

1989 OREGON PROBATE PRACTICE LEGISLATION: CLAIMS AND SMALL ESTATES

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I. INTRODUCTION

The Estate Planning and Administration Section of the Oregon State Bar submitted two bills to the 1989 Oregon Legislative Assembly that substantially revised Oregon's statutes governing probate claims¹ and small estates.² Each bill was accompanied to the legislative committees by a detailed commentary prepared by the working group responsible for the bills. That commentary constitutes the bulk of the legislative history. Both bills were enacted substantially intact. The purpose of this article is to make the commentary generally available to practicing attorneys and others interested in this legislation without the need to examine the legislative records. The commentary has been edited extensively for this publication, but its original content has been preserved.

II. PROBATE CLAIMS LAW REVISION

In *Tulsa Professional Collection Services v. Pope*,³ the United States Supreme Court declared unconstitutional a probate "non-claim statute" similar to Oregon's statute. These statutes provided for the discharge of claims of creditors of a decedent on the basis of published notice without actual notice to the creditor. The court ruled that actual notice must be given to "known or reasonable ascertainable creditors" before their claims can be discharged. The bulk of Senate Bill 307⁴ was directed toward conforming Oregon law to the requirements of *Tulsa*. However, in the course of mak-

* Member of the Oregon State Bar and Chairman of the Estate Planning Administration Section task force that produced both the bills and the commentary discussed in this Article.

1. S.B. 307, enacted as 1989 Oregon Laws, ch. 229. Unless otherwise indicated, all references to ORS numbers are to the 1989 codification.

2. S.B. 306, enacted as 1989 Oregon Laws ch. 228. Unless otherwise indicated, all references to ORS numbers are to the 1989 codification.

3. 485 U.S. 479, 108 S. Ct. 1340, 99 L.Ed. 2d 565 (1988).

4. The bill included an emergency clause making it effective when signed by the governor on May 30, 1989.

ing the amendments required by *Tulsa*, various other problems in the probate claims statutes were corrected as well.

Section 2 establishes a new procedure for ascertaining and notifying those creditors entitled to notice. Subsection (1)⁵ sets a three-month search period for identifying creditors unless a longer time is allowed by the court. Note that the duty of the personal representative is to take reasonable actions to identify claims. The personal representative is not accountable for failure to identify claimants who might have been ascertainable by other actions unless the approach used by the personal representative was not reasonable in all the circumstances known to the personal representative at the time.

Subsection (2)⁶ of section 2 requires delivery of notice to certain creditors, in person or by mail, not later than thirty days after the end of the search period. No notice is required for claims already presented, accepted or paid in full or for "conjectural" claims. The term "conjectural" was used, but not defined, in *Tulsa*;⁷ it appears to cover such matters as professional malprac-

5. Codified at ORS 115.003(1):

During the three months following appointment, unless a longer time is allowed by the court, the personal representative shall make reasonably diligent efforts to investigate the financial records and affairs of the decedent and shall take such further actions as may be reasonably necessary to ascertain the identity and address of each person who has or asserts a claim against the estate. The personal representative shall request and the court shall allow a longer time for ascertaining claims if the personal representative cannot complete reasonably diligent efforts to identify persons with claims during the time required by this section or by a previous order of the court.

6. Codified at ORS 115.003(2):

Not later than 30 days after expiration of the period, including any extensions, described in subsection (1) of this section, the personal representative shall cause to be delivered or mailed to each person known by the personal representative during such period to have or assert a claim against the estate a notice containing the information required in subsection (3) of this section, except that it shall not be necessary to give notice on account of a claim that has already been presented, accepted or paid in full or on account of a claim that is merely conjectural. The personal representative may also cause such a notice to be delivered or mailed to any person discovered by the personal representative after expiration of the period described in subsection (1) of this section to have or assert a claim against the estate.

7. 108 S.Ct. at 1347. The Court referred to *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 317, (1950) as the source of the language. There the Court, in a discussion of the adequacy of published notice to the beneficiaries of a trust, stated:

Nor do we consider it unreasonable for the state to dispense with more certain notice to those beneficiaries whose interests are either conjectural or future or, although they could be discovered upon investigation, do not in due course of

tice, product liability and other tort claims, at least if no actual injury had been suffered during or prior to the period for identifying claimants. Notice to creditors discovered after the initial notice period is permitted but not required. In case of doubt as to whether these creditors should have been given notice, this will allow the personal representative to give notice, start the running of the thirty-day time period for filing claims, and avoid later litigation over personal liability for failure to give notice.

Subsection (3)⁸ of section 2 prescribes the contents of notice to creditors using language drawn from ORS 113.155 relating to published notice. Note that the claim "may" be barred after thirty days, rather than "shall" be barred. This is because no claim can be barred until four months after publication.

Subsection (4)⁹ of section 2 requires an affidavit of notice similar to the affidavit of notice to heirs and devisees under ORS 113.145. The attached "form of notice" need not include the date on each individual notice, but the date must be listed on the affidavit. This avoids the need to attach numerous copies of the same form mailed on different dates.

business come to knowledge of the common trustee. Whatever searches might be required in another situation under ordinary standards of diligence, in view of the character of the proceedings and the nature of the interests here involved we think them unnecessary. We recognize the practical difficulties and costs that would be attendant on frequent investigations into the status of great numbers of beneficiaries, many of whose interests in the common fund are so remote as to be ephemeral; and we have no doubt that such impracticable and extended searches are not required in the name of due process.

8. Codified at ORS 115.003(3):

The notice shall include:

- (a) The title of the court in which the estate proceeding is pending;
- (b) The name of the decedent;
- (c) The name of the personal representative and the address at which claims are to be presented;
- (d) A statement that claims against the estate not presented to the personal representative within 30 days of the date of the notice may be barred; and
- (e) The date of the notice, which shall be the date on which it is delivered or mailed.

9. Codified at ORS 115.003(4):

Not later than 60 days after expiration of the period, including any extensions, described in subsection (1) of this section, the personal representative shall cause to be filed in the estate proceeding proof by an affidavit of compliance with subsections (1) and (2) of this section. The affidavit shall include a copy of the form of any notice delivered or mailed, the date on which each notice was delivered or mailed and the name and address of the person to whom each notice was delivered or mailed.

