

A-Engrossed Senate Bill 64

Section by Section Analysis Prepared by Warren C. Deras

A BILL FOR AN ACT

Relating to the estates of decedents; creating new provisions; and amending ORS 112.055, 113.035, 113.045, 113.085, 113.105, 113.145, 114.505, 114.520, 114.525, 116.243, 116.253, 146.125, 708A.430, 708A.655, 722.262, 722.660, 723.466 and 723.844.

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

BILL

EXPLANATION

NOTE: Section 1 was deleted by amendment. Subsequent sections were not renumbered.

Former section 1 would have changed heirship rules. It is being proposed as an amendment to SB 217

SECTION 2. ORS 112.055 is amended to read:

ORS 112.055 was added as part of the 1969 Probate Code revision. It is incomplete in that it ignores the possibility of partial escheat under ORS 116.203.

112.055. (1) If no person takes under ORS 112.025 to 112.045, the net intestate estate [shall escheat] escheats to the State of Oregon.

Proposed subsection (2) completes this initial definition of escheat by referring to partial escheats.

(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:

The original report on the 1969 Probate Code did not expressly provide for administration of escheat estates by DSL. However, the legislative history suggested that DSL would have all rights of an heir in estates in which an heir was missing. During the 1969 legislative process ORS 113.085(2) was added. Under it *only* DSL can administer estates of persons who "died wholly intestate and without heirs". This suggested that DSL could not serve in other circumstances, and DSL adopted rules to that effect. If there is a single heir entitled to a small share of the estate DSL will not act, even if the heir is not interested in pursuing the matter. The 1969 legislative history suggests that this restrictive interpretation is not required. This interpretation is a problem in relatively small estates with geographically remote and elderly heirs. In those cases there may not be sufficient incentive for the heirs to step forward.

(a) The Division 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 Division of State Lands; and

(c) The Division 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:

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

(B) The right to information under ORS 113.145.

Currently when DSL opens a probate prior to finding any heirs it will resign if a single heir is found, even if other heirs are missing. In many such cases it would be more economical for DSL to complete administration.

New subsection (3) of the bill gives DSL the same authority as missing heirs to act in such estates. Until all heirs are identified DSL could take an appropriate role to protect the interest of the missing heirs and the Common School Fund.

It is contemplated that DSL will defer to family members who wish to administer these estates in most cases.

At the end of probate DSL is reimbursed from the estates it administers for the costs of administering the estates. Ordinarily there is no General Fund cost for these services that is not recovered by DSL. In some probates DSL is paid a statutory personal representative's fee which exceeds its costs.

SECTION 3. Section 4 of this 2003 Act is added to and made a part of ORS chapter 112.

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

Section 4(1) establishes some evidentiary presumptions to allow distribution of an estate when heirs are missing. These provisions are a codification of rules on when death can be

(a) No preference shall be given to any person over escheat; and
(b) After diligent search and inquiry appropriate to the circumstances, the following presumptions apply in a proceeding to determine whether a missing person has died:

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

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

(C) A missing person whose absence is unexplained has died if the character and habits of the person are inconsistent with a voluntary absence for the time that the person has been missing.

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

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

NOTE: Section 5 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 6. Sections 7, 8 and 9 of this 2003 Act are added to and made a part of ORS chapter 113.

SECTION 7. The Director of the Division of State Lands shall appoint one or more estate administrators to act for the Division of State Lands in administration of any estate in which the Division of State Lands is appointed personal representative. An estate administrator appointed under this section is an employee of the Division of State Lands.

SECTION 8. (1) Any person who has knowledge that a decedent died wholly intestate, that the decedent owned property subject to probate in Oregon and that the decedent died without a known heir shall give notice of the death within 48 hours after acquiring that knowledge to an estate administrator of the Division of State Lands appointed under section 7 of this 2003 Act.

presumed that were set forth in *Kankkonen v. Hendrickson et al*, 232 Or 49 (1962).

However, the presumption stated there against escheat is expressly overridden. Under the 1969 Oregon Probate Code limiting the scope of heirship there is no remaining foundation for that presumption, and the commentary on the 1969 proposed code criticized the rule. Although early Oregon cases frequently stated that escheats are not favored in law, such statements had little practical effect. As noted in Jauregui and Love, *Oregon Probate Law and Practice* (1958) §201, "all that any such statement can mean is that it is the policy of the law to give to lawful heirs every opportunity to prove that they are such". This change does not reduce the opportunities of heirs to prove their status. Elimination of the presumption serves to clarify the law by avoiding the tendency to read more into the presumption than was intended.

The 1969 revisions fundamentally changed the rules for determining the escheat share by adding the concept of right of representation for collateral heirs. This change created a problem in calculating the shares of known heirs. There may be no way to determine what the shares are when an heir or line of heirs is simply missing. DSL deals repeatedly with estates in which aunts and uncles disappeared ages ago and may be presumed dead on account of age, but it is impossible to determine if they had children. Calculation of all shares depends upon how many children they had. Estates in this situation can only be closed if a presumption is created as to how many children they had. The bill presumes such missing persons too old to be surviving had two children, but only if they are missing in circumstances suggesting they had the opportunity to have children. For example, someone last seen boarding the Titanic or walking into the World Trade Center on September 11, 2001, but whose remains were never found, would not be presumed to have had children who should inherit a share.

Former section 5 would have regulated fees charged by heirship search firms. It is being proposed as an amendment to SB 217

Section 12 of the bill changes existing law to make DSL, rather than the director of DSL, personal representative for escheat estates. This provision allows the director to appoint one or more estate administrators who would actually perform the duties within DSL. Current practice is that the actual work of administering these estates is done by estate administrators, whose duties are defined in OAR Division 141-035.

This provision is substantially identical to existing OAR 141-035-0020(3). However, authority for that rule is not clear, and most attorneys are not aware of it. In many cases DSL receives notice many months after a death, and in the interim no one has legal authority to manage estate assets. In most estates those authorized to administer the estate are family

(2) Except as provided by ORS 708A.430, 722.262 and 723.466, a person may not dispose of or diminish any assets of the estate of a decedent who has died wholly intestate, who owned property subject to probate in Oregon and who died without a known heir unless the person has prior written approval of an estate administrator of the Division of State Lands appointed under section 7 of this 2003 Act. The prohibition of this subsection:

- (a) Applies to a guardian or conservator for the decedent; and**
- (b) Does not apply to a personal representative appointed under ORS 113.085 (3) or to an affiant authorized under ORS 114.520 to file an affidavit under ORS 114.515.**

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(3) For purposes of this section, a known heir is an heir who has been identified and found.

