

Judgments and Orders in Probate Court

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Court Action	Probate Estates	Conservatorships	Guardianships
Decision on a petition for appointment of fiduciary.	Limited judgment. ORS 111.275(1).*†○ Usually also admits will to probate.	Limited judgment. ORS 125.030(1).† See ORS 125.400.	Limited judgment. ORS 125.030(1).† See ORS 125.305.
Admitting will to probate.	Limited judgment, if it also appoints a personal representative. ORS 111.275(1).*†○		
Decision on a petition for removal of fiduciary.	Limited judgment, whether granting or denying removal. ORS 111.275(1).*○	Limited judgment, if it appoints a new fiduciary. ORS 125.030(1).†	Limited judgment, if it appoints a new fiduciary. ORS 125.030(1).†
Decision in a will contest.	Limited judgment. ORS 111.275(1).*○		
Placement of a protected person.			Limited judgment. ORS 125.030(2).*○
Sale of residence of protected person.		Limited judgment. ORS 125.030(2).*○	
Declaratory judgment decisions.	Limited judgment. ORS 111.275(1).*○	Order.	Order.
Decisions awarding fees and/or expenses (see below for final accountings).	Limited judgment. ORS 111.275(1).*○	Limited judgment. ORS 125.030(2).*○	Limited judgment. ORS 125.030(2).*○
Approving an interim accounting without objection and without awarding fees or expenses.	Order.	Order. ORS 125.480.	

Court Action	Probate Estates	Conservatorships	Guardianships
Decisions on interim accountings after objection, or awarding fees or expenses.	Limited judgment. ORS 111.275(1).*○	Limited judgment. ORS 125.030(2).*○	
Decisions on petitions for final accounting, approving distribution, and awarding fees and expenses, or after an objection.	General judgment approving final account and approving final distribution. ORS 111.275(1);*○ ORS 116.113; ORS 18.005(7).	Limited judgment approving final account. ORS 125.030(2).*○	
Decisions on petitions for final accounting and approving distribution without objection, but <u>not</u> awarding fees or expenses.	Order approving final account and general judgment of final distribution. ORS 116.113; ORS 18.005(7).	Order approving final account and general judgment closing the proceeding. ORS 125.090; ORS 125.480; ORS 18.005(7)	
Termination of a protective proceeding.		General judgment. ORS 125.090; ORS 18.005(7).	General judgment. ORS 125.090; ORS 18.005(7).
Discharging fiduciary after general judgment on final account.	Supplemental judgment. ORS 116.213; ORS 18.005(17).		
Additional decisions after entry of general judgment.	Supplemental judgment. ORS 18.005(17).	Supplemental judgment. ORS 18.005(17).	Supplemental judgment. ORS 18.005(17).

Notes:

1. The provisions summarized above were enacted by HB 2359 (2005 Oregon Laws Ch. 568). That act has been codified as part of ORS Chapters 111 (general provisions), 116 (probate estates), and 125 (protective proceedings). Additional changes were made by SB 370 (2009 Oregon Laws Chapter 50).

2. ORS 112.205(4) states that the probate court operates through orders and judgments. ORS 111.275(1) and 125.030(2) provide that limited judgments may be used only in certain

enumerated situations. In estates, ORS 116.113 states that a general judgment will be used to direct the distribution of assets. In protective proceedings, ORS 125.090 states that a general judgment will be used to terminate a proceeding. The statutes do not authorize limited or general judgments in other situations. Accordingly, this chart indicates that an order should be used in all situations where the statute is silent as to the type of document to employ. For the same reason, court decisions should be in the form of orders in situations not described in this chart.

3. For the definition of general judgments and limited judgments, see ORS 18.005. A general judgment is defined as a judgment which disposes of all of the remaining issues (requests for relief) that have not previously been decided by a limited judgment. ORS 18.005(7). However, a proceeding might result in interim rulings on various issues, and those interim rulings will be entered as a limited judgment if they dispose of one or more issues (one or more requests for relief), but less than all of the issues. ORS 18.005(13). They will be entered as orders if they do not dispose of a request for relief. ORS 18.005(13). A limited judgment may not be used to dispose of a “portion of a claim . . . ; rather, a limited judgment must dispose of a whole claim or of all claims against a party.” *Steele v. Mayoral*, 231 Or. App. 60 (11/4/09). Supplemental judgments are entered after the entry of a general judgment; they usually deal with the discharge of the fiduciary and other matters specifically authorized by statute. ORS 18.005(17). Limited judgments, general judgments and supplemental judgments are appealable, assuming the appealing party preserved their right to appeal by timely objecting to the entry of the judgment, and filed their notice of appeal within the applicable time period. ORS 19.205. The time period for appeal is generally 30 days from entry of the judgment. ORS 19.255.

4. In trust proceedings, a general judgment is usually entered at the conclusion of the proceeding. However, a proceeding might result in interim rulings on various issues, which are discussed above. In those situations, ORS 111.275 (which governs probates) does not apply, and ORS 18.005(7)(a) and ORS 18.005(13)(d) do apply. That latter statute authorizes limited judgments only when a legal authority specifically authorizes the use of a limited judgment. As a result, limited judgments are available to a lesser degree in trust matters than in probates, and orders should be used for most interim rulings in trust proceedings.

5. In wrongful death probates, an order should be used to approve a settlement and/or an apportionment of the proceeds of the wrongful death action pursuant to ORS 30.040 and 30.050. After the order is entered and the proceeds distributed, file receipts with the court and request a general judgment incorporating the prior order(s), discharging the personal representative, exonerating the bond (if any), and closing the estate.

6. This is a summary only; please review the text of the statutes regarding the application of the law to particular situations. Statutes not cited here may also be relevant.

Footnotes:

* ORS 111.275(2) and ORS 125.030(3) both require that the court must determine “that there is no just reason for delay” before entering a limited judgment under ORS 111.275(1) and ORS 125.030(2). However, the limited judgment document need not reflect that determination.

Interstate Roofing v. Springville, 347 Or. 144 (2009). The safest practice would be to include that representation in the petition and then to include that determination in the limited judgment. It is also not necessary to use the word “adjudged” in a limited judgment, *Interstate Roofing v. Springville*, 347 Or. 144 (2009).

○ ORS 111.275(1) and ORS 125.030(2) provide that a limited judgment “may” be used in these situations. Most courts now require the use of a limited judgment, even though the use of an order appears to be permissive under the statute. An order would be appropriate in these situations if there is a reason for delaying entry of an appealable judgment, such as when a proceeding is close to being terminated and a general judgment can be used to combine all of the rulings of the court. Note, however, that a limited judgment is always used to appoint a fiduciary in a protective proceeding. ORS 125.030(1). When appointing a personal representative, ORS 125.030(2) states that a limited judgment “may” be used.

† The use of the phrase “limited judgment” may be confusing to financial institutions and others dealing with a fiduciary operating pursuant to an appointment under a limited judgment. To clarify that the fiduciary has full powers to act as fiduciary, it is suggested that both the caption and the body of the limited judgment reflect those full powers. For example, the document appointing a personal representative might be labeled as a “limited judgment admitting will to probate and appointing personal representative with full powers.”