Subsection (5)¹⁰ of section 2 uses language derived from ORS 113.145(3) to define and limit the consequences of failure to give notice to creditors. The meaning of this language is clarified in section 3.

Section 3¹¹ defines certain consequences of failure to give no-

10. Codified at ORS 115.003(5):

The failure of the personal representative to make reasonably diligent efforts to ascertain claims as required by subsection (1) of this section or to cause a notice to be delivered or mailed as required by subsection (2) of 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.

11. Codified at ORS 115.004:

If, as a result of breach of a duty imposed by ORS 115.003, a claim or any part of a claim is not paid from the estate during administration, the amount of the claim may be recovered as follows:

(1) The claimant shall have a cause of action against the personal representative and the surety for the personal representative for the amount the claimant would have been paid from the estate had all claims not barred from payment been presented within the time required by ORS 115.005(2) and allowed by the personal representatives, provided that any payment on account of a judgment entered under subsection (2) of this section shall also satisfy a judgment entered under this subsection in the amount of the payment.

(2) The claimant shall have a cause of action against each interested person who received a distribution or other payment from the estate for the amount by which the payment received would have been reduced by payment of the claim from the estate had all claims not barred from payment been presented within the time required by ORS 115.005(2) and allowed by the personal representative, provided that any payment on account of a judgment entered under subsection (1) of this section shall also satisfy a pro rata portion of each judgment entered under this subsection.

(3) Each interested person who received a distribution or other payment from the estate shall indemnify the personal representative and the surety for the personal representative against liability on the claim in the amount by which the payment received would have been reduced by payment of the claim from the estate had all claims not barred from payment been presented within the time required by ORS 115.005(2) and allowed by the personal representative.

(4) Each interested person who received a distribution or other payment from the estate shall indemnify the personal representative and the surety for the personal representative against the reasonable costs, including attorney fees, of defense of the action in the same proportion and to the same extent as such distributee would be required to indemnify against the claim under subsection (3) of this section:

(a) If the personal representative prevails against the claimant, in such proportion of the full amount of such costs; or

(b) If the claimant prevails against the personal representative, in such proportion of the amount of any such costs which could have been reasonably incurred by the estate upon disallowance of the claim had it been presented within the time required by ORS 115.005(2).

(5) Except as provided in subsection (6) of this section, an action under this section against a personal representative, the surety for a personal representative

tice to a creditor entitled to notice. It provides an exclusive remedy in terms of recovery of money but does not foreclose other remedies such as removal of the personal representative. The general pattern is that both the personal representative and interested persons are liable to the claimant to the extent that the claim would have been payable from the estate, but that persons who benefit from failure to pay the claim are required to indemnify the personal representative and are ultimately liable. The reference to "interested persons" (defined in ORS 111.005(19) to include both distributees and creditors) is intended to bring in creditors of an insolvent estate and place ultimate liability on them to the extent that they received excess payments. An early draft of the bill would have required a personal representative who knowingly omitted to give notice to a creditor to indemnify a distributee who is later required to pay the creditor if the distributee received assets without knowledge of the failure to give notice and acted in reliance on the distribution. That proposal was not approved by the Oregon State Bar committee that drafted the bill and was not included in the bill submitted to the legislature.

Subsection (1)¹² of section 3 makes the personal representative liable to an omitted creditor, but only to the extent that the creditor would have recovered on the claim from the estate if all creditors not barred had filed claims. This limitation can be significant in insolvent estates, especially where more than one creditor does not receive notice. *Example:* A \$100 estate with four ascertainable creditors, each of whom has a \$100 claim. One is paid during administration, exhausting the estate, but three do not receive notice. Each of the three who did not receive notice could recover \$25 from the personal representative. This limit would apply to each of the three even if only one of them sues, the objective being to avoid

or an interested person shall be commenced within two years after the death of the decedent or within the statute of limitations applicable to the claim, whichever is earlier.

(6) An action for indemnity under subsection (3) or (4) of this section shall be commenced within the time required by subsection (5) of this section, unless:

(a) Notice of the action giving rise to the claim for indemnity is given to each party from whom indemnity is sought personally or by mail to the party's last-known address within 180 days after the complaint in the action is served on the party seeking indemnity; and

(b) The action is commenced within one year after a judgment in the action giving rise to the claim for indemnity becomes final and not subject to further appeal.

12. See *supra* note 11.

requiring the personal representative to pay more than the creditor would have recovered if the estate were properly administered, as well as to avoid multiple recoveries exceeding the aggregate the creditors were entitled to receive. It would be up to the personal representative to assert that there were other creditors who did not receive notice. The provisos at the end of this and the following subsection prevent a duplicate recovery from the personal representative and the interested persons.

Subsection (2)¹³ of section 3 makes interested persons, including distributees and creditors, liable to omitted creditors to the extent that the amount the interested persons received from the estate was increased by the omission. An interested person cannot be required to pay more than the amount received and has the benefit of the same limit as discussed above with respect to the personal representative. An interested person who did not benefit from the omission is not subject to liability, even if the claim cannot be recovered from the distributee who did benefit. For example, if omission of a claim only increased the residuary portion of the estate, a specific devisee could not be required to make any payment on account of the claim.

Subsection (3)¹⁴ of section 3 requires interested persons who benefit from omission of a creditor to indemnify the personal representative from liability to the extent of the assets received.

Subsection (4)¹⁵ of section 3 requires interested persons to indemnify the personal representative against the cost of defending the claim to the extent that their payments from the estate would have been reduced if those costs had been paid as administration expenses during probate. However, the personal representative is required to pay the cost of unsuccessfully attempting to prove that the claim was not ascertainable.

