the devise
11 or that its value was to be deducted from the value of the devise.

12 (b) For purposes of applying the gift against the devisee's share of
13 the testate estate, the property advanced must be valued as of the time
14 the devisee came into possession or enjoyment of the property or as
15 of the time of the testator's death, whichever occurs first, unless
16 otherwise directed in the testator's will or a writing described in par-
17 agraph (a)(B) of this subsection.

18 (3)(a) Property not subject to probate administration, the transfer
19 of which is intended by the decedent to take effect on death, is treated
20 as an advancement against the heir's share of the estate or the
21 devisee's devise under the will if declared in writing by the decedent,
22 or acknowledged in writing by the heir or devisee, to be an advance-
23 ment. Examples of transfers under this subsection include but are not
24 limited to beneficiary designation, right of survivorship and transfer
25 on death deed or transfer on death designation.

26 (b) The property transferred under this subsection must be valued
27 as of the time of the decedent's death, unless otherwise directed in the
28 testator's will or in a writing by the decedent.

29 **SECTION 9.** ORS 112.145 is amended to read:

30 112.145. (1) If the value of [*the*] **an** advancement exceeds the heir's **or**
31 **devisee's** share of the estate, the heir **or** **devisee** shall be excluded from any

1 further share of the estate, but the heir **or devisee** shall not be required to
2 refund any part of the advancement. If the value of [*the*] **an** advancement is
3 less than the heir's **or devisee's** share, the heir **or devisee** shall be entitled
4 upon distribution of the estate to such additional amount as will give the
5 heir **or devisee** the heir's **or devisee's** share of the estate.

6 (2) The property advanced is not a part of the estate, but for the purpose
7 of determining the shares of the heirs **or devisees** the advancement shall be
8 added to the **value of the** estate, the sum then divided among the heirs **or**
9 **devisees according to the laws of intestate succession or the testator's**
10 **will** and the advancement then deducted from the share of the heir **or**
11 **devisee** to whom the advancement was made.

12 **SECTION 10.** ORS 112.155 is amended to read:

13 112.155. If the recipient of the property advanced fails to survive the
14 decedent, the amount of the advancement shall be taken into account in
15 computing the share of the [*issue*] **descendants** of the recipient, whether or
16 not the [*issue*] **descendants** take by representation.

17 **SECTION 11.** ORS 112.175 is amended to read:

18 112.175. (1) An adopted person, the [*issue*] **descendants** and kindred of the
19 adopted person shall take by intestate succession from the adoptive parents,
20 their [*issue*] **descendants** and kindred, and the adoptive parents, their
21 [*issue*] **descendants** and kindred shall take by intestate succession from the
22 adopted person, the [*issue*] **descendants** and kindred of the adopted person,
23 as though the adopted person were the biological child of the adoptive par-
24 ents.

25 (2) An adopted person shall cease to be treated as the child of any person
26 other than the adopted person's adoptive parents for all purposes of intestate
27 succession except in the following circumstances:

28 (a) If a person is adopted by a stepparent or a domestic partner of a
29 parent in a domestic partnership registered under ORS 106.300 to 106.340 or
30 under a similar law in another state, the adopted person shall continue also
31 to be treated, for all purposes of intestate succession, as the child of the

1 parent who is the spouse of, or other domestic partner in the domestic part-
 2 nership with, the adoptive parent.

3 (b) If a parent of a person dies, and the other parent of the person marries
 4 or enters into a domestic partnership registered under ORS 106.300 to 106.340
 5 or under a similar law in another state, and the person is adopted by a
 6 stepparent or the other domestic partner, the adopted person shall continue
 7 also to be treated, for all purposes of intestate succession, as the child of the
 8 deceased parent.

9 (3) ORS chapters 111, 112, 113, 114, 115, 116 and 117 apply to adopted
 10 persons who were adopted in this state or elsewhere.

11 **SECTION 12.** ORS 111.015 is amended to read:

12 111.015. Except as specifically provided otherwise in chapter 591, Oregon
 13 Laws 1969, on July 1, 1970[:],

14 [(1)] chapter 591, Oregon Laws 1969, applies to wills of decedents dying
 15 [thereon or] thereafter, and a will executed before July 1, 1970, shall be con-
 16 sidered lawfully executed if the application of ORS 112.255 would make it so,
 17 but the construction of a will executed before July 1, 1970, shall be governed
 18 by the law in effect on the date of execution unless a contrary intent is es-
 19 tablished by the will.

