

## CHAPTER 387

AN ACT

SB 379

Relating to estates; creating new provisions; amending ORS 111.005, 112.015, 112.045, 112.047, 112.055, 112.065, 112.105, 112.175, 112.185, 112.225, 112.235, 112.255, 112.272, 112.275, 112.285, 112.305, 112.345, 112.355, 112.365, 112.385, 112.405, 112.465, 112.475, 112.535, 112.555, 112.685, 116.313 and 419B.552; and repealing ORS 112.075, 112.325, 112.335, 112.435, 112.485 and 112.695.

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

## REVISION OF ORS CHAPTER 112

**SECTION 1.** ORS 112.075, 112.325, 112.335, 112.435, 112.485 and 112.695 are repealed.

**SECTION 2.** ORS 112.015 is amended to read:

112.015. (1) Any part of the net estate of a decedent not effectively disposed of by the will of the decedent shall pass as provided in ORS 112.025 to 112.055.

(2) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed that individual's or member's intestate share.

**SECTION 3.** ORS 112.045 is amended to read:

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

(1) To the issue of the decedent. *[If the issue are all of the same degree of kinship to the decedent, they shall take equally, but if of unequal degree, then those of more remote degrees take by representation]* **Issue of different generations in relation to the decedent take by representation as defined in ORS 112.065.**

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

(3) If there is no surviving issue, **spouse** or parent, to the brothers and sisters of the decedent and the issue of any deceased brother or sister of the decedent by representation **as defined in ORS 112.065.** If there is no surviving brother or sister, the issue of brothers and sisters take equally if they are all of the same *[degree of kinship]* **generation in relation to the decedent**, but if of *[unequal degree]* **different generations**, then those of *[more remote degrees]* **later generations** take by representation **as defined in ORS 112.065.**

(4)(a) If there is no surviving issue, **spouse**, parent or issue of a parent, **equally** to the grandparents of the decedent and the issue of any

deceased grandparent of the decedent by representation **as defined in ORS 112.065.** **If one or more grandparents of the decedent do not survive the decedent, the issue of the grandparents take equally if they are all of the same generation in relation to the decedent, but if of different generations, then those of later generations take by representation as defined in ORS 112.065.**

(b) If there is no surviving grandparent, the issue of grandparents take equally if they are all of the same *[degree of kinship]* **generation in relation to the decedent**, but if of *[unequal degree]* **different generations**, then those of *[more remote degrees]* **later generations** take by representation **as defined in ORS 112.065.**

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

**SECTION 4.** ORS 112.047 is amended to read:

112.047. (1) Property that would pass by intestate succession under ORS 112.045 from the estate of a decedent to a parent of the decedent shall pass and be vested as if the parent had predeceased the decedent if:

(a) **The parental rights of the parent with respect to the decedent were terminated and the parent-child relationship between the parent and the decedent was not judicially reestablished.**

(b) The decedent was an adult when the decedent died and:

*[(a)]* (A) The parent of the decedent willfully deserted the decedent for the 10-year period immediately preceding the date on which the decedent became an adult; or

*[(b)]* (B) The parent neglected without just and sufficient cause to provide proper care and maintenance for the decedent for the 10-year period immediately preceding the date on which the decedent became an adult.

*[(2)]* (c) *[Property that would pass by intestate succession under ORS 112.045 from the estate of a decedent to a parent of the decedent shall pass and be vested as if the parent had predeceased the decedent if]* The decedent was a minor when the decedent died and:

*[(a)]* (A) The parent of the decedent willfully deserted the decedent for the life of the decedent or for the 10-year period immediately preceding the date on which the decedent died; or

*[(b)]* (B) The parent neglected without just and sufficient cause to provide proper care and maintenance for the decedent for the life of the decedent or for the 10-year period immediately preceding the date on which the decedent died.

*[(3)]* (2) For the purposes of *[subsections (1) and (2)]* **subsection (1)** of this section, the court may disregard incidental visitations, communications and contributions in determining whether a parent willfully deserted the decedent or neglected without

just and sufficient cause to provide proper care and maintenance for the decedent.