Subsection (5)¹⁶ of section 3 requires that actions against the personal representative or interested persons for failure of the personal representative to notify a claimant be filed within two years from the date of death or any earlier statute of limitations. This is the same ultimate time limit as that allowed under revised ORS 115.005(4) for filing claims. It was felt that the old limit of one

13. *See id.*

14. *See id.*

15. *See id.*

16. *See id.*

year from closing of the probate found in ORS 116.213 might not survive a challenge under *Tulsa*, which expressly upheld general statutes of limitation running from the date of death. Because this cause of action is created by this statute, it would appear that it is not tolled as to minors and others under a disability under ORS 12.160.¹⁷

Subsection (6)¹⁸ of section 3 allows the personal representative an additional year from final resolution of an action against the personal representative alone to bring a claim for indemnity against the interested persons, provided they were given notice of the action. This avoids a situation in which the scheme established in section 3 could be defeated by a case filed on the last day against a personal representative alone and gives the personal representative time to try to resolve the claim without having to bring in the interested persons as parties. The Senate Judiciary Committee amended this provision to make the one-year limitation run from completion of the action rather than from service of the complaint. The committee also added a provision requiring notice of the action to interested persons within 180 days of service of the complaint if the personal representative is to have the benefit of the additional time limit.

Section 4 amends ORS 115.005 to re-define the period for filing claims. ORS 115.005(1) is unchanged.

New ORS 115.005(2)¹⁹ requires that claims be filed within the later of (1) thirty days after notice — the same time as is allowed to answer a complaint — or (2) four months after publication of notice. Note that receipt of the notice is not required. The time limit runs from the date reasonable effort was made to give the notice, even if it is not received.

17. See *Kearney v. Montgomery Ward & Co.*, 55 Or. App. 641, 639 P.2d 682 (1982), for a recent discussion of the principles involved in tolling the statute of limitations.

18. See *supra* note 11.

19. ORS 115.005(2) provides:

Except as provided in subsection (3) of this section, a claim is barred from payment from the estate if not presented before the later of:

(a) Four months after the date of first publication of notice to interested persons; or

(b) If the claim was one with respect to which the personal representative was required to deliver or mail a notice under ORS 115.003(2), 30 days after a notice meeting the requirements of ORS 115.003(3) is delivered or mailed to the last-known address of the person asserting the claim.

New ORS 115.005(3)²⁰ requires payment of late claims filed within the ultimate two-year statute by persons who did not receive notice, including those who did not receive the notice mailed to them. This provision avoids the need to litigate whether or not persons with late claims were "reasonably ascertainable" under *Tulsa*. Otherwise, the two-tier claim system is eliminated by the deletion of former ORS 115.005(2) and (3).

Revised ORS 115.005(4)²¹ replaces the existing three years from death limit on claims with a two-year limit and expands the limit to cases where probate is filed. Subsection (5) of section 3²² imposes a similar statute of limitations on the liability of the personal representative and interested persons. Together these two sections leave a creditor no remedy after two years from the date of the debtor's death. Because this claim procedure is created by this statute, it would appear that it is not tolled as to minors and others under a disability under ORS 12.160.²³ The new "from the estate" language makes it clear that a claimant who did not receive notice and who cannot be paid from the estate need not file a claim before pursuing the personal representative (*i.e.*, a claim under Section 3 after the estate is closed).

New ORS 115.005(5)²⁴ replaces former ORS 115.015, which excluded certain causes of action from the effect of Oregon's pro-

20. ORS 115.005(3) provides:

A claim against the estate presented subsequent to the day after which claims are barred under subsection (2) of this section shall be paid from the estate, but only to the extent that payment can be made without prejudice to payment of expenses having priority over claims under ORS 115.125 and payment of the previously presented claims of other persons, if it meets each of the following requirements:

(a) It is presented on or before the day after which claims are barred under subsection (4) of this section and also before the day on which the personal representative files the final account;

(b) It is presented by a person who did not receive a notice under ORS 115.003 mailed or delivered more than 30 days prior to the date on which the claim is presented and who is not an assignee of a person who received such notice; and

(c) It would be allowable but for the time at which it is presented.

21. ORS 115.005(4) provides:

Claims not presented within two years after the death of the decedent or within the applicable statute of limitations, whichever is earlier, are barred from payment from the estate.

22. *See supra* note 11.

23. *See Kearney v. Montgomery Ward & Co.*, 55 Or. App. 641, 639 P.2d 682 (1982), for a recent discussion of the principles involved in tolling the statute of limitations.

24. ORS 115.005(5) provides:

bate non-claim statutes. Paragraph (a) expands the exclusion to include suits to quiet title and for reformation. The exclusion also is expanded to cover the limit under ORS 115.005(4), as well as those under ORS 115.005(2) and (3). Those provisions reflect the fact that disputes over ownership of property are not treated as claims but handled under ORS 111.085(4).

Section 5 makes various changes to ORS 115.065²⁵ not related to the *Tulsa* problem. Substantive changes include the amendment of ORS 115.065(5)(a) to incorporate language from the Uniform Probate Code, which recognizes that deficiency judgments are not allowed for certain kinds of security interests — e.g., purchase money mortgages and trust deeds on non-commercial property foreclosed by advertisement and sale. Similar principles would govern any court order under ORS 115.065(5)(b). Former ORS 115.065(6) is deleted because it was inconsistent with ORS 115.065(1). New ORS 115.065(6) alters former ORS 115.065(7) to make it clear that a secured party taking a deed in lieu of foreclo-

This section does not affect or prevent:

(a) Any proceeding to enforce a mortgage, pledge or other lien upon property of the estate, or to quiet title or reform any instrument with respect to title to property; or

(b) To the limits of the insurance protection, any proceeding to establish liability of the decedent or the personal representative for which the decedent is protected by liability insurance.

25. ORS 115.065, as amended, now reads:

(1) A claim on a debt due for which the creditor holds security may be presented as a claim on an unsecured debt due, or the creditor may elect to rely entirely on the security without presentation of the claim.

(2) If the claim is presented, it shall describe the security. If the security is an encumbrance that is recorded, it is sufficient to describe the encumbrance by reference to the book, page, date and place of recording.

(3) If the claim is presented and allowed, allowance shall be in the amount of the debt remaining unpaid on the date of allowance.