20 [(2) *The procedure prescribed by chapter 591, Oregon Laws 1969, applies to*
 21 *any proceedings commenced thereon or thereafter regardless of the time of the*
 22 *death of a decedent, and also as to any further procedure in proceedings then*
 23 *pending except to the extent that in the opinion of the court the former proce-*
 24 *dure should be made applicable in a particular case in the interest of justice*
 25 *or because of infeasibility of application of the procedure prescribed by chapter*
 26 *591, Oregon Laws 1969.*]

27 [(3) *A personal representative, guardian or conservator holding an ap-*
 28 *pointment on that date shall continue to hold the appointment, but shall have*
 29 *only the powers conferred and be subject to the duties imposed by chapter 591,*
 30 *Oregon Laws 1969, with respect to any act occurring or done thereon or*
 31 *thereafter, other than acts pursuant to powers or duties validly conferred or*

1 *imposed by a will executed before July 1, 1970.]*

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

8 **SECTION 13.** ORS 111.095 is amended to read:

9 111.095. (1) The general legal and equitable powers of a circuit court [*are*
10 *applicable to effectuate the jurisdiction of]* **apply to** a probate court.[, *punish*
11 *contempts and carry out its determinations, orders and judgments as a court*
12 *of record with general jurisdiction, and]*

13 **(2)** The same validity, finality and presumption of regularity shall be ac-
14 corded to [*its*] **the** determinations, orders and judgments **of a probate**
15 **court**[, *including determinations of its own jurisdiction,*] as to those of a
16 [*court of record with general jurisdiction*] **circuit court.**

17 [(2)] **(3)** A probate court has full, legal and equitable powers to make
18 declaratory judgments, as provided in ORS 28.010 to 28.160, in all matters
19 involved in the administration of an estate, including [*those*] **matters** per-
20 taining to the title of real property **and ownership of personal property,**
21 the determination of heirship and the distribution of the estate.

22 **SECTION 14.** ORS 111.115 is amended to read:

23 111.115. (1) An estate proceeding[, *including all probate matters, causes*
24 *and proceedings pertaining thereto,*] may be transferred at any time from a
25 county court [*sitting in probate*] to the circuit court for the county by order
26 of the county court.

27 (2) An estate proceeding[, *including all probate matters, causes and pro-*
28 *ceedings pertaining thereto,*] commenced in a county court [*sitting in*
29 *probate*] and in which the county judge is a party or directly interested
30 [*shall*] **must** be transferred from the county court to the circuit court for the
31 county by order of the county court.

1 (3) Upon transfer of an estate proceeding from a county court to the cir-
2 cuit court **for the county** under this section[,]:

3 (a) The county clerk shall certify and cause to be filed in the records of
4 the circuit court all original papers and proceedings pertaining to the estate
5 proceeding[, *and thereafter jurisdiction of all probate matters, causes and*
6 *proceedings pertaining to the estate proceeding is vested in the circuit court*
7 *as if that jurisdiction had been originally and exclusively vested in the circuit*
8 *court*]; **and**

9 (b) **Jurisdiction over the estate proceeding vests in the circuit court**
10 **as if the jurisdiction had been originally and exclusively vested in the**
11 **circuit court.**

12 **SECTION 15.** ORS 111.175 is amended to read:

13 111.175. [*The court may appoint the clerk of the probate court or some other*
14 *suitable person at the county seat to act as probate commissioner within the*
15 *county. If the clerk of the probate court is appointed probate commissioner, the*
16 *deputy of the clerk has the power to perform any act as probate commissioner*
17 *that the clerk has, and the clerk is responsible for conduct of the deputy so*
18 *acting.*] **The presiding judge of a circuit court or the county judge of a**
19 **county court may appoint a probate commissioner and one or more**
20 **deputy probate commissioners and, if such appointments are made,**
21 **shall prescribe, by rule or order, the duties and responsibilities of the**
22 **probate commissioner and deputy probate commissioners, subject to**
23 **ORS 111.185.**

24 **SECTION 16.** ORS 111.185 is amended to read:

25 111.185. (1) **To the extent prescribed or otherwise authorized by rule**
26 **or order made under ORS 111.175,** a probate commissioner **or deputy**
27 **probate commissioner** may:

28 (a) Act upon uncontested petitions for appointment of special adminis-
29 trators, for probate of wills and for appointment of personal representatives,
30 guardians and conservators[, *to the extent authorized by rule of the court.*
31 *Pursuant thereto the probate commissioner may*];

1 **(b) Make and enter orders and judgments** *[on behalf of the court]* ad-
2 mitting wills to probate and appointing and setting the amount of the bonds
3 of special administrators, personal representatives, guardians and
4 conservators^{[, subject to the orders of the probate commissioner being set aside}
5 *or modified by the judge of the court within 30 days after the date an order*
6 *is entered]*; **and**

7 **(c) Appoint court visitors.**

8 (2) Any matter presented to the probate commissioner **or deputy probate**
9 **commissioner** may be referred *[by the probate commissioner]* to the judge
10 **of the court.**

11 **(3) Any order or judgment made by a probate commissioner or**
12 **deputy probate commissioner is subject to being set aside or modified**
13 **by the judge of the court within 30 days after the date of the order or**
14 **judgment.**

15 **(4) Any interested person may object to an order or judgment of a**
16 **probate commissioner or deputy probate commissioner within 30 days**
17 **after the date of the order or judgment, and the judge of the court**
18 **may set aside or modify the order or judgment.**

19 ^[(3)] **(5) Unless set aside or modified by the judge of the court, the orders**
20 **and judgments** of the probate commissioner **or deputy probate commis-**
21 **sioner** have the same effect as if made by the judge **of the court.**

22 **SECTION 17.** ORS 112.238 is amended to read:

23 112.238. (1) Although a writing was not executed in compliance with ORS
24 112.235, the writing may be treated as if it had been executed in compliance
25 with ORS 112.235 if the proponent of the writing establishes by clear and
26 convincing evidence that the decedent intended the writing to constitute:

27 (a) The decedent's will;

28 (b) A partial or complete revocation of the decedent's will; or

29 (c) An addition to or an alteration of the decedent's will.

30 ^[(2)] *The proponent of the writing must file a petition with the court to es-*
31 *tablish the decedent's intention with respect to the writing. The proponent*

1 *shall provide notice of the petition to heirs, devisees under prior wills and*
2 *persons interested in the estate of the decedent that would be required to be*
3 *identified and set forth in a petition for the appointment of a personal repre-*
4 *sentative under ORS 113.035. Persons receiving notice and other interested*
5 *persons shall have 20 days after service of the notice under this subsection to*
6 *file written objections to the petition. The court may make a determination*
7 *regarding the decedent's intent after a hearing or on the basis of affidavits.]*

8 **(2) A writing described in subsection (1) of this section may be filed**
9 **with the court for administration as the decedent's will pursuant to**
10 **ORS 113.035. The proponent of the writing shall give notice of the filing**
11 **of the petition to those persons identified in ORS 113.035 (5), (7), (8)**
12 **and (9). Persons receiving notice under this subsection shall have 20**
13 **days after the notice was given to file written objections to the peti-**
14 **tion. The court may make a determination regarding the decedent's**
15 **intent after a hearing or on the basis of affidavits.**

16 *[(3) If the court determines that clear and convincing evidence exists*
17 *showing that the writing was intended by the decedent to accomplish one of*
18 *the purposes set forth in subsection (1) of this section, the court shall:]*

19 *[(a) Prepare written findings of fact in support of the determination; and]*

20 *[(b) Enter a limited judgment that admits the writing for probate or other-*
21 *wise acknowledges the validity and intent of the writing.]*

22 **(3) The proponent of a writing described in subsection (1) of this**
23 **section may file a petition with the court to establish the decedent's**
24 **intent that the writing was to be a partial or complete revocation of**
25 **the decedent's will, or an addition to or an alteration of the decedent's**
26 **will. The proponent shall give notice of the filing to any personal**
27 **representative appointed by the court, the devisees named in any will**
28 **admitted to probate and those persons identified in ORS 113.035 (5).**
29 **Persons receiving notice under this subsection shall have 20 days after**
30 **the notice was given to file written objections to the petition. The**
31 **court may make a determination regarding the decedent's intent after**

1 **a hearing or on the basis of affidavits.**

2 *[(4) A petition filed under this section must be filed within four months*
3 *after the date on which the notice required by subsection (2) of this section*
4 *was provided.]*