SECTION 9. (1) An estate administrator of the Division of State Lands appointed under section 7 of this 2003 Act may take custody of the property of a decedent who died owning property subject to probate in Oregon upon the estate administrator receiving notice that:

- (a) The decedent died wholly intestate and without a known heir as described in section 8 (3) of this 2003 Act; or**
- (b) The decedent left a valid will, but no devisee has been identified and found.**
- (2) For any estate described in subsection (1) of this section, an estate administrator of the Division of State Lands appointed under section 7 of this 2003 Act may:**
 - (a) Incur expenses for the funeral, burial or other disposition of the remains of the decedent in a manner suitable to the condition in life of the decedent;**
 - (b) Incur expenses for the protection of the property of the estate;**
 - (c) Incur expenses searching for a will or for heirs or devisees of the decedent;**
 - (d) Have access to the property and records of the decedent other than records that are made confidential or privileged by statute;**
 - (e) With proof of the death of the decedent, have access to all financial records of accounts or safe deposit boxes of the decedent at banks or other financial institutions; and**
 - (f) Sell perishable property of the estate.**

(3) The reasonable funeral and administrative expenses of the Division of State Lands incurred under this section, including a reasonable attorney fee, shall be paid from the assets of the estate with the same priority as funeral and administration expenses under ORS 115.125.

members who know immediately of the death. That is not the case for DSL. It depends on medical examiners, funeral directors, guardians and others for notice. Failure to receive notice of deaths of Oregonians who have no wills and no known heirs is a major obstacle to efficient administration of those estates by DSL. This provision should reduce that problem.

This provision is substantially identical to existing OAR 141-035-0020(3). However, authority for that rule is not clear, and most attorneys are not aware of it. It is not unusual for guardians to wait six to eight months to give notice to DSL of the death of a protected person with no will and no known heirs. In the meantime the guardian may incur, obtain court approval for and pay substantial post-death fees to the guardian and the guardian's attorney. It is also not unusual for funeral homes to incur thousands of dollars in funeral expenses without authorization. These expenses ultimately come from the Common School Fund in escheat estates, and this provision makes clear that DSL must approve them.

The authority of DSL is subordinate to that of known heirs. This definition merely makes it clear that until an heir is both known and found, DSL may act to protect the estate. Absent an heir who has actually been found, there is no one with legal authority to protect estate assets.

This provision incorporates the substance of existing OAR 141-035-0020(4), 141-035-0025 and 141-035-0030. However, authority for those rules is not clear.

In practice DSL now routinely steps in to administer estates before probate is filed until family members can be located. It receives requests for intervention from funeral homes, medical examiners, police agencies, fiduciaries and attorneys. Since no one else has authority in these cases, there is a need for some public agency to intervene to protect the estate.

In most cases where DSL intervenes heirs are found before probate is commenced.

This provision incorporates the substance of existing OAR 141-035-0045(2), under which DSL withholds funds in its hands to cover its expenses. However, authority for the rule is not clear. At times pre-probate expenses can be substantial, especially in larger estates. In some cases no recovery is made, and in practice those collections are not pursued because of the lack of statutory authority. In many cases

expenses are relatively moderate and heirs are grateful that they were notified by DSL rather than an heirship search firm seeking a large (usually 1/3) share of the estate. In some cases DSL files probate proceedings earlier than it otherwise would while seeking heirs, simply because once DSL is appointed personal representative it can clearly recover its reasonable expenses.

SECTION 10. ORS 113.035 is amended to read:

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

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

(2) Whether the decedent died testate or intestate.

(3) The facts relied upon to establish venue.

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

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

(6) A statement that reasonable efforts have been made to identify and locate all heirs of the decedent. If the petitioner knows of any actual or possible omissions from the list of heirs, the petition must include a statement indicating that there are omissions from the information relating to heirs.

~~[(6)]~~ (7) If the decedent died testate, the names and post-office addresses of the devisees, and the ages of any who are minors. **If the will devises property to a person who did not survive the decedent or who is otherwise not entitled to receive the devise, the petition must include a statement explaining why the devise failed. If the petitioner knows of any actual or possible omissions from the list of devisees, the petition must include a statement indicating that**

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there are omissions from the information relating to devisees.

~~[(7)]~~ (8) The name and post-office address of any person asserting an interest in the estate, or on whose behalf an interest has been asserted, based on a contention that:

(a) The will alleged in the petition to be the will of the decedent is ineffective in whole or part;

(b) There exists a will that has not been alleged in the petition to be the will of the decedent; or

(c) The decedent agreed, promised or represented that the decedent would make or revoke a will or devise, or not revoke a will or devise, or die intestate.

~~[(8)]~~ (9) Whether the original of the last will of the decedent is in the possession of the court or accompanies the petition. If the original will is not in the possession of the court or accompanying the petition and an authenticated copy of the will probated in another jurisdiction does not accompany the petition, the petition shall also state the contents of the will and indicate that it is lost, destroyed or otherwise unavailable and that it was not revoked..

~~[(9)]~~ (10) A statement of the extent and nature of assets of the estate, to enable the court to set the amount of bond of the personal representative.

Until 1969 ORS 117.550 expressly provided that missing or unknown heirs or distributees could simply be ignored in probate. In 1969 that provision was repealed, and ORS 116.203 now requires that those shares escheat. However, common practice has not recognized this change in the law, and remote or missing heirs tend to be simply ignored.

ORS 113.035 requires that a petition to open a probate identify heirs "as far as known". It does not require that known omissions be noted. For example a cousin can open an estate identifying the cousin as the only heir without disclosing that he or she has no idea who the other heirs are. In my experience many attorneys fail to advise their clients on the scope of heirship, and I have seen many cases where heirs entitled to a share of an estate or to contest a will never receive notice of the probate. This is not ordinarily a problem when the heirs are a spouse or children.

These changes are intended to focus the attention of persons filing probate petitions on the rules for determining heirs.

SECTION 11. ORS 113.045 is amended to read:

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

(1) Upon appointment, a personal representative shall deliver or mail to an estate administrator of the Division of State Lands appointed under section 7 of this 2003 Act a copy of the petition filed under ORS 113.035, and a copy of any last will of the decedent, if the personal representative has not identified and found all heirs and devisees of the decedent. The personal representative shall file an affidavit in the probate proceeding proving the delivery or mailing.

(2) If at any time after the appointment of a personal representative it appears that any heir or devisee of the decedent cannot be identified and found, the personal representative shall promptly deliver or mail to an estate administrator of the Division of State Lands appointed under section 7 of this 2003 Act a notice indicating that an heir or devisee cannot be identified and found. The personal representative shall file an affidavit in the probate proceeding proving the delivery or mailing.

(3) This section does not affect the requirements of ORS 113.085(2).

SECTION 12. ORS 113.085 is amended to read:

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

(a) To the executor named in the will.

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

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

(d) To the Director of Human Services or a designee, if it appears the decedent received public assistance pursuant to ORS chapter 411, 412, 413 or 414 and that such assistance is a claim against the estate.

(e) To the Director of Veterans' Affairs, if the decedent was a protected person under

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ORS 406.050 (7), and the director has joined in the petition for such appointment.

(f) To any other person.