(4) If the creditor surrenders the security, payment shall be on the basis of the amount allowed.

(5) If the creditor does not surrender the security, payment shall be on the basis of:

(a) If the creditor exhausts the security before receiving payment, unless precluded by other law, the amount allowed, less the amount realized on exhausting the security; or

(b) If the creditor does not exhaust the security before receiving payment or does not have the right to exhaust the security, the amount allowed, less the value of the security determined by agreement or as the court may order.

(6) The personal representative may convey the secured property to the creditor in consideration of the satisfaction or partial satisfaction of the claim.

sure need not surrender his priority as compared to other persons claiming an interest in the property.

Section 6 amends ORS 115.115²⁶ to change the cutoff date for determining the allocation of assets of an insolvent estate among creditors from four months after publication to the date on which all known claims are barred. This effectively incorporates the new limit in ORS 115.005. The priority for payment of claims filed under ORS 115.005(3), the remaining remnant of the two-tier system, is changed from the order prescribed in ORS 115.125 to chronological.

Section 7 amends ORS 115.145²⁷ by adding ORS 115.145(3) to clarify the procedures for limiting litigated claims against insolvent estates to their proper share of the estate assets. Because other sections of the bill subject all judgments against the decedent or the estate to probate procedures for allocating insolvent estates (found in ORS 115.185), there is no need for the proceeding in which the liability is established to become involved in the allocation process. This avoids the possibility of conflicting judgments against the same assets.

26. ORS 115.115, as amended, now reads:

After the day on which all known claims are barred under ORS 115.005(2), the personal representative, after making provision for support of spouse and children ordered by the court, for expenses of administration and for claims already presented which have not been allowed or allowance of which has been appealed, shall proceed to pay the claims allowed against the estate in the order of priority prescribed by ORS 115.125. After payment of those claims, claims presented and allowed under ORS 115.005(3) shall be paid in the order in which they are received and to the extent of the remaining assets of the estate.

27. ORS 115.145, as amended, now reads:

(1) If the personal representative disallows a claim in whole or in part, the claimant, within 30 days after the date of mailing or delivery of the notice of disallowance, may either:

(a) File in the estate proceeding a request for summary determination of the claim by the probate court, with proof of service of a copy of the request upon the personal representative or the attorney of the personal representative; or

(b) Commence a separate action against the personal representative on the claim in any court of competent jurisdiction. The action shall proceed and be tried as any other action.

(2) If the claimant fails to either request a summary determination or commence a separate action as provided in subsection (1) of this section, the claim, to the extent disallowed by the personal representative, is barred.

(3) In a proceeding for summary determination of a claim or in a separate action on a claim the claim shall be allowed or judgment entered on the claim in the full amount of the liability, if any, of the decedent to the claimant. However, the claim shall be paid only to the extent of the assets of the estate allocable to the payment of the claim pursuant to ORS 115.115 and 115.125.

Section 8 amends ORS 115.325,²⁸ making it clear that it is not necessary to follow the claim procedures (i.e., after the estate is closed) to pursue the personal representative personally for failure to give a required notice to a creditor. The words "on account of a claim" are added to make it clear that the procedures applicable to determining claims do not apply to administration expenses, which should be handled by action against the person who incurred the expense and/or in connection with approval of the final account under ORS 116.183. The last sentence²⁹ is deleted as an unnecessary remnant of the two-tier claim system, with some of the text moved to ORS 115.115 by section 6.

Section 9 amends ORS 116.213³⁰ by adding a reference to the new time limit in section 3 that allows creditors to bring an action for failure of the personal representative to give notice of the probate proceedings.

Section 11³¹ treats claims reduced to judgment prior to death

28. ORS 115.325, as amended, now reads:

Except as provided in ORS 115.004 or in ORS 115.065, no action against a personal representative on account of a claim shall be commenced until the claim of the plaintiff has been presented to and disallowed by the personal representative.

29. The deleted sentence read:

If the claim is presented after the expiration of four months after the date of the first publication of notice to interested persons, the personal representative, in an action therefor, is liable only to the extent of the assets in the hands of the personal representative at the time the summons is served upon the personal representative and allocable to the payment of the claim pursuant to ORS 115.115 and 115.125.

30. ORS 116.213, as amended, now reads:

Upon the filing of receipts or other evidence satisfactory to the court that distribution has been made as ordered in the final decree, the court shall enter an order of discharge. Except as provided in ORS 115.004, the discharge so entered operates as a release of the personal representative from further duties and as a bar to any action against the personal representative and the surety of the personal representative. The court may, in its discretion and upon such terms as may be just, within one year after entry of the order of discharge, permit an action to be brought against the personal representative and the surety of the personal representative if the order of discharge was taken through fraud or misrepresentation of the personal representative or the surety of the personal representative or through the mistake, inadvertence, surprise or excusable neglect of the claimant.

31. Codified at ORS 115.070:

If a judgment was entered on a claim prior to the death of the decedent, the claim shall be presented in the same manner as if no judgment had been entered, and a copy of the judgment shall be attached to the claim. Such a claim may be disallowed only if the judgment was void or voidable, or if the judgment could have been set aside on the date of the decedent's death, or if the claim is not

exactly as other claims except to the extent that the judgment has become a lien and indisputable. This is a new provision not required by *Tulsa* but intended to eliminate confusion in this area.

Sections 13³² and 14³³ and the repealer of ORS 23.100 in section 15 amend ORS Chapter 23 to delete provisions that suggest execution can issue against estate assets for a sum greater than that allocable to the creditor under ORS 115.125 and to affirmatively prohibit execution against an estate. Execution as described in these sections could seriously disrupt administration and drain assets required for higher priority expenses. A judgment creditor now will be required to follow the procedures set forth in ORS 115.185 to collect the judgment if the personal representative fails to pay it. These changes are particularly significant in insolvent estates and are intended to avoid a "race to the courthouse" system of resolving who gets paid. In these cases, probate should function in much the way bankruptcy functions to fairly allocate the assets among creditors.