5 **(4)(a) If the court determines that clear and convincing evidence**
6 **exists showing that a writing described in subsection (1) of this section**
7 **was intended by the decedent to accomplish one of the purposes set**
8 **forth in subsection (1) of this section, the court shall:**

9 **(A) Prepare written findings of fact in support of the determination;**
10 **and**

11 **(B) Enter a limited judgment that admits the writing for probate**
12 **as the decedent's will or otherwise acknowledges the validity and in-**
13 **tent of the writing.**

14 **(b) A determination under this subsection does not preclude the**
15 **filing of a will contest under ORS 113.075, except that the will may not**
16 **be contested on the grounds that the will was not executed in com-**
17 **pliance with ORS 112.235.**

18 (5) The fee imposed and collected by the court for the filing of a petition
19 under this section shall be in accordance with ORS 21.135.

20 **SECTION 18.** ORS 111.275 is amended to read:

21 111.275. (1) The court in a probate proceeding under ORS chapters 111,
22 112, 113, 114, 115, 116 and 117 may enter a limited judgment only for the
23 following decisions of the court:

24 (a) A decision on a petition for appointment or removal of a personal
25 representative.

26 (b) A decision in a will contest filed in the probate proceeding.

27 (c) A decision on an objection to an accounting.

28 (d) A decision on a request made in the proceeding for a declaratory
29 judgment under ORS 111.095.

30 (e) A decision on a request for an award of expenses under ORS 116.183.

31 **(f) A decision on a petition filed under ORS 112.238 admitting a**

1 **writing for probate or otherwise acknowledging the validity and intent**
2 **of the writing.**

3 [(f)] (g) Such decisions of the court as may be specified by rules or orders
4 of the Chief Justice of the Supreme Court under ORS 18.028.

5 (2) A court may enter a limited judgment under this section only if the
6 court determines that there is no just reason for delay. The judgment docu-
7 ment need not reflect the court's determination that there is no just reason
8 for delay.

9 **SECTION 19.** ORS 179.610 is amended to read:

10 179.610. As used in ORS 179.610 to 179.770, unless the context requires
11 otherwise:

12 (1) "Authorized representative" means an individual or entity appointed
13 under authority of ORS chapter 125, as guardian or conservator of a person,
14 who has the ability to control the person's finances, and any other individual
15 or entity holding funds or receiving benefits or income on behalf of any
16 person.

17 (2) "Care" means all services rendered to a patient by the state insti-
18 tutions as described in ORS 179.321 or by the Eastern Oregon Training
19 Center. These services include, but are not limited to, such items as medical
20 care, room, board, administrative costs and other costs not otherwise ex-
21 cluded by law.

22 (3) "Decedent's estate" has the meaning given "estate" in ORS 111.005
23 [(15)].

24 (4) "Person," "person in a state institution" or "person at a state insti-
25 tution," or any similar phrase, means an individual who is or has been at a
26 state institution described in ORS 179.321 or in the Eastern Oregon Training
27 Center.

28 (5) "Personal estate" means all income and benefits as well as all assets,
29 including all personal and real property of a living person, and includes as-
30 sets held by the person's authorized representative and all other assets held
31 by any other individual or entity holding funds or receiving benefits or in-

1 come on behalf of any person.

2 **SECTION 20.** ORS 113.005 is amended to read:

3 113.005. (1) If, prior to appointment and qualification of a personal rep-
4 resentative, property of a decedent is in danger of loss, injury or deteri-
5 oration, or disposition of the remains of a decedent is required, the court
6 may appoint a special administrator to take charge of the property or the
7 remains. The petition for appointment shall state the reasons for special ad-
8 ministration and specify the property, so far as known, requiring adminis-
9 tration, and the danger to which it is subject.

10 (2) The special administrator shall qualify by filing a bond in the amount
11 set by the court, conditioned upon the special administrator faithfully per-
12 forming the duties of the trust.

13 (3) The special administrator may:

14 (a) Incur expenses for the funeral[, *burial or other disposition of the re-*
15 *mains*] of **the** decedent in a manner suitable to the condition in life of the
16 decedent;

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

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

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

24 (5) Upon the appointment and qualification of a personal representative
25 the powers of the special administrator shall cease. Within 30 days after the
26 issuance of letters testamentary to a personal representative, the special
27 administrator shall make and file an account and deliver to the personal
28 representative the assets of the estate in the possession of the special ad-
29 ministrator. If the personal representative objects to the account of the spe-
30 cial administrator, the court shall hear the objections, and, whether or not
31 objections are made, shall examine the account.