[(4)] (3) For the purposes of [subsections (1) and (2)] **subsection (1)** of this section, in determining whether the parent willfully deserted the decedent or neglected without just and sufficient cause to provide proper care and maintenance for the decedent, the court may consider whether a custodial parent or other custodian attempted, without good cause, to prevent or to impede contact between the decedent and the parent whose intestate share would be forfeited under this section.

[(5)] (4) The intestate share of a parent of a decedent may be forfeited under this section only pursuant to an order of the court entered after the filing of a petition under ORS 112.049. A petition filed under ORS 113.035 may not request the forfeiture of the intestate share of a parent of a decedent under this section.

**SECTION 5.** ORS 112.055 is amended to read:

112.055. (1) **If, after diligent search and inquiry that is appropriate to the circumstances, taking into account the value of the decedent's estate,** no person takes under ORS 112.025 to 112.045, the net intestate estate escheats to the State of Oregon.

(2) If a devisee or a person entitled to take under ORS 112.025 to 112.045 is not identified or found, the share of that person escheats to the State of Oregon.

(3) If a devisee or a person entitled to take under ORS 112.025 to 112.045 is not identified or found:

(a) The Department of State Lands has the same preference as the missing devisee or person for the purpose of appointment as personal representative under ORS 113.085;

(b) Title to property of the decedent that would vest in the missing devisee or person under ORS 114.215 vests in the Department of State Lands; and

(c) The Department of State Lands has all of the rights of the missing devisee or person for the purposes of ORS chapters 111, 112, 113, 114, 115, 116 and 117, including but not limited to the following:

(A) The right to contest any will of the decedent under ORS 113.075; and

(B) The right to information under ORS 113.145.

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

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

the issue of the deceased person in the same manner.

**SECTION 7.** ORS 112.105 is amended to read:

112.105. (1) For all purposes of intestate succession, full effect shall be given to all relationships as described in ORS 109.060, except as otherwise provided by law in case of adoption.

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

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

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

**SECTION 8.** ORS 112.175 is amended to read:

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

(2) An adopted person shall cease to be treated as the child of [the person's natural parents] **any person other than the adopted person's adoptive parents** for all purposes of intestate succession [by the adopted person, the issue and kindred of the adopted person and the natural parents, their issue and kindred,] **except in the following circumstances:**

(a) [If a natural parent of a person marries or remarries and the] **If a person is adopted by [the] a stepparent or a domestic partner of a parent in a domestic partnership registered under ORS 106.300 to 106.340 or under a similar law in another state,** the adopted person shall continue also to be treated, for all purposes of intestate succession, as the child of the [natural] parent who is the spouse of, **or other domestic partner in the domestic partnership with,** the adoptive parent.

(b) If a [natural] parent of a person dies, [the other natural parent remarries] **and the other parent of the person marries or enters into a domestic partnership registered under ORS 106.300 to 106.340 or under a similar law in another state,** and the person is adopted by [the] a stepparent **or the other domestic partner,** the adopted person shall continue also to be treated, for all purposes of intestate succession [by any person through the deceased natural parent], as the child of the deceased [natural] parent.

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

**SECTION 9.** ORS 112.185 is amended to read:

112.185. For all purposes of intestate succession, a person who has been adopted more than once shall be treated as the child of the parents who have most recently adopted the person and, except as otherwise provided in this section, shall cease to be treated as the child of the previous adoptive parents. The person shall continue also to be treated as the child of a [natural parent or previous adoptive parent] **previous parent or previous adoptive parent other than the most recent adoptive parents** only to the extent provided in ORS 112.175 (2), and for the purpose of applying that subsection with reference to a previous adoptive parent, “[natural] parent” in that subsection means the previous adoptive parent.

**SECTION 10.** ORS 112.225 is amended to read:

112.225. Any person who is 18 years of age or older or who has been lawfully married **or who has been emancipated in accordance with ORS 419B.550 to 419B.558**, and who is of sound mind, may make a will.