Section 16³⁴ applies the procedural changes in the law to probate proceedings commenced on or after May 30, 1989, the date it

presented within the time required by ORS 115.005. If the judgment was a lien against the property of the estate on the date of the decedent's death it shall be treated as a claim on a debt due for which the creditor holds security. In all other respects a claim which has been reduced to judgment shall have the same priority under ORS 115.125 as it would have had were it not reduced to judgment.

32. Codified at ORS 23.030 to 23.070, which provides:

Execution shall not issue against the property of a deceased party, but such judgment shall be paid as a claim against the estate of the deceased party in the manner prescribed by ORS chapter 115 or ORS 114.505 to 114.555.

33. This section deletes former ORS 23.050(2). ORS 23.050 previously read in relevant part:

ORS 23.050 The writ of execution shall be issued by the clerk and directed to the sheriff. It shall contain the name of the court, the names of the parties to the action, and the title thereof; it shall substantially describe the judgment, and if it is for money, shall state the amount actually due thereon, and shall require the sheriff substantially as follows:

(1) * * *

(2) If it is issued after the death of the judgment debtor, and is against real or personal property, it shall require the sheriff to satisfy the judgment, with interest, out of any property in the hands of the debtor's personal representatives, heirs, devisees, legatees, tenants of real property, or trustees of such.

(3) * * *

34. Codified as a note to ORS 23.105, which provides:

This Act (ch. 229, Oregon Laws 1989) applies to estate proceedings initiated by the filing of a petition for appointment of a personal representative on or after the effective date of this Act [May 30, 1989].

was signed by the governor. This establishes a clear dividing line as to which estates are required to file the affidavit contemplated by section 2 prior to being closed.

Section 17³⁵ applies the new two-years-from-death time limit to pre-existing claims after a grace period ending July 1, 1990. It was felt that due process requires this grace period before this new legislation can defeat existing claims under *Tulsa*, but that those claims should be cut off at some point.

III. SMALL ESTATE LAW REVISION

Senate Bill 306 began as part of the project to conform probate claims law to the notice requirements imposed by *Tulsa*. However, there were significant problems with the Small Estates law separate from those created by *Tulsa*. Even some of the definitions made no sense in the context in which defined terms were used. The task force working on the project decided that a general revision, based on the existing statute, was the best course of action.

Section 1 revises definitions in ORS 114.505 with some significant substantive effects. ORS 114.505(1)³⁶ is a revised definition of "claiming successors," the term used to establish eligibility to file a small estate affidavit. ORS 114.505(1)(a) now allows an heir to file an affidavit only if the decedent died intestate. Prior law included in the definition an heir who took nothing from the estate because of a will. Revised language relating to the Director of the Division of State Lands allows the Director to file if the decedent died partially or wholly intestate without heirs.

ORS 114.505(1)(c) is a significant addition to the definition of "claiming successors" that allows a creditor to file a small estate

35. Codified as a note to ORS 115.004, which provides:

Subsections (5) and (6) of section 3 of this Act [ORS 115.004] and the amendments to ORS 115.005 by section 4 of this Act shall first become applicable July 1, 1990, and shall apply to all estate proceedings initiated by the filing of a petition pursuant to ORS 113.035 whether the petition is filed on, before or after the effective date of this Act [May 30, 1989].

36. ORS 114.505(1) provides:

"Claiming successors" means:

(a) If the decedent died intestate, the heir or heirs of the decedent, or if there is no heir, the Director of the Division of State Lands;

(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.

affidavit, just as present law allows a creditor to file a full probate. This change is one of several intended to extend the use of small estate affidavits to insolvent estates. A common fact situation in which these changes would be useful is on the death of a recipient of Medicaid whose entire estate is payable to the Adult and Family Services Division. Under prior law there was no practical alternative to a full probate of insolvent small estates because there was no other way to obtain funds from the estate for funeral expenses and administration expenses. In the Senate this provision was amended at the request of the Division of State Lands to impose an additional 30-day waiting period before creditors can file a small estate affidavit. This gives heirs, devisees and the Division a clear first opportunity to file and is consistent with the provisions of the probate code giving family members a higher priority for appointment as personal representative.

Because "creditor" is not a defined term in the probate code, it is defined in ORS 114.505(1)(c) by reference to ORS 114.545(1)(c), which includes both persons entitled to payment for administration expenses and persons with claims.

ORS 114.505(2)³⁷ is amended to simplify the language and follow the present definition of "administration," which under ORS 111.005(3) includes all probate proceedings.

Section 2 amends ORS 114.515,³⁸ which authorizes the filing of an affidavit in lieu of full probate. Revised ORS 114.515(1) simplifies the venue language by referring to the general probate venue

37. ORS 114.505(2) provides: "'Estate' means decedent's property subject to administration in Oregon."

38. ORS 114.515, as amended, now reads:

(1) If the estate consists of personal property having a fair market value of \$15,000 or less, or real property having a fair market value of \$35,000 or less, or a combination of personal property having a fair market value of \$15,000 or less and real property having a fair market value of \$35,000 or less, not less than 30 days after the death of the decedent, one or more of the claiming successors may file an affidavit with the clerk of the probate court in any county where there is venue for a proceeding seeking the appointment of a personal representative for the estate. The affidavit shall contain the information required in ORS 114.525 and shall be made a part of the probate records. In determining fair market value under this section, the fair market value of the entire interest in the property included in the estate shall be used without reduction for liens or other debts.

(2) The clerk of the probate court shall charge and collect a fee of \$15 for the filing of the affidavit.

(3) An affidavit filed under this section may be amended by a new affidavit containing the information required in ORS 114.525 filed by one or more of the claiming successors within four months after the filing of the prior affidavit.

provisions rather than summarizing them. This has the effect of including any future changes.

A new definition of "fair market value" in ORS 114.515(1) is intended to make it clear that the small estate procedure is not available if the decedent's equity in property is within the limit, but the total value is not. Although the law appears clear in this regard already, some practitioners have used affidavits based on equity rather than full value.