1 (6) To the extent approved by the court, the compensation of the special
2 administrator and expenses properly incurred by the special administrator,
3 including a reasonable fee of the attorney of the special administrator, shall
4 be paid as expenses of administration.

5 **SECTION 21.** ORS 113.242 is amended to read:

6 113.242. (1) An estate administrator of the Department of State Lands
7 appointed under ORS 113.235 may take custody of the property of a decedent
8 who died owning property subject to probate in Oregon upon the estate ad-
9 ministrator receiving notice that:

10 (a) The decedent died wholly intestate and without a known heir as de-
11 scribed in ORS 113.238 (3); or

12 (b) The decedent left a valid will, but no devisee has been identified and
13 found.

14 (2) For any estate described in subsection (1) of this section, an estate
15 administrator of the Department of State Lands appointed under ORS 113.235
16 may:

17 (a) Incur expenses for the funeral[, *burial or other disposition of the re-*
18 *mains*] of the decedent in a manner suitable to the condition in life of the
19 decedent;

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

21 (c) Incur expenses searching for a will or for heirs or devisees of the
22 decedent;

23 (d) Have access to the property and records of the decedent other than
24 records that are made confidential or privileged by statute;

25 (e) With proof of the death of the decedent, have access to all financial
26 records of accounts or safe deposit boxes of the decedent at banks or other
27 financial institutions; and

28 (f) Sell perishable property of the estate.

29 (3) The reasonable funeral and administrative expenses of the Department
30 of State Lands incurred under this section, including a reasonable attorney
31 fee, shall be paid from the assets of the estate with the same priority as fu-

1 neral and administration expenses under ORS 115.125.

2 **SECTION 22.** ORS 114.305 is amended to read:

3 114.305. Subject to the provisions of ORS 97.130 (2) and (10) and except
4 as restricted or otherwise provided by the will of the decedent, a document
5 of anatomical gift under ORS 97.965 or by court order, a personal represen-
6 tative, acting reasonably for the benefit of interested persons, is authorized
7 to:

8 (1) Direct and authorize disposition of the remains of the decedent pur-
9 suant to ORS 97.130 and incur expenses for the funeral[, *burial or other dis-*
10 *position of the remains*] in a manner suitable to the condition in life of the
11 decedent. Only those funeral expenses necessary for a plain and decent fu-
12 neral [*and disposition of the remains of the decedent*] may be paid from the
13 estate if the assets are insufficient to pay the claims of the Department of
14 Human Services and the Oregon Health Authority for the net amount of
15 public assistance, as defined in ORS 411.010, or medical assistance, as defined
16 in ORS 414.025, paid to or for the decedent and for care and maintenance of
17 any decedent who was at a state institution to the extent provided in ORS
18 179.610 to 179.770.

19 (2) Retain assets owned by the decedent pending distribution or liqui-
20 dation.

21 (3) Receive assets from fiduciaries or other sources.

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

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

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

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

4 (6) Deposit funds not needed to meet currently payable debts and ex-
5 penses, and not immediately distributable, in bank or savings and loan as-
6 sociation accounts, or invest the funds in bank or savings and loan
7 association certificates of deposit, or federally regulated money-market funds
8 and short-term investment funds suitable for investment by trustees under
9 ORS 130.750 to 130.775, or short-term United States Government obligations.

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

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

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

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

17 (11) Consent, directly or through a committee or other agent, to the re-
18 organization, consolidation, merger, dissolution or liquidation of a corpo-
19 ration or other business enterprise.

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

23 (13) Insure the assets of the estate against damage and loss, and insure
24 the personal representative against liability to third persons.

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

26 (15) Compromise, extend, renew or otherwise modify an obligation owing
27 to the estate. A personal representative who holds a mortgage, pledge, lien
28 or other security interest may accept a conveyance or transfer of the en-
29 cumbered asset in lieu of foreclosure in full or partial satisfaction of the
30 indebtedness.

31 (16) Accept other real property in part payment of the purchase price of

1 real property sold by the personal representative.

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

4 (18) Employ qualified persons, including attorneys, accountants and in-
5 vestment advisers, to advise and assist the personal representative and to
6 perform acts of administration, whether or not discretionary, on behalf of the
7 personal representative.