(2) **Except as provided in subsection (3) of this section** *[If it appears that the decedent died wholly intestate and without heirs]*, the court shall appoint *[the Director of]* the Division of State Lands as personal representative **if it appears that the decedent died wholly intestate and without known heirs.** The Attorney General shall represent the *[director]* **Division of State Lands** in the administration of the estate. Any funds received by the *[director]* **Division of State Lands** in the capacity of personal representative may be deposited in accounts, separate and distinct from the General Fund, established with the State Treasurer. Interest earned by such account shall be credited to that account.

ORS 113.045 was added in 1969 during the legislative process. It was not included in the proposal from the committee on revision of the probate code, which did not contemplate an active role for DSL in the probate process. This is the only statute requiring notice of probate to DSL.

Unfortunately the existing statute appears inconsistent with the provision in ORS 113.085(2) stating that *only* DSL can administer an estate of a decedent who died wholly intestate and without heirs. In fact it is not. It was apparently intended to address testate estates in which there are no known heirs, giving DSL a notice of its right to contest the will.

In recognition to the new role of DSL in administration of partial escheat estates the existing provision is replaced with one requiring notice to DSL at the commencement of probate whenever any heir or devisee is missing, not just when all heirs are missing.

A separate provision is added to require notice when it is learned during administration that an heir or devisee is missing.

Finally, for clarification new subsection (3) references the provisions of ORS 113.085(2) that only DSL can administer intestate estates when there are no known heirs.

ORS 113.085(2) currently provides for appointment of the director of DSL as personal representative to administer escheat estates. Generally fiduciary duties are not entirely delegable, although many aspects of those duties can be individually delegated. As a result the director must sign all probate documents, although in fact administration of estates is conducted by an estate administrator. This is of concern when a new person becomes director, because some counties appoint the director by name rather than merely identifying the position she holds. This implicates awkward rules involving the removal of one personal representative and appointment of another whenever there is a change in the person who is director.

Financial institutions are appointed to fiduciary position without reference to any person or office holder. The

(3) The court may appoint a person other than the Division of State Lands to administer the estate of a decedent who died wholly intestate and without known heirs if the person filing a petition under ORS 113.035 attaches written authorization from an estate administrator of the Division of State Lands appointed under section 7 of this 2003 Act approving the filing of the petition by the person. Except as provided by rule adopted by the Director of the Division of State Lands, an estate administrator may consent to the appointment of another person to act as personal representative only if it appears after investigation that the estate is insolvent.

SECTION 13. ORS 113.105 is amended to read:

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

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

- (a) The nature, liquidity and apparent value of the assets of the estate.
- (b) The anticipated income during administration.
- (c) The probable indebtedness and taxes.

(3) Nothing in this section affects the provisions of ORS 709.240, relating to a trust company acting as personal representative.

(4) Notwithstanding any other provisions of this section, a court may, in its discretion, waive the requirement of a bond if all devisees and heirs known to the court agree in writing that the requirement be waived and the signed agreement is filed with the court at the time of filing of the petition for the appointment of a personal representative.

SECTION 14. ORS 114.505 is amended to read:

114.505. As used in ORS 114.505 to 114.560:

(1) "Claiming successors" means:

(a) If the decedent died intestate, the heir or heirs of the decedent, or if there is no heir, [the

institution is appointed. This amendment adopts a similar procedure for DSL. Section 7 allows the director to appoint one or more estate administrators to do the actual work of administering escheat estates.

Under ORS 113.085(2) only the director of DSL can serve as personal representative for an estate with no will and no known heirs. The purpose for this appointment is to protect the interest of the missing heirs and the Common School Fund. However, the heirs and Common School Fund have no real interest in insolvent estates. Such estates belong to creditors.

ORS 114.520 allows the director to permit a creditor to file a small estate affidavit, but there is no comparable authority for full probates. Frequently insolvent estates cost DSL more to administer than is recovered.

This amendment will allow DSL to permit a creditor to be personal representative for an insolvent estate with no will and no known heirs. It would also allow DSL to adopt rules allowing it to designate individuals outside DSL to administer some estates. This authority could be useful in administering estates in remote sections of the state where the cost of sending DSL employees to deal with the estates would be excessive.

Conforms existing statute to change in Section 12 making DSL rather than director personal representative.

Director of the Division of State Lands] **an estate administrator of the Division of State Lands appointed under section 7 of this 2003 Act;**

(b) If the decedent died testate, the devisee or devisees of the decedent; and

(c) Any creditor of the estate entitled to payment or reimbursement from the estate under ORS 114.545 (1)(c) who has not been paid or reimbursed the full amount owed such creditor within 60 days after the date of the decedent's death.

(2) "Estate" means decedent's property subject to administration in Oregon.

(3) "Affiant" means the person or persons signing an affidavit filed under ORS 114.515.

SECTION 15. ORS 114.520 is amended to read:

114.520. (1) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming successor may not file an affidavit under ORS 114.515 unless the creditor has received written authorization from *[the Director]* **an estate administrator** of the Division of State Lands *[in the manner required by this section]* **appointed under section 7 of this 2003 Act. Except as provided by rule adopted by the Director of the Division of State Lands, an estate administrator shall consent to the filing of an affidavit under ORS 114.515 by a creditor only if it appears after investigation that the estate is insolvent.**

(2) A creditor of an estate who is subject to subsection (1) of this section *[shall]* **may** give written notice to *[the Director]* **an estate administrator** of the Division of State Lands informing the *[director]* **estate administrator** that the creditor intends to file an affidavit under ORS 114.515. Upon receiving the notice *[required]* **permitted** by this subsection, the *[director]* **estate administrator** shall investigate the assets and liabilities of the estate. Within 30 days after receiving the notice required by this subsection, the *[director]* **estate administrator** shall either:

(a) Give written authorization to the creditor for the filing of an affidavit by the creditor under ORS 114.515; or

(b) Inform the creditor that the Division of State Lands will file an affidavit as claiming successor under ORS 114.515.

(3) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming successor and who files an affidavit under ORS 114.515 must notate at the top of the affidavit that the affidavit is being filed by a creditor of the estate. If the affidavit contains the notation required by this subsection, the clerk of the probate court may not accept the affidavit for filing unless there is attached to the affidavit written authorization for the filing of the affidavit *[issued]* by the creditor from *[the Director]* **an estate administrator** of the Division of State Lands. **The written authorization may be a copy of a memorandum of an interagency agreement between the Division of State Lands and another state agency.**

SECTION 16. ORS 114.525 is amended to read:

114.525. An affidavit filed under ORS 114.515 shall:

(1) State the name, age, domicile, post-office address and social security number of the decedent;

(2) State the date and place of the decedent's death. A certified copy of the death certificate shall be attached to the affidavit;

Conforms existing statute to change in sections 7 and 12 by which estate administrators rather than director of DSL will administer escheat estates.

Conforms existing small estate law to change in sections 7 and 12 by which estate administrators rather than director of DSL will administer escheat estates.

Conforms to provisions of section 12 allowing creditors to administer insolvent estates and also allowing DSL to adopt rules under which it may delegate administration of escheat estates to others.