The Oregon State Bar committee that drafted the bill considered combining the small estate limits — \$15,000 in personal property and \$35,000 in real property — into a single \$50,000 limit.³⁹ The small estate law was first enacted in 1973 with separate limits of \$5,000 and \$10,000. These were combined in 1977 to establish a single limit of \$10,000; but in 1979, the law was amended again to establish separate limits of \$10,000 and \$20,000. It appears that the Legislative Assembly has already faced this issue and decided to keep the separate limits. A good reason for this is that this expedited procedure would be inappropriate for highly liquid assets, such as bank accounts, larger than \$15,000.

The substance of former ORS 114.515(3) is now found in ORS 114.515(14) and ORS 114.545(1)(b). New ORS 114.515(3) now makes it clear that an affidavit can be amended and that the corrected one can be filed by any claiming successor, not necessarily the same one who signed the first affidavit. Upon the filing of an amended affidavit, the original affidavit would have no further affect. If an amended affidavit would reflect a dispute among claiming successors, the dispute should be resolved by the filing of a full probate or by a summary review of administration under section 8, rather than by successive amended affidavits.

Section 3 generally revises ORS 114.525,⁴⁰ relating to the contents of the affidavit, to make the order more rational. Significant changes are made to comply with the requirements of *Tulsa*.

New ORS 114.525(1) corrects what appears to be an obvious omission of basic information about the decedent. New ORS 114.525(2) is former ORS 114.525(3) with language improvement.

New ORS 114.525(3) has language improvement of some

39. The 1989 session of the Legislative Assembly did enact another measure increasing the small estate limits to \$25,000 in personal property and \$60,000 in real property. 1989 Oregon Laws ch. 856, codified at ORS 114.515(1).

40. ORS 114.525, as amended, now reads:

practical significance. Existing law makes use of the small estate

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;
- (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;
- (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;
- (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 which 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 Adult and Family Services Division, Estate Administration Section, Salem, Oregon, and to the Department of Revenue, Salem, Oregon;
- (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 or claims; or
 - (b) A personal representative of the estate is appointed within the time allowed under ORS 114.555;
- (13) If the affidavit lists one or more claims which 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; and
- (14) State that a copy of the affidavit, showing the date of filing or an ab-

affidavit impractical for ancillary administration of Oregon property of nonresidents by requiring that the affidavit report all property "of the decedent." This is corrected to property "in the estate," which under ORS 114.505 includes only property subject to administration in Oregon.

ORS 114.525(4) has minor language improvements. New ORS 114.525(5) was ORS 114.525(6). New ORS 114.525(6) was ORS 114.525(5) and contains a significant change also reflected in revised ORS 114.525(7), (9), (10), (11) and (14). Prior law required that the affidavit state that certain copies of the affidavit "have been" mailed. This sworn statement was always false, because the copies were not mailed until they were made from the signed original with the court filing number added. The new requirement is that the copies "will be" mailed after filing and that they show the date of filing, because this date will determine when objections to the affidavit can be filed.

Revised ORS 114.525(7) has language that tracks new ORS 114.525(6). ORS 114.525(8) remains unscathed.

New ORS 114.525(9) replaces former ORS 114.525(2) with significant changes to the list of creditors who must be shown in the affidavit and receive copies of it. It adds administration expenses to claims and also includes claims or expenses that have been paid by someone entitled to reimbursement from the estate. To meet the requirements of *Tulsa*, ORS 114.525(9) requires notice to unpaid creditors.

ORS 114.525(10) is new and requires notice to disputed creditors similar to that given unpaid creditors. This meets the requirements of *Tulsa* and avoids any suggestion that listing a creditor concedes the validity of the claim. It is not anticipated that many filings will include disputed creditors, because disputes that do exist are commonly settled before an affidavit is filed.

New ORS 114.525(11) replaces former ORS 114.525(9) with language improvements.

ORS 114.525(12) is new and meets the requirements of *Tulsa* by giving notice to creditors about what they must do to resolve disputes regarding their claims. Filing an affidavit in the public records is notice to creditors who are not "reasonably ascertain-

stract meeting the requirements of ORS 113.165(2), will be mailed or delivered with the required recording fee to the county clerk in each county where the decedent's real property, if any, is located.

able" that they must file claims within the time indicated or their claims will be barred. Similarly, new ORS 114.525(13) gives notice to claimants whose claims are shown as disputed in the affidavit of the procedures they must follow to assert their claims.

New ORS 114.525(14) replaces former ORS 114.525(10) with significant changes regarding what must be recorded in the real property records. It deletes the requirement that a copy of the will be recorded. Such a copy now need only be delivered to heirs and devisees. Under ORS 114.525(8), the affidavit already provides information as to who will succeed to ownership of the real property on account of which recording is required, and the will is available in the probate records. Because the information is readily available, it was decided that there was no need to impose the cost of recording lengthy wills on filers of small estate affidavits. Recording of an abstract in the real property records, as is now permitted under ORS 113.165(2) in a regular probate, also is allowed in place of recording the full affidavit. Apparently, the failure to include small estates in this procedure was an oversight in the 1987 legislation.

Section 4 amends ORS 114.535 relating to the right of the affiant to assemble property of the estate after the affidavit is filed. Revised ORS 114.535(1)⁴¹ corrects "decendent" to "estate" to make it clear that in an ancillary administration situation only Oregon property is affected. It also adds a ten-day waiting period before an affiant can demand property under an affidavit. The purpose of this change is to prevent a thief from obtaining information on a bank account, filing a false affidavit listing the account, and going immediately to the bank to demand the funds in the account. The risk associated with the new delay should discourage any such entirely

41. ORS 114.535(1) provides:

Any person indebted to the decedent or having possession of personal property belonging to the estate, to whom a certified copy of the affidavit filed under ORS 114.515 is delivered by affiant on or after the 10th day following the filing of the affidavit, shall pay, transfer or deliver the personal property to the affiant. Any person who has received property of the decedent under ORS 708.520, 722.262, 803.095 (10), or any similar statute providing for the transfer of property of an estate which is not being probated shall pay, transfer or deliver the property to the affiant if the person would be required to pay, transfer or deliver the property to a personal representative of the estate. The transferor is discharged and released 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.

fraudulent use of the procedure. Finally, a new sentence is added to erase any doubt that in calculating small estate dollar limits it is necessary to include accounts and vehicles already transferred under various statutes designed to avoid all probate filings for small accounts.