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

11 (20) Prosecute claims of the decedent including those for personal injury
12 or wrongful death.

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

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

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

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

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

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

25 **SECTION 23.** ORS 115.125 is amended to read:

26 115.125. (1) If the applicable assets of the estate are insufficient to pay
27 all expenses and claims in full, the personal representative shall make pay-
28 ment in the following order:

29 (a) Support of spouse and children, subject to the limitations imposed by
30 ORS 114.065.

31 (b) Expenses of administration.

1 (c) Expenses of a plain and decent funeral [*and disposition of the remains*
2 *of the decedent*].

3 (d) Debts and taxes with preference under federal law.

4 (e) Reasonable and necessary medical and hospital expenses of the last
5 illness of the decedent, including compensation of persons attending the
6 decedent.

7 (f) Taxes with preference under the laws of this state that are due and
8 payable while possession of the estate of the decedent is retained by the
9 personal representative.

10 (g) Debts owed employees of the decedent for labor performed within 90
11 days immediately preceding the date of death of the decedent.

12 (h) Child support arrearages.

13 (i) The claim of the Department of Veterans' Affairs under ORS 406.100,
14 including a claim the waiver of which was retracted by the Director of
15 Veterans' Affairs under ORS 406.110.

16 (j) The claim of the Department of Human Services or the Oregon Health
17 Authority for the amount of the state's monthly contribution to the federal
18 government to defray the costs of outpatient prescription drug coverage
19 provided to a person who is eligible for Medicare Part D prescription drug
20 coverage and who receives benefits under the state medical assistance pro-
21 gram or Title XIX of the Social Security Act.

22 (k) The claim of the Department of Human Services or the Oregon Health
23 Authority for the net amount of assistance paid to or for the decedent, in the
24 following order:

25 (A) Public assistance, as defined in ORS 411.010, and medical assistance,
26 as defined in ORS 414.025, funded entirely by moneys from the General Fund;
27 and

28 (B) Public assistance, as defined in ORS 411.010, and medical assistance,
29 as defined in ORS 414.025, that may be recovered from an estate under ORS
30 416.350, funded by a combination of state and federal funds.

31 (L) The claim of the Department of Human Services or the Oregon Health

1 Authority for the care and maintenance of the decedent at a state institu-
2 tion, as provided in ORS 179.610 to 179.770.

3 (m) The claim of the Department of Corrections for care and maintenance
4 of any decedent who was at a state institution to the extent provided in ORS
5 179.610 to 179.770.

6 (n) All other claims against the estate.

7 (2) If the applicable assets of the estate are insufficient to pay in full all
8 expenses or claims of any one class specified in subsection (1) of this section,
9 each expense or claim of that class shall be paid only in proportion to the
10 amount thereof.

11 **SECTION 24. The amendments to ORS 111.005, 111.015, 111.095,**
12 **111.115, 111.175, 111.185, 111.275, 112.025, 112.035, 112.058, 112.065, 112.135,**
13 **112.145, 112.155, 112.175, 113.005, 113.242, 114.305, 115.125 and 179.610 by**
14 **sections 1 to 3, 5, 6, 8 to 16 and 18 to 23 of this 2016 Act and the repeal**
15 **of ORS 112.390 by section 7 of this 2016 Act become operative on Jan-**
16 **uary 1, 2017.**

17 **SECTION 25. (1) The amendments to ORS 111.005, 111.015, 111.095,**
18 **111.115, 111.175, 111.185, 111.275, 112.025, 112.035, 112.058, 112.065, 112.135,**
19 **112.145, 112.155, 112.175, 113.005, 113.242, 114.305, 115.125 and 179.610 by**
20 **sections 1 to 6, 8 to 16 and 18 to 23 of this 2016 Act and the repeal of**
21 **ORS 112.390 by section 7 of this 2016 Act apply to estates of decedents**
22 **dying after the operative date specified in section 24 of this 2016 Act.**

23 (2) The amendments to ORS 112.045 and 112.238 by sections 4 and 17
24 of this 2016 Act apply to estates of decedents dying after the effective
25 date of this 2016 Act.

26 **SECTION 26. This 2016 Act being necessary for the immediate**
27 **preservation of the public peace, health and safety, an emergency is**
28 **declared to exist, and this 2016 Act takes effect on its passage.**

29