Corrects wording in subsection (2) to eliminate language suggesting permissive provisions are mandatory.

Conforms existing statute to change in sections 7 and 12 by which estate administrators rather than director of DSL will administer escheat estates.

By existing agreement DSL permits DHS to administer estates of decedents with no known heirs when DHS has a medicaid lien. This provision allows use of a memorandum of such an agreement without the need for separate consent for the individual estate.

(3) Describe and state the fair market value of all property in the estate, including a legal description of any real property;

(4) State that no application or petition for the appointment of a personal representative has been granted in Oregon;

(5) State whether the decedent died testate or intestate, and if the decedent died testate, the will shall be attached to the affidavit;

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(6) List the heirs of the decedent and the last address of each heir as known to the affiant, and state that a copy of the affidavit showing the date of filing and a copy of the will, if the decedent died testate, will be delivered to each heir or mailed to the heir at the last-known address;

(7) If the decedent died testate, list the devisees of the decedent and the last address of each devisee as known to the affiant and state that a copy of the will and a copy of the affidavit showing the date of filing will be delivered to each devisee or mailed to the devisee at the last-known address;

(8) State the interest in the property described in the affidavit to which each heir or devisee is entitled **and the interest, if any, that will escheat;**

(9) State that reasonable efforts have been made to ascertain creditors of the estate. List the expenses of and claims against the estate remaining unpaid or on account of which the affiant or any other person is entitled to reimbursement from the estate, including the known or estimated amounts thereof and the names and addresses of the creditors as known to the affiant, and state that a copy of the affidavit showing the date of filing will be delivered to each creditor who has not been paid in full or mailed to the creditor at the last-known address;

(10) Separately list the name and address of each person known to the affiant to assert a claim against the estate that the affiant disputes and the known or estimated amount thereof and state that a copy of the affidavit showing the date of filing will be delivered to each such person or mailed to the person at the last-known address;

(11) State that a copy of the affidavit showing the date of filing will be mailed or delivered to the Department of Human Services;

(12) State that claims against the estate not listed in the affidavit or in amounts larger than those listed in the affidavit may be barred unless:

(a) A claim is presented to the affiant within four months of the filing of the affidavit at the address stated in the affidavit for presentment of claims; or

(b) A personal representative of the estate is appointed within the time allowed under ORS 114.555; and

(13) If the affidavit lists one or more claims that the affiant disputes, state that any such claim may be barred unless:

(a) A petition for summary determination is filed within four months of the filing of the affidavit; or

(b) A personal representative of the estate is appointed within the time allowed under ORS 114.555.

SECTION 17. ORS 116.243 is amended to read:

116.243. A court clerk of any county in which the county court has judicial functions, the clerk of any county court that has jurisdiction over probate matters under ORS 111.075 or a court administrator, upon request, shall furnish to *[the Director]* **an estate administrator** of the Division of State Lands **appointed under section 7 of this 2003 Act** the titles of estates of decedents that have remained open for more than three years and in which no heirs, or only persons whose right to inherit the proceeds thereof is being contested, have appeared to claim the estate.

SECTION 18. ORS 116.253 is amended to read:

Corrects omission in existing statute. The only reason DSL is allowed to file small estate affidavits is to recover the escheat share. Also clarifies that these funds escheat rather than being treated as unclaimed property.

Conforms existing statute to change in sections 7 and 12 by which estate administrators rather than director of DSL will administer escheat estates.

116.253. [(1) Within 10 years after the entry of a decree of final distribution designating title to an estate available for distribution in the Division of State Lands or an order of escheat to the state, a claim may be made for the property escheated, or the proceeds thereof, by or on behalf of a person not having actual knowledge of the decree or order.]

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(1) Within 10 years after the death of a decedent whose estate escheated in whole or in part to the state, or within eight years after the entry of a decree or order escheating property of an estate to the state, a claim may be made for the property escheated, or the proceeds thereof, by or on behalf of a person not having actual knowledge of the escheat or by or on behalf of a person who at the time of the escheat was unable to prove entitlement to the escheated property.

(2) The claim shall be made by a petition filed with the Director of the Division of State Lands. The claim is considered a contested case as provided in ORS 183.310 and there is the right of judicial review as provided in ORS 183.480. The petition shall be verified in the same manner as a *[complaint]* **petition in probate** and shall state:

(a) The age and place of residence of the claimant by whom or on whose behalf the petition is filed;

(b) That the claimant lawfully is entitled to the property or proceeds, briefly describing the property or proceeds;

(c) That at the time the property escheated to the state the claimant had no knowledge or notice thereof **or was unable to prove entitlement to the escheated property and has subsequently acquired new evidence of that entitlement;**

(d) That the claimant claims the property or proceeds as an heir **or devisee** or as the personal representative of the estate of an heir **or devisee**, setting forth the relationship, **if any, of the claimant to the decedent who at the time of death was the owner;**

[(e) That 10 years have not elapsed since the entry of the decree or order escheating the property to the state; and]

(e) That 10 years have not elapsed since the death of the decedent, or that eight years have not elapsed since the entry of the decree or order escheating the property to the state; and

(f) If the petition is not filed by the claimant, the status of the petitioner.

(3) If it is determined that the claimant is entitled to the property or the proceeds thereof, the Director of the Division of State Lands shall deliver the property to the petitioner, subject to and charged with *[the inheritance tax thereon, if any,]* **any tax on the property** and the costs and expenses

Currently the ten year time limit for recovery of escheated property in administrative proceedings commences on the date of the decree of distribution or the escheat order. However, various statutes provide for escheat of assets of a decedent without a court proceeding. e.g. ORS 114.505 et seq (small estates); ORS 708A.430, 722.262 and 723.466 (account balances below \$25,000).

This change provides that the ten year time limit for the administrative proceedings to recover escheat property commences on the date of death. This is the only date all of the forms of escheat have in common and is therefore the only suitable date to commence the time period.

For probate estates closed long after the date of death a new provision assures at least eight years from the date of the decree or order. This provision will not affect non-probate escheats.

The prohibition on administrative recoveries by those who were aware of the probate proceeding is an obstacle to settlement in cases in which some, but not all, heirs are missing. The known heirs are reasonably fearful that if evidence later surfaces that the missing heirs died without issue, they will lose the chance to recover that additional amount. As a result they want to keep probate proceedings open indefinitely. To facilitate settlement in those cases the statute is changed to allow those heirs to present new evidence in the administrative proceedings.

Complaints in civil actions have not been verified for decades. However, probate petitions still are verified.

Conforms to changes in subsection (1)

Shares of missing devisees may escheat under ORS 116.203, and they should have the same right to recover their shares in administrative proceedings as heirs.

Conforms to changes in subsection (1)

Escheat assets will more likely be charged with income taxes than inheritance taxes, and may also be subject to federal

of the state in connection therewith.

(4) If the person whose property escheated or reverted to the state was at any time an inmate of a state institution in Oregon for the mentally ill or mentally deficient, the reasonable unpaid cost, as determined by the Department of Human Services, of the care and maintenance of the person while a ward of the institution, regardless of when the cost was incurred, may be deducted from, or, if necessary, be offset in full against, the amount of the escheated property.