**SECTION 11.** ORS 112.235 is amended to read:

112.235. (1) **Except as provided in section 29 of this 2015 Act**, a will shall be in writing and shall be executed **in accordance** with the following formalities:

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

[(a)] (A) Sign the will; [or]

[(b)] (B) Direct one of the witnesses or some other person to sign [thereon] the name of the testator **and the signer's own name on the will**; or

[(c)] (C) Acknowledge the signature previously made on the will by the testator or at the testator's direction.

[(2) Any person who signs the name of the testator as provided in subsection (1)(b) of this section shall sign the signer's own name on the will and write on the will that the signer signed the name of the testator at the direction of the testator.]

[(3)] (b) At least two witnesses shall each:

[(a)] (A)(i) See the testator sign the will; [or]

[(b)] (ii) Hear the testator acknowledge the signature on the will; [and] **or**

(iii) **Hear or observe the testator direct some other person to sign the name of the testator; and**

[(c)] (B) Attest the will by signing the witness' name to [it] **the will within a reasonable time before the testator's death.**

(2) **The signature by a witness on an affidavit executed contemporaneously with execution of a will is considered a signature by the witness on the will in compliance with subsection (1)(b)(A)(iii) of this section if necessary to prove the will was duly executed in compliance with this section.**

[(4)] (3) A will executed in compliance with the Uniform International Wills Act shall be deemed to have complied with the formalities of this section.

(4) **As used in this section, “writing” does not include an electronic record, document or image.**

**SECTION 12.** ORS 112.255 is amended to read:

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

(a) This state at the time of execution or at the time of death of the testator; [or]

(b) The domicile of the testator at the time of execution or at the time of the testator's death; or

(c) The place of execution at the time of execution.

(2) A will is lawfully executed if it complies with the Uniform International Wills Act.

(3) **A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.**

(4) **A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether the events occur before or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event.**

**SECTION 13.** ORS 112.272 is amended to read:

112.272. (1) Except as provided in this section, an in terrorem clause in a will is valid and enforceable. If a devisee contests a will that contains an in terrorem clause that applies to the devisee, the court shall enforce the clause against the devisee even though the devisee establishes that there was probable cause for the contest.

(2) The court shall not enforce an in terrorem clause:

(a) If the devisee contesting the will establishes that:

(A) The devisee has probable cause to believe that the will is a forgery; [or that]

(B) The will has been revoked; **or**

(C) **The will is invalid in whole or in part.**

(b) **If the devisee is only making objections to the acts of the personal representative in the administration of the decedent's estate.**

(3) The court shall not enforce an in terrorem clause if the contest is brought by a fiduciary acting on behalf of a protected person under the provisions of ORS chapter 125, a guardian ad litem appointed for a minor, or a guardian ad litem appointed for an incapacitated or financially incapable person.

(4) For the purposes of this section, “in terrorem clause” means a provision in a will that reduces or eliminates a devise to a devisee if the devisee contests the will **in whole or in part.**

(5) **This section is not intended as a complete codification of the law governing enforcement of an in terrorem clause. The common law gov-**

**erns enforcement of an in terrorem clause to the extent the common law is not inconsistent with the provisions of this section.**

**SECTION 14.** ORS 112.275 is amended to read:

112.275. A will may be revoked or altered only as provided in ORS 112.285 to 112.315 **or section 29 or 30 of this 2015 Act.**

**SECTION 15.** ORS 112.285 is amended to read:

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

(2) A will may be revoked by **one or more physical acts** by being burned, torn, canceled, obliterated or destroyed, with the intent and purpose of the testator of revoking the will, by the testator, or by another person at the direction of the testator and in the presence of the testator. The injury or destruction **of the will** by a person other than the testator at the direction and in the presence of the testator shall be proved by at least two witnesses.