Revised ORS 114.535(2)⁴² deletes specific reference to subsection (1) of ORS 114.515 due to the possibility of a filing under new ORS 114.515(3). ORS 114.535(3)⁴³ has language improvements.

Section 5 amends ORS 114.545, which generally establishes procedures for administration of the estate by the affiant and by claiming successors who receive property.

Revised ORS 114.545(1)⁴⁴ contains significant changes. ORS

42. ORS 114.535(2) provides:

A transfer agent of any corporate security registered in the name of the decedent shall change the registered ownership on the books of the corporation to the person entitled thereto on presentation of a certified copy of the affidavit filed under ORS 114.515.

43. ORS 114.535(3) provides:

If a person to whom an affidavit is delivered refuses to pay, deliver or transfer any personal property to the affiant or the person entitled to the property as disclosed in the affidavit filed under ORS 114.515, the property may be recovered or its payment, delivery or transfer compelled upon proof of the transferee's entitlement in a proceeding brought for the purpose by or on behalf of the transferee.

44. ORS 114.545(1) provides:

The affiant:

(a) Shall take control of the property of the estate coming into the possession of the affiant.

(b) Within 30 days after filing the affidavit shall mail, deliver or cause to be recorded each instrument which the affidavit states will be mailed, delivered or recorded.

(c) From and to the extent of the property of the estate, shall pay or reimburse any person who has paid:

(A) Expenses described in ORS 115.125(1)(b) and (c) and listed in the affidavit;

(B) Claims listed in the affidavit as undisputed:

(C) Allowed claims presented to the affiant within the time permitted by ORS 114.540; and

(D) Claims which the probate court directs the affiant to pay.

(d) Shall pay claims and expenses under paragraph (c) of this subsection in the order of priority described by ORS 115.125.

(e) May transfer or sell any vehicle that is part of the estate before the completion of the period established under ORS 114.555 if the affiant complies with the requirements established by the Motor Vehicles Division for such purposes under ORS 803.095.

(f) May convey any real or personal property that is part of the estate before the completion of the period established under ORS 114.555, provided that each heir or devisee succeeding to the interest conveyed joins in the conveyance and that any proceeds of sale, net of the reasonable expenses of sale and any debt

114.545(1)(b) is new and requires that all copies of the affidavit required under ORS 114.525 shall be delivered within thirty days of filing of the affidavit.

Revised ORS 114.545(1)(c) allows reimbursement as well as payment of allowable claims. This provision also adds that the affiant must pay funeral expenses and administration expenses, including court fees and attorney fees, all in the same order of priority as would be allowed in probate under ORS 115.125. Payment of support as a priority expense is not allowed under small estate procedures, the view being that this would create too much potential for abuse. It should be noted that the nature of the priority rules permits payments to all creditors to be delayed until the last claim is resolved. A claim that makes an estate insolvent will reduce the shares of all general creditors.

ORS 114.545(1)(f) is new and is intended to eliminate the existing practice under which title insurance companies do not accept the validity of small estate affidavits and impose higher premiums (a \$200 surcharge) on property transferred by this procedure. By picking up the "in good faith and for a valuable consideration" language from the recording statutes and defining who must join in the conveyance, this new provision should give title companies sufficient confidence in the procedure to eliminate this extra expense on sale of the property. If the affidavit is false and the property is sold to a bona fide purchaser for value, those wronged will be limited to remedies against the affiant and the proceeds of the sale of the property. In furtherance of this same objective, section 10 also amends ORS 114.555 to clarify that completion of the small estate procedures clears the property of all claims, not just those listed in the affidavit.

Language in former ORS 114.545(1)(b), relating to the filing of claims, is replaced by new provisions in section 7. Former ORS 114.545(2) is now in section 7(3) of the act.

secured as of the date of the decedent's death by a duly perfected lien on the property, shall become a part of the estate subject to ORS 114.505 to 114.555. Any conveyance to a purchaser in good faith and for a valuable consideration made by the affiant and the heir or devisee succeeding to the interest conveyed, or made by the heir or devisee succeeding to the interest conveyed after completion of the period established under ORS 114.555, conveys the interest stated in the conveyance free of any interest of the claiming successors, and the purchaser has no duty with respect to application of the consideration paid for the conveyance.

Revised ORS 114.545(2),⁴⁵ formerly ORS 114.545(3), originally required heirs and devisees receiving property under the small estate procedure to apply it to payment of claims to the extent required by the act. That requirement now is extended to “claiming successors,” which are defined to include creditors as well. Thus, if a creditor is paid before all claims are resolved, and another creditor was entitled to some or all of the payment, the first creditor must return the excess payment. The same is true if a personal representative is appointed after the payment.

Section 7 establishes procedures for processing claims which meet the requirements of *Tulsa* and are based on the summary determination procedures previously at ORS 114.525(2).

Subsection (1)⁴⁶ of section 7 defines the time and procedure for filing claims, referring to the full probate claims procedures to define the contents of a claim. This replaces less definitive language formerly in ORS 114.545(1).

Subsection (2)⁴⁷ of section 7 provides a procedure, absent in the existing law, for notice of denial of claims. This appears to be required by *Tulsa*. The procedure is similar to that used in full probate.

45. ORS 114.545(2) provides:

Any claiming successor to whom payment, delivery or transfer is made under ORS 114.505 to 114.555 as a person entitled thereto as disclosed in the affidavit is personally answerable and accountable:

(a) To the extent of the value of the property received, to creditors of the estate to the extent such creditors are entitled to payment under subsection (1) of this section; and

(b) To any personal representative of the estate of the decedent thereafter appointed.

46. Codified at ORS 114.540(1):

A claim against an estate with respect to which an affidavit is filed under ORS 114.515 may be presented to the affiant within four months after the affidavit was filed. Each claim presented to the affiant shall include the information required by ORS 115.025.