(5) For the purposes of this section, the death of the decedent is presumed to have occurred on the date shown in the decedent's death certificate or in any other similar document issued by the jurisdiction in which the death occurred or issued by an agency of the federal government.

estate taxes.

Subsection (1) changes the date for commencing the time limit to recover escheat assets to the date of death. However, in some cases the date of death may not be certain. This provision effectively incorporates existing law on determination of the date in death certificates.

SECTION 19. ORS 146.125 is amended to read:

146.125. (1) The medical examiner, deputy medical examiner, district attorney or sheriff may temporarily retain possession of any property found on the body or in the possession of the deceased which in the opinion of the medical examiner, deputy medical examiner, district attorney or sheriff may be useful in establishing the cause or manner of death or may be used in further proceedings.

(2) When a medical examiner, deputy medical examiner, district attorney or sheriff assumes

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control or custody of money or personal property found on the body or in the possession of the deceased, the medical examiner, deputy medical examiner, district attorney or sheriff shall:

- (a) Make a verified inventory of such money or property.
- (b) File the inventory in the district medical examiner's office.
- (c) Deposit the money with the county treasurer to the credit of the county general fund.

(3) If personal property is not retained by the medical examiner, deputy medical examiner, district attorney or sheriff, and is not claimed within 30 days, the inventory shall be filed with the board of county commissioners to be disposed of as follows:

(a) If the property has value, the board may order it sold and after deducting the cost of sale, shall deposit the proceeds of the sale with the county treasurer to the credit of the county general fund.

(b) If the property has no value in the judgment of the board, the board may order the sheriff to destroy such property.

(4) Any expenses incurred by the county in transporting or disposing of the body may be deducted from the money or proceeds of the sale of personal property before it is delivered to a claimant.

(5) If it appears that the person whose death required investigation died wholly intestate and without heirs, the county whose official has control or custody of the property shall notify *[the Director]* **an estate administrator** of the Division of State Lands **appointed under section 7 of this 2003 Act** within 15 days after the death.

Conforms existing statute to change in sections 7 and 12 by which estate administrators rather than director of DSL will administer escheat estates.

(6) If a legally qualified personal representative, spouse, or next of kin:

(a) Claims the money of the deceased, the treasurer shall, subject to the provisions of subsection (4) of this section, deliver such money to the claimant.

(b) Within 30 days, claims the personal property of the deceased, the property shall be delivered to such claimant subject to the provisions of subsections (1) and (5) of this section.

(7) If money of the deceased is not claimed within seven years and is presumed abandoned as provided by ORS 98.302 to 98.436 and 98.992,

the board of county commissioners shall order the money paid as required by law.

SECTION 20. ORS 708A.430 is amended to read:

708A.430. (1) On the death of a depositor of a financial institution, if the deposit is \$25,000 or less, the financial institution may, upon receipt of an affidavit from the person claiming the deposit as provided in subsection (2) of this section, pay the moneys on deposit to the credit of the deceased depositor:

(a) To the surviving spouse;

(b) If there is no surviving spouse, to the Department of Human Services, on demand of the department within 60 days from the death of the depositor where there is a preferred claim arising under ORS 411.795, 412.600, 413.200 or 414.105, or if there is no claim by the department, to the surviving children 18 years of age or older;

(c) If the depositor left no surviving spouse, Department of Human Services claim or surviving children, to the depositor's surviving parents; or

(d) If there is no surviving spouse, Department of Human Services claim, surviving child or surviving parent, to the depositor's surviving brothers and sisters 18 years of age or older.

(2) The affidavit shall:

(a) State where and when the depositor died;

(b) State that the total deposits of the deceased depositor in all financial institutions in Oregon

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do not exceed \$25,000;

(c) Show the relationship of the affiant or affiants to the deceased depositor; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased out of the deposit to the full extent of the deposit if necessary, **in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.**

(3) In the event the decedent died intestate without known heirs, *[the Director]* **an estate administrator** of the Division of State Lands **appointed under section 7 of this 2003 Act** shall be the affiant **and shall receive the moneys as escheat property.**

(4) The financial institution shall determine the relationship of the affiant to the deceased depositor, however payment of such moneys in good faith to the affiant or affiants shall discharge and release the transferor from any liability or responsibility for the transfer in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the decedent.

(5) A probate proceeding is not necessary to establish the right of the surviving spouse, Department of Human Services claim, surviving child, surviving parent, surviving brothers and sisters or *[the Director]* **an estate administrator** of the Division of State Lands to withdraw the deposits upon the filing of the affidavit. If a personal representative is appointed in an estate where a withdrawal of deposits was made under this section, the person withdrawing the deposits shall account for them to the personal representative.

(6) When a financial institution transfers moneys under subsection (1) of this section, the transferor may require the transferee to furnish the transferor a written indemnity agreement, indemnifying the transferor against loss for moneys paid to the extent of the amount of the deposit.

(7) This section is subject to the rights of other parties in the account under ORS 708A.455 to 708A.515.

Makes this section consistent with similar provisions in ORS 722.262 and 723.466.

Conforms existing statute to change in sections 7 and 12 by which estate administrators rather than director of DSL will administer escheat estates.

Conforms existing statute to change in sections 7 and 12 by which estate administrators rather than director of DSL will administer escheat estates.

SECTION 21. ORS 708A.655 is amended to read:

708A.655. (1) This section applies to the safe deposit box of any person who is the sole lessee or last surviving lessee of the box and who has died.

(2) Upon being furnished with a certified copy of the decedent's death certificate or other evidence of death satisfactory to the Oregon operating institution, the Oregon operating institution within which the box is located shall cause or permit the box to be opened and the contents of the box examined at the request of an individual who furnishes an affidavit stating:

(a) That the individual believes the box may contain the will of the decedent, a trust instrument creating a trust of which the decedent was a trustor or a trustee at the time of the decedent's death, documents pertaining to the disposition of the remains of the decedent, documents pertaining to property of the estate of the decedent or property of the estate of the decedent; and

(b) That the individual is an interested person as defined in this section and wishes to open the box to conduct a will search or trust instrument search, obtain documents relating to the disposition of the decedent's remains or inventory the contents of the box.

(3) For the purpose of this section, "interested person" means any of the following:

(a) A person named as personal representative of the decedent in a purported will of the decedent;

(b) The surviving spouse or any heir of the decedent;

(c) A person who was serving as the court-appointed guardian or conservator of the decedent or as trustee for the decedent immediately prior to the decedent's death;

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(d) A person named as successor trustee in a purported trust instrument creating a trust of which the decedent was a trustor or a trustee at the time of the decedent's death;

(e) A person designated by the decedent in a writing that is acceptable to the Oregon operating institution and is filed with it prior to the decedent's death;

(f) A person who immediately prior to the death of the decedent had the right of access to the box as an agent of the decedent under a durable power of attorney; or

(g) If there are no heirs of the decedent, *[the Director]* **an estate administrator** of the Division of State Lands **appointed under section 7 of this 2003 Act.**

Conforms existing statute to change in sections 7 and 12 by which estate administrators rather than director of DSL will administer escheat estates.