(3) **A partial revocation of a provision in a will by one or more physical acts as described in subsection (2) of this section is not a valid revocation. One or more physical acts that affect one or more provisions of a will but not the entirety of the will are not effective to revoke those provisions, but clear and convincing evidence may show that the testator intended by the physical act or acts to revoke the entirety of the will.**

**SECTION 16.** ORS 112.305 is amended to read:

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

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

(2) The testator and spouse entered into a written contract before the marriage that either makes provision for the spouse or provides that the spouse is to have no rights in the estate of the testator; **or**

(3) **The testator executed the will after entering into a registered domestic partnership under ORS 106.300 to 106.340 or a similar law in another state and the testator subsequently marries the domestic partner.**

**SECTION 17.** ORS 112.345 is amended to read:

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

**SECTION 18.** ORS 112.355 is amended to read:

112.355. A devise of property passes all of the interest of the testator [therein] **in the property** at the time of the death of the testator, unless the will evidences the intent of the testator to devise a lesser interest.

**SECTION 19.** ORS 112.365 is amended to read:

112.365. Any property acquired by the testator after the making of a will passes [thereby, and in like manner] **pursuant to the will** as if title [thereto] **to the property** were vested in the testator at the time of making the will, unless the intent expressed in the will is clear and explicit to the contrary.

**SECTION 20.** ORS 112.385 is amended to read:

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

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

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

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

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

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

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

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

(5) If property that is the subject of a specific devise is taken by condemnation before the death of

the testator, the specific devisee has the right to receive:

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

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

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

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

(8) The amount a specific devisee receives as provided in this section is reduced by any expenses of the sale or of collection of proceeds of insurance, sale or condemnation award and by any amount by which the income tax of the decedent or the estate of the decedent is increased by reason of items provided for in this section. Expenses include legal fees paid or incurred.

**SECTION 21.** ORS 112.405 is amended to read:

112.405. (1) As used in this section, "pretermitted child" means a child of a testator who is born, [or] adopted, **or conceived as described in section 27 (3) or (4) of this 2015 Act**, after the execution of the will of the testator, who is neither provided for in the will nor in any way mentioned in the will and who survives the testator.

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

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

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

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

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

(4) If a testator has no child living when the testator executes a will, a pretermitted child shall take a share of the estate as though the testator had died intestate, **unless the will devised all or substantially all of the estate to the other parent of the pretermitted child and that other parent survives the testator and is entitled to take under the will.**

(5) A pretermitted child may recover the share of the estate to which the child is entitled, as provided in this section, either from the other children under subsection (3) of this section or from the testamentary beneficiaries under subsection (4) of this section, ratably, out of the portions of the estate passing to those persons under the will. In abating the interests of those beneficiaries, the character of the testamentary plan adopted by the testator *[shall]* **must** be preserved so far as possible.

**SECTION 22.** ORS 112.465 is amended to read:

112.465. (1) Property that would have passed by reason of the death of a decedent to a person who was a slayer or an abuser of the decedent, whether by intestate succession, by will, by transfer on death deed, [or] by trust, **or otherwise**, passes **on death** and vests as if the slayer or abuser had predeceased the decedent.

(2) Property that would have passed by reason of the death of an heir or devisee of a decedent to a person who was the slayer or abuser of the decedent, whether by intestate succession, by will, by transfer on death deed or by trust, passes and vests as if the slayer or abuser had predeceased the decedent unless the heir or devisee specifically provides otherwise in a will or other instrument executed after the death of the decedent.

**SECTION 23.** ORS 112.475 is amended to read:

112.475. (1) If a slayer of a decedent and the decedent, or an abuser of a decedent and the decedent, owned property as tenants by the entirety or with a right of survivorship, upon the death of the decedent *[an undivided one-half interest remains in the slayer]*

or abuser for the lifetime of the slayer or abuser and subject to that interest the property passes to and is vested in the heirs or devisees of the decedent other than the slayer or abuser], there exist two undivided equal interests in the property. One share passes to and is vested in the heirs or devisees of the decedent, and the other share passes to and is vested in the slayer or abuser.

(2) If a slayer of a decedent, the decedent and one or more other persons owned property with a right of survivorship, or if an abuser of a decedent, the decedent and one or more other persons owned property with a right of survivorship, upon the death of the decedent, the interest of the slayer or abuser remains as an undivided interest in the slayer or abuser for the lifetime of the slayer or abuser and subject to that interest, the property passes to and is vested in the other surviving owner or owners.