47. Codified at ORS 114.540(2):

A claim presented to the affiant shall be considered allowed as presented unless within 60 days after the date of presentment of the claim the affiant mails or delivers a notice of disallowance of the claim in whole or in part to the claimant and any attorney for the claimant. A notice of disallowance of a claim shall inform the claimant that the claim has been disallowed in whole or in part and, to the extent disallowed, will be barred unless:

(a) The claimant proceeds as provided in subsection (3) of this section; or

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

Subsection (3)⁴⁸ of section 7 is drawn from former ORS 114.545(2), except that the proposed procedure is limited to disallowed claims. Note that the power of the court extends to all claiming successors, not just heirs and devisees. This is consistent with the change to ORS 114.545(2). The former procedure under ORS 114.545(2) was available to creditors regardless of the reason for nonpayment of the claim. However, it was considered more appropriate to have a separate procedure for disputes arising from administrative problems rather than from disagreement over the validity of a claim, and that procedure is established in section 8.

Section 8⁴⁹ establishes a new procedure for handling disputes arising from administration of a small estate not subject to section

48. Codified at ORS 114.540(3):

A creditor of the estate whose claim has been presented within the time permitted by subsection (1) of this section and disallowed by the affiant may within 30 days after the date of mailing or delivery of the notice of disallowance file with the probate court a petition for summary determination of the claim by the court. A creditor of the decedent whose claim is listed in the affidavit as disputed may within four months after the filing of the affidavit file with the probate court a petition for summary determination of the creditor's claim by the court. The court shall hear the matter without a jury, after notice to the creditor and affiant, and any interested person may be heard in the proceeding. Upon the hearing the court shall determine the claim in a summary manner and shall make an order allowing or disallowing the claim in whole or in part. If the court allows the claim in whole or in part, the order shall direct the affiant, to the extent of property of the estate allocable to the payment of the claim pursuant to ORS 115.125, or any claiming successor to whom payment, delivery or transfer has been made under ORS 114.505 to 114.555 as a person entitled thereto as disclosed in the affidavit, to the extent of the value of the property received, to pay to the creditor the amount so allowed. No appeal may be taken from the order of the court made upon the summary determination.

49. Codified at ORS 114.550:

The affiant or any claiming successor of the estate who has not been paid the full amount owed such claiming successor may within two years after the death of the decedent file with the probate court a petition for summary review of administration of the estate. A creditor may not file a petition under this section if the creditor received a copy of an affidavit filed under ORS 114.515 delivered or mailed to such creditor within 30 days after the date the affidavit was filed, the creditor was not shown as an undisputed creditor in the affidavit, and the creditor has not filed a petition for summary determination under ORS 114.540. The court shall hear the matter without a jury, after notice to the claiming successor and the affiant, and any interested person may be heard in the proceeding. Upon the hearing the court shall review administration of the estate in a summary manner and may order the affiant to sell property of the estate and pay creditors, to pay creditors of the estate from property of the estate or of the affiant, or to distribute property of the estate to the claiming successors, or may order any person who has received property of the estate to pay amounts owed to claiming successors of the estate in whole or in part.

7. These disputes could include an assertion that the affidavit was false in some respect (e.g., an heir or a reasonably ascertainable creditor was omitted) or that the affiant has failed to follow applicable procedure (e.g., pay claiming successors entitled to payment or property from the estate). An affiant with questions about allocation of assets among competing claimants also could use this procedure. The two-year time limit from the date of death for filing actions under this section becomes the general statute of limitations for actions under the Small Estates law and is intended to be identical to that available to creditors in full probate situations. The procedure is not available to a creditor who should have filed for summary determination of the claim but failed to do so. The procedure generally is similar to that for summary determination under section 7, but the court has broad powers to order the affiant to pay the obligation from his own assets in case of malfeasance.

Review by the court of appeals is available under section 8 but not under section 7. Appeal is allowed here because the time for filing full probate may have expired before a creditor became aware of the small estate filing. There should be some alternative avenue of review available if the right to require a full probate is not surrendered voluntarily, as it normally is when parties accept the small estate procedure.

Section 9⁵⁰ is new and is intended to make it clear that the two-year limit in section 9 is an absolute bar to a civil action arising from a false affidavit or any other failure to follow small estate procedures. This limit does not apply to criminal charges that might result from false swearing.

Section 10 amends ORS 114.555⁵¹ to clarify that small estate procedures will bar all claims, not just those listed in the affidavit.

50. Codified at ORS 114.560:

The exclusive remedy of a person injured by the failure of the affiant or any claiming successor to comply with the requirements of ORS 114.505 to 114.555 shall be a summary determination under ORS 114.540, a summary review of administration under ORS 114.550, or appointment of a personal representative for the estate within the time allowed by ORS 114.555

51. ORS 114.555, as amended, now reads:

If a personal representative is not appointed within four months after the filing of the affidavit authorized by ORS 114.515, the interest of the decedent in all of the property described in the affidavit is transferred to the person or persons shown by the affidavit to be entitled thereto, and any other claims against the property are barred except as provided in ORS 114.540, 114.545 and 114.550.

IV. CONCLUSION

The ruling in *Tulsa* came as a shock to many probate attorneys, and the requirement of actual notice to creditors will, in a small minority of probate proceedings, prevent the unfair use of probate to cut off the legitimate claims against the decedent. However, in the vast majority of decedents' estates, all creditors are paid in full in the ordinary course of probate, and the new Oregon probate claims law simply will mean the filing of one or more form affidavits in addition to those already required. This is a small price to pay to assure due process for creditors in the probate process.

The revision of Oregon's small estate procedures will increase significantly the usefulness of this alternative to full probate. The separate law increasing to \$60,000 the limit on real property eligible for this procedure probably means that most homes in the state now can pass through probate with the filing of a single affidavit. Much of the cost savings to the public, which will be realized by using the small estate process, will consist of reduced legal fees; so it is particularly noteworthy that this improved procedure is the product of volunteer work by the attorneys who would have received most of these fees — the Estate Planning and Administration Section of the Oregon State Bar.