(4) If the box is opened for the purpose of conducting a will search, the Oregon operating institution shall remove any document that appears to be a will, make a true and correct copy of it and deliver the original will to a person designated in the will to serve as the decedent's personal representative, or if no such person is designated or the Oregon operating institution cannot, despite reasonable efforts, determine the whereabouts of such person, the Oregon operating institution shall retain the will or deliver it to a court having jurisdiction of the estate of the decedent. A copy of the will shall be retained in the box. At the request of the interested person, a copy of the will, together with copies of any documents pertaining to the disposition of the remains of the decedent, may be given to the interested person.

(5) If the box is opened for the purpose of conducting a trust instrument search, the Oregon operating institution shall remove any document that appears to be a trust instrument creating a trust of which the decedent was a trustor or trustee at the time of the decedent's death, make

a true and correct copy of it and deliver the original trust instrument to a person designated in the trust instrument to serve as the successor trustee on the death of the decedent. If no such person is designated or the Oregon operating institution cannot, despite reasonable efforts, determine the whereabouts of such person, the Oregon operating institution shall retain the trust instrument. A copy of the trust instrument shall be retained in the box. At the request of any interested person, a copy of the trust instrument may be given to the interested person.

(6) If the box is opened for the purpose of obtaining documents pertaining to the disposition of the decedent's remains, the Oregon operating institution shall comply with subsection (4) of this section with respect to any will of the decedent found in the box, and may in its discretion either:

(a) Make and retain in the box a copy of any documents pertaining to the disposition of the remains of the decedent and tender the original documents to the interested person; or

(b) Provide a copy of any documents pertaining to the disposition of the remains of the decedent to the interested person and retain the original documents in the box.

(7) If the box is opened for the purpose of making an inventory of its contents, the Oregon operating institution shall comply with subsection (4) or (5) of this section with respect to any will or trust instrument of the decedent that is found in the box, and shall cause the inventory to be made. The inventory shall be attested to by a representative of the Oregon operating institution and may be attested to by the interested person, if the interested person is present when the inventory is made. The Oregon operating institution shall retain the original inventory in the box, and shall furnish a copy of the inventory to the interested person upon request.

(8) The Oregon operating institution may presume the truth of any statement contained in the affidavit required to be furnished under this section, and when acting in reliance upon such an affidavit, the Oregon operating institution is discharged as if it had dealt with the personal representative of the decedent. The Oregon operating institution is not responsible for the adequacy of the description of any property included in an inventory of the contents of a box, or for the conversion

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of the property in connection with actions performed under this section, except for conversion by intentional acts of the Oregon operating institution or its employees, directors, officers or agents. If the Oregon operating institution is not satisfied that the requirements of this section have been satisfied, the Oregon operating institution may decline to open the box.

(9) If the interested person does not furnish the key needed to open the box, and the Oregon operating institution must incur expense in gaining entry to the box, the Oregon operating institution may require that the interested person pay the expense of opening the box.

(10) Any examination of the contents of a box under this section shall be conducted in the presence of at least one employee of the Oregon operating institution.

SECTION 22. ORS 722.262 is amended to read:

722.262. (1) On the death of an account holder or a holder of a demand deposit account, if the savings liability of an association or federal association on all savings accounts of the deceased, and the amounts held in all demand deposit accounts of the deceased, is \$25,000 or less, the association or federal association may, upon receipt of an affidavit from the person claiming the account, pay the withdrawal value of the accounts of the deceased holder:

- (a) To the surviving spouse;
- (b) If there is no surviving spouse, to the surviving children 18 years of age or older;
- (c) If there is no surviving spouse or surviving children 18 years of age or older, to the surviving parents; or
- (d) If there is no surviving spouse, surviving child 18 years of age or older or surviving parent, to the surviving brothers and sisters 18 years of age or older.

(2) If the deceased account holder or holder of a demand deposit account received public assistance pursuant to ORS chapter 411, 412, 413 or 414, the Department of Human Services may claim such withdrawal value by filing an affidavit in the form prescribed by subsection (3) of this section and the Department of Human Services shall be preferred to all other claimants except a surviving spouse.

(3) The affidavit of the person or the Department of Human Services claiming the account shall:

- (a) State where and when the account holder or holder of a demand deposit account died;
- (b) State that the total withdrawal value of all savings and demand deposit accounts of the deceased holder in all associations in Oregon, including federal associations, does not exceed \$25,000;
- (c) Show the relationship of the affiant or affiants to the deceased holder; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of *[the deceased out of the account to the full extent of the account if necessary and to distribute any balance to those persons entitled thereto by law]* **the deceased out of the account to the full extent of the account if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.**

(4) In the event the decedent died intestate without known heirs, *[the Director]* **an estate administrator** of the Division of State Lands **appointed under section 7 of this 2003 Act** shall be the affiant **and shall receive the withdrawal value of the accounts as escheat property.**

(5) A savings association or federal association is under no obligation to determine the relationship of the affiant to the deceased. Payment made in good faith to the person or the Department of Human Services **or an estate administrator of the Division of State Lands** making the affidavit is a full acquittance and release of the association or federal association for the amount so paid.

(6) A probate proceeding is not necessary to establish the right of the surviving spouse, surviv-

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ing children, surviving parent or surviving brothers and sisters to withdraw an account as provided by this section. However, if a personal representative is appointed in an estate of a deceased person whose account has been withdrawn under this section, the person or the Department of Human Services withdrawing the account shall account for it to the personal representative.

SECTION 23. ORS 722.660 is amended to read:

722.660. (1) This section applies to the safe deposit box of any person who is the sole lessee or last surviving lessee of the box and who has died.

(2) Upon being furnished with a certified copy of the decedent's death certificate or other evidence of death satisfactory to the savings association, the savings association within which the box is located shall cause or permit the box to be opened and the contents of the box examined at the request of an individual who furnishes an affidavit stating:

Makes this section consistent with similar provisions in ORS 708A.430 and 723.466.

Conforms existing statute to change in sections 7 and 12 by which estate administrators rather than director of DSL will administer escheat estates.

Conforms existing statute to change in sections 7 and 12 by which estate administrators rather than director of DSL will administer escheat estates.

(a) That the individual believes the box may contain the will of the decedent, a trust instrument creating a trust of which the decedent was a trustor or a trustee at the time of the decedent's death, documents pertaining to the disposition of the remains of the decedent, documents pertaining to property of the estate of the decedent or property of the estate of the decedent; and

(b) That the individual is an interested person as defined in this section and wishes to open the box to conduct a will search or trust instrument search, obtain documents relating to the disposition of the decedent's remains or inventory the contents of the box.