**SECTION 24.** ORS 112.535 is amended to read:

112.535. Any insurance company making payment according to the terms of its policy, or any financial institution, trustee or other person performing an obligation to a slayer of a decedent or an abuser of a decedent is not subject to [additional] liability because of ORS 112.455 to 112.555 if the payment or performance is made without written notice by a claimant of a claim arising under those sections. Upon receipt of written notice the person to whom it is directed may withhold any disposition of the property pending determination of the duties of the person.

**SECTION 25.** ORS 112.555 is amended to read:

112.555. **After any right to appeal has been exhausted,** a final judgment of conviction of felonious and intentional killing is conclusive for purposes of ORS 112.455 to 112.555. In the absence of a conviction of felonious and intentional killing the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of ORS 112.455 to 112.555.

**SECTION 26.** Sections 27 to 30 of this 2015 Act are added to and made a part of ORS chapter 112.

**SECTION 27.** (1) For purposes of this section, an embryo that exists outside a person's body is not considered to be conceived until the embryo is implanted into a person's body.

(2) Except as provided in subsections (3) and (4) of this section, the relationships existing at the time of the death of a decedent govern the passing of the decedent's estate.

(3) A person conceived before the death of the decedent and born alive thereafter inherits as though the person was a child of the decedent and alive at the time of the death of the decedent.

(4) A child conceived from the genetic material of a decedent who died before the transfer

of the decedent's genetic material into a person's body is not entitled to an interest in the decedent's estate unless:

(a) The decedent's will or trust provided for posthumously conceived children; and

(b) The following conditions are satisfied:

(A) The decedent, in a writing signed by the decedent and dated, specified that the decedent's genetic material may be used for the posthumous conception of a child of the decedent, and the person designated by the decedent to control use of the decedent's genetic material gives written notice to the personal representative of the decedent's estate, within four months of the date of the appointment of the personal representative, that the decedent's genetic material is available for the purpose of posthumous conception; and

(B) The child using the decedent's genetic material is in utero within two years after the date of the decedent's death.

**SECTION 28.** (1) Except as provided in ORS 112.385, property that a testator gives during the testator's lifetime to a devisee of the testator's will is treated as a satisfaction of the devise in whole or in part only if:

(a) The will provides for deduction of the gift;

(b) The testator declared in a writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise; or

(c) The devisee acknowledges in writing that the gift was made in satisfaction of the devise or that its value was to be deducted from the value of the devise.

(2) For purposes of applying the gift against the devisee's share of the estate, the property must be valued as of the time the devisee came into possession or enjoyment of the property or as of the time of the testator's death, whichever occurs first.

**SECTION 29.** (1) Although a writing was not executed in compliance with ORS 112.235, the writing may be treated as if it had been executed in compliance with ORS 112.235 if the proponent of the writing establishes by clear and convincing evidence that the decedent intended the writing to constitute:

(a) The decedent's will;

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

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

(2) The proponent of the writing must file a petition with the court to establish the decedent's intention with respect to the writing. The proponent shall provide notice of the petition to heirs, devisees under prior wills and persons interested in the estate of the decedent that would be required to be identified and set

forth in a petition for the appointment of a personal representative under ORS 113.035. Persons receiving notice and other interested persons shall have 20 days after service of the notice under this subsection to file written objections to the petition. The court may make a determination regarding the decedent's intent after a hearing or on the basis of affidavits.

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

(a) Prepare written findings of fact in support of the determination; and

(b) Enter a limited judgment that admits the writing for probate or otherwise acknowledges the validity and intent of the writing.

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

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

**SECTION 30.** (1) Except as otherwise provided in a valid will, a will may refer to a writing that contains a statement or list disposing of household items, furniture, furnishings and personal effects. Money, property used in trade or business and items evidenced by documents or certificates of title may not be disposed of under this section.