(3) For the purpose of this section, "interested person" means any of the following:

(a) A person named as personal representative of the decedent in a purported will of the decedent;

(b) The surviving spouse or any heir of the decedent;

(c) A person who was serving as the court-appointed guardian or conservator of the decedent or as trustee for the decedent immediately prior to the decedent's death;

(d) A person named as successor trustee in a purported trust instrument creating a trust of which the decedent was a trustor or a trustee at the time of the decedent's death;

(e) A person designated by the decedent in a writing that is acceptable to the savings association and is filed with it prior to the decedent's death;

(f) A person who immediately prior to the death of the decedent had the right of access to the box as an agent of the decedent under a durable power of attorney; or

(g) If there are no heirs of the decedent, *[the Director]* **an estate administrator** of the Division of State Lands **appointed under section 7 of this 2003 Act.**

(4) If the box is opened for the purpose of conducting a will search, the savings association shall remove any document that appears to be a will, make a true and correct copy of it and deliver the original will to a person designated in the will to serve as the decedent's personal representative, or if no such person is designated or the savings association cannot, despite reasonable efforts, determine the whereabouts of such person, the savings association shall retain the will or deliver it to a court having jurisdiction of the estate of the decedent. A copy of the will shall be retained in the box. At the request of the interested person, a copy of the will, together with copies of any documents pertaining to the disposition of the remains of the decedent, may be given to the interested person.

(5) If the box is opened for the purpose of conducting a trust instrument search, the savings association shall remove any document that appears to be a trust instrument creating a trust of which the decedent was a trustor or trustee at the time of the decedent's death, make a true and correct copy of it and deliver the original trust instrument to a person designated in the trust in-

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strument to serve as the successor trustee on the death of the decedent. If no such person is designated or the savings association cannot, despite reasonable efforts, determine the whereabouts of such person, the savings association shall retain the trust instrument. A copy of the trust instrument shall be retained in the box. At the request of any interested person, a copy of the trust instrument may be given to the interested person.

(6) If the box is opened for the purpose of obtaining documents pertaining to the disposition of the decedent's remains, the savings association shall comply with subsection (4) of this section with respect to any will of the decedent found in the box, and may in its discretion either:

Conforms existing statute to change in sections 7 and 12 by which estate administrators rather than director of DSL will administer escheat estates.

(a) Make and retain in the box a copy of any documents pertaining to the disposition of the remains of the decedent and tender the original documents to the interested person; or

(b) Provide a copy of any documents pertaining to the disposition of the remains of the decedent to the interested person and retain the original documents in the box.

(7) If the box is opened for the purpose of making an inventory of its contents, the savings association shall comply with subsection (4) or (5) of this section with respect to any will or trust instrument of the decedent that is found in the box, and shall cause the inventory to be made. The inventory shall be attested to by a representative of the savings association and may be attested to by the interested person, if the interested person is present when the inventory is made. The savings association shall retain the original inventory in the box, and shall furnish a copy of the inventory to the interested person upon request.

(8) The savings association may presume the truth of any statement contained in the affidavit required to be furnished under this section, and when acting in reliance upon such an affidavit, the savings association is discharged as if it had dealt with the personal representative of the decedent. The savings association is not responsible for the adequacy of the description of any property included in an inventory of the contents of a box, or for the conversion of the property in connection with actions performed under this section, except for conversion by intentional acts of the savings association or its employees, directors, officers or agents. If the savings association is not satisfied that the requirements of this section have been satisfied, the savings association may decline to open the box.

(9) If the interested person does not furnish the key needed to open the box, and the savings association must incur expense in gaining entry to the box, the savings association may require that the interested person pay the expense of opening the box.

(10) Any examination of the contents of a box under this section shall be conducted in the presence of at least one employee of the savings association.

SECTION 24. ORS 723.466 is amended to read:

723.466. (1) On the death of a member of a credit union, if the deposit to the credit of the deceased member is \$25,000 or less, the credit union may, upon receipt of an affidavit from the person claiming the deposit as provided in subsection (2) of this section, pay the moneys on deposit:

(a) To the surviving spouse;

(b) If there is no surviving spouse, to the Department of Human Services, on demand of the Department of Human Services within 60 days from the death of the member when there is a preferred claim arising under ORS 411.795, 412.600, 413.200 or 414.105, or if there is no claim by the Department of Human Services, to the surviving children 18 years of age or older;

(c) If there is no surviving spouse, Department of Human Services claim or surviving children, to the member's surviving parents; or

(d) If there is no surviving spouse, Department of Human Services claim, surviving children or

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surviving parents, to the member's surviving brothers and sisters 18 years of age or older.

(2) The affidavit shall:

(a) State where and when the member died;

(b) State that the total deposits of the deceased member in all financial institutions in this state do not exceed \$25,000;

(c) Show the relationship of the affiant or affiants to the deceased

member; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased out of the deposit, to the full extent of the deposit if necessary, **in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.**

(3) In the event the decedent died intestate without known heirs, *[the Director]* **an estate administrator** of the Division of State Lands **appointed under section 7 of this 2003 Act** shall be the affiant **and shall receive the moneys as escheat property.**

(4) The credit union shall determine the relationship of the affiant to the deceased member. However, payment of such moneys in good faith to the affiant or affiants shall discharge and release the transferor from any liability or responsibility for the transfer in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the decedent.

(5) A probate proceeding is not necessary to establish the right of the surviving spouse, Department of Human Services claim, surviving children, surviving parents, surviving brothers and sisters or *[the Director]* **an estate administrator** of the Division of State Lands to withdraw the deposits upon the filing of the affidavit. If a personal representative is appointed in an estate where a withdrawal of deposits was made under this section, the person withdrawing the deposits shall account for them to the personal representative.

(6) When a credit union transfers moneys under subsection (1) of this section, the transferor may require the transferee to furnish the transferor with a written indemnity agreement, indemnifying the transferor against loss for moneys paid to the extent of the amount of the deposit.

(7) This section is subject to the rights of other parties to the account under ORS 723.474 to 723.498.

SECTION 25. ORS 723.844 is amended to read:

723.844. (1) This section applies to the safe deposit box of any person who is the sole lessee or last surviving lessee of the box and who has died.

(2) Upon being furnished with a certified copy of the decedent's death certificate or other evidence of death satisfactory to the credit union, the credit union within which the box is located shall cause or permit the box to be opened and the contents of the box examined at the request of an individual who furnishes an affidavit stating:

(a) That the individual believes the box may contain the will of the decedent, a trust instrument creating a trust of which the decedent was a trustor or a trustee at the time of the decedent's death, documents pertaining to the disposition of the remains of the decedent, documents pertaining to property of the estate of the decedent or property of the estate of the decedent; and

(b) That the individual is an interested person as defined in this section and wishes to open the box to conduct a will search or trust instrument search, obtain documents relating to the disposition of the decedent's remains or inventory the contents of the box.