(2) To be admissible under this section as evidence of the intended disposition, the writing must:

(a) Be referred to in the testator's will;

(b) Be signed by the testator; and

(c) Describe the household items, furniture, furnishings, personal effects and the devisees with reasonable certainty.

(3) A writing under this section may be referred to as a writing that is or will be in existence at the time of the testator's death and may be prepared before or after the execution of the testator's will.

(4) A writing under this section may be altered by the testator one or more times after the initial creation of the writing and may be a writing that has no significance apart from the writing's effect on the dispositions made by the will.

(5) As used in this section, "writing" includes an electronic record, document or image.

#### AMENDMENTS TO LAWS IN CHAPTERS OTHER THAN ORS CHAPTER 112

**SECTION 31.** 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.

(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 the will of the decedent or under intestate succession.

(14) "Domicile" means the place of abode of a person, where the person intends to remain and to which, if absent, the person 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) "Generation" means a group of human beings, living or deceased, that constitute a single step in the line of descent from an ancestor.

[(18)] (19) "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)] (20) "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 proceed-

ing. It also includes fiduciaries representing interested persons.

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

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

[(22)] (23) “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)] (24) “Net estate” means the real and personal property of a decedent, except property used for the support of the surviving spouse and children and for the payment of expenses of administration, funeral expenses, claims and taxes.

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

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

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

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

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

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

[(30)] (31) “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)] (32) “Will” includes codicil; it also includes a testamentary instrument that merely appoints an executor or that merely revokes or revives another will.

#### **SECTION 32.** ORS 116.313 is amended to read:

116.313. Unless the will, **or a revocable trust of which the decedent is settlor**, otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose. In the event the decedent’s will **or revocable trust** directs a method of apportionment of tax different from the method described in ORS 116.303 to 116.383, the method described in the will **or revocable trust** shall control. A mere testamentary direction to pay debts, charges,

taxes or expenses of administration shall not be considered a direction against apportionment of estate taxes.

#### **SECTION 33.** ORS 419B.552 is amended to read:

419B.552. (1) A juvenile court, upon the written application of a minor who is domiciled within the jurisdiction of such court, is authorized to enter a judgment of emancipation in the manner provided in ORS 419B.558. A judgment of emancipation shall serve only to:

(a) Recognize the minor as an adult for the purposes of contracting and conveying, establishing a residence, suing and being sued, **and making a will**, and recognize the minor as an adult for purposes of the criminal laws of this state.

(b) Terminate as to the parent and child relationship the provisions of ORS 109.010 until the child reaches the age of majority.

(c) Terminate as to the parent and child relationship the provisions of ORS 108.045, 109.100, 419B.373, 419B.400, 419B.402, 419B.404, 419B.406, 419B.408, 419C.550, 419C.590, 419C.592, 419C.595, 419C.597 and 419C.600.

(2) A judgment of emancipation shall not affect any age qualification for purchasing alcoholic liquor, the requirements for obtaining a marriage license, nor the minor’s status under ORS 109.510.

#### **SECTION 34.** ORS 112.685 is amended to read:

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

### **UNIT CAPTIONS**

**SECTION 35.** The unit captions used in this 2015 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2015 Act.

**SECTION 36.** Sections 27 to 30 of this 2015 Act, the amendments to ORS 111.005, 112.015, 112.045, 112.047, 112.055, 112.065, 112.105, 112.175, 112.185, 112.225, 112.235, 112.255, 112.272, 112.275, 112.285, 112.305, 112.345, 112.355, 112.365, 112.385, 112.405, 112.465, 112.475, 112.535, 112.555, 112.685, 116.313 and 419B.552 by sections 2 to 25 and 31 to 34 of this 2015 Act and the repeal of ORS 112.075, 112.325, 112.335, 112.435, 112.485 and 112.695 by section 1 of this 2015 Act apply to decedents dying and wills and writings executed after the effective date of this 2015 Act.

Approved by the Governor June 11, 2015  
Filed in the office of Secretary of State June 15, 2015  
Effective date January 1, 2016