(3) For the purpose of this section, "interested person" means any of the following:

(a) A person named as personal representative of the decedent in a purported will of the

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decedent;

(b) The surviving spouse or any heir of the decedent;

(c) A person who was serving as the court-appointed guardian or conservator of the decedent or as trustee for the decedent immediately

Makes this section consistent with similar provisions in ORS 708A.430 and 722.262.

Conforms existing statute to change in sections 7 and 12 by which estate administrators rather than director of DSL will administer escheat estates.

Conforms existing statute to change in sections 7 and 12 by which estate administrators rather than director of DSL will administer escheat estates.

prior to the decedent's death;

(d) A person named as successor trustee in a purported trust instrument creating a trust of which the decedent was a trustor or a trustee at the time of the decedent's death;

(e) A person designated by the decedent in a writing that is acceptable to the credit union and is filed with it prior to the decedent's death;

(f) A person who immediately prior to the death of the decedent had the right of access to the box as an agent of the decedent under a durable power of attorney; or

(g) If there are no heirs of the decedent, *[the Director]* **an estate administrator** of the Division of State Lands **appointed under section 7 of this 2003 Act.**

(4) If the box is opened for the purpose of conducting a will search, the credit union shall remove any document that appears to be a will, make a true and correct copy of it and deliver the original will to a person designated in the will to serve as the decedent's personal representative, or if no such person is designated or the credit union cannot, despite reasonable efforts, determine the whereabouts of such person, the credit union shall retain the will or deliver it to a court having jurisdiction of the estate of the decedent. A copy of the will shall be retained in the box. At the request of the interested person, a copy of the will, together with copies of any documents pertaining to the disposition of the remains of the decedent, may be given to the interested person.

(5) If the box is opened for the purpose of conducting a trust instrument search, the credit union shall remove any document that appears to be a trust instrument creating a trust of which the decedent was a trustor or trustee at the time of the decedent's death, make a true and correct copy of it and deliver the original trust instrument to a person designated in the trust instrument to serve as the successor trustee on the death of the decedent. If no such person is designated or the credit union cannot, despite reasonable efforts, determine the whereabouts of such person, the credit union shall retain the trust instrument. A copy of the trust instrument shall be retained in the box. At the request of any interested person, a copy of the trust instrument may be given to the interested person.

(6) If the box is opened for the purpose of obtaining documents pertaining to the disposition of the decedent's remains, the credit union shall comply with subsection (4) of this section with respect to any will of the decedent found in the box, and may in its discretion either:

(a) Make and retain in the box a copy of any documents pertaining to the disposition of the remains of the decedent and tender the original documents to the interested person; or

(b) Provide a copy of any documents pertaining to the disposition of the remains of the decedent to the interested person and retain the original documents in the box.

(7) If the box is opened for the purpose of making an inventory of its contents, the credit union shall comply with subsection (4) or (5) of this section with respect to any will or trust instrument of the decedent that is found in the box, and shall cause the inventory to be made. The inventory shall be attested to by a representative of the credit union and may be attested to by the interested person, if the interested person is present when the inventory is made. The credit union shall retain the original inventory in the box, and shall furnish a copy of the inventory to the interested person upon request.

(8) The credit union may presume the truth of any statement contained in the affidavit required to be furnished under this section, and when acting in reliance upon such an affidavit, the credit

Conforms existing statute to change in sections 7 and 12 by which estate administrators rather than director of DSL will administer escheat estates.

union is discharged as if it had dealt with the personal representative of the decedent. The credit union is not responsible for the adequacy of the description of any property included in an inventory of the contents of a box, or for the conversion of the property in connection with actions performed under this section, except for conversion by intentional acts of the credit union or its employees, directors, officers or agents. If the credit union is not satisfied that the requirements of this section have been satisfied, the credit union may decline to open the box.

(9) If the interested person does not furnish the key needed to open the box, and the credit union must incur expense in gaining entry to the box, the credit union may require that the interested person pay the expense of opening the box.

(10) Any examination of the contents of a box under this section shall be conducted in the presence of at least one employee of the credit union.

SECTION 26. ORS 113.145 is amended to read:

113.145. (1) Upon appointment a personal representative shall deliver or mail to the devisees, heirs and the persons described in ORS 113.035 [(7)] (8) who were required to be named in the petition for appointment of a personal representative, at the addresses therein shown, information that shall include:

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

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

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

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

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

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

(g) If information under this section is required to be delivered or mailed to a person described in ORS 113.035 [(7)] (8), a statement that the rights of the person in the estate may be barred unless the person proceeds as provided in ORS 113.075 within four months of the delivery or mailing of the information.

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

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

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

(5) If before the filing of the final account the personal representative has actual knowledge that the petition did not include the name and address of any person described in ORS 113.035 (4), (5), [(6) or (7)] (7) or (8), the personal representative shall:

Conforms to change made by Section 10.

Conforms to change made by Section 10.

(a) Make reasonable efforts under the circumstances to ascertain each of those names and addresses;

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(b) Promptly deliver or mail information as described in subsection (1) of this section to each of those persons located after the filing of the petition and before the filing of the final account; and

(c) File in the estate proceeding, on or before filing the final account under ORS 116.083, proof by affidavit of compliance with this subsection or a waiver of notice as provided under ORS 111.225.

(6) Within 30 days after the appointment of a personal representative, the personal representative must mail or deliver the information specified in subsection (1) of this section and a copy of the death certificate of the decedent to the Estate Administration Unit within the Department of Human Services.

SECTION 27 (1) Section 4 of this 2003 Act and the amendments to ORS 112.055 by section 2 of this 2003 Act apply to the estates of all decedents, whether the death occurs before, on or after the effective date of this 2003 Act.

Applies new procedural provisions regarding authority of DSL in partial escheat estates and presumptions in determining escheat share to all probates, including prior deaths.

(2) The amendments to ORS 113.035 by section 10 of this 2003 Act apply only to petitions filed under ORS 113.035 on or after the effective date of this 2003 Act.

Applies changes in content of probate petitions to petitions filed after effective date.

(3) ORS 113.045 (1), as created by the amendments to ORS 113.045 by section 11 of this 2003 Act, applies only to personal representatives appointed on or after the effective date of this 2003 Act. ORS 113.045 (2), as created by the amendments to ORS 113.045 by section 11 of this 2003 Act, applies to all personal representatives, whether appointed before, on or after the effective date of this 2003 Act.

Applies notice obligation (re missing heirs or devisees) on newly appointed personal representative to those appointed after effective date. Applies ongoing notice requirement to previously appointed personal representatives.

(4) Before January 1, 2005, the amendments to ORS 116.253 by section 18 of this 2003 Act apply only to the estates of decedents who die on or after the effective date of this 2003 Act. On and after January 1, 2005, the amendments to ORS 116.253 by section 18 of this 2003 Act apply to the estates of all decedents, whether the death occurs before, on or after the effective date of this 2003 Act.

Applies new time limit on recovery of escheat property by administrative proceedings only on estates of decedents dying on or after effective date until January 1, 2005, allowing reasonable time for existing claimants to file proceedings to comply with due process requirements. Thereafter the new limits apply to all estates.