



OREGON LAW COMMISSION

Oregon Probate Code

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Report of the Probate Modernization Work Group on HB 2986A (2017)

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From the Offices of:
Executive Director Jeffrey C. Dobbins
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I. Introductory summary

Oregon adopted its probate statutes in 1969. The probate statutes had not undergone a thorough review until the Oregon Law Commission's Probate Modernization Work Group began its efforts in 2013. In two recent sessions, the Oregon Legislature has recognized the importance of the Oregon Law Commission's work recommending changes to the Probate Code by enacting them. The current bill contains additional amendments to improve the probate statutes. The Work Group's goal continues to be to clarify and modernize the probate statutes, while leaving intact the parts of the statutes that work well.

II. History of the project

In October 2013, the Oregon Law Commission ("OLC" and "Commission") appointed the Probate Modernization Work Group ("Work Group") to review and recommend changes to the Oregon probate statutes. Members of the Work Group came from the Estate Planning and Administration Section, the Elder Law Section, the Oregon Bankers Association, the Oregon Land Title Association, the Department of Justice (the Charitable Activities and Civil Recovery Sections of the Civil Enforcement Division), and the Circuit Courts (both probate judges and staff). The Work Group began with Chapter 112 and based on the Work Group's recommendations, the Commission approved Senate Bill 379 for the 2015 Legislative Session. The Legislature enacted that bill, making changes to Chapter 112 effective January 1, 2016.

Beginning in October 2015, the Work Group reviewed and modernized Chapter 111, while also adjusting some technical issues in Chapter 112. The Commission approved House Bill 4102 for the 2016 Legislative Session. The Legislature enacted that bill, making changes effective in January 1, 2017, with an emergency clause for technical corrections to Chapter 112 effective immediately.

In April 2016, the Work Group resumed its efforts by reviewing Chapters 111, 113, 114, 115, and 116, and related Chapters 18 and 125. HB 2986A amends sections in those chapters and makes conforming amendments to other affected chapters.

The voting Work Group members are:

Lane Shetterly, Chair of the Work Group and OLC Commissioner
Prof. Susan Gary, OLC Commissioner, Work Group Reporter & Professor at
University of Oregon School of Law
Cleve Abbe, Lawyers Title of Oregon LLC
Kathy Belcher, McGinty & Belcher Attorneys PC
Victoria Blachly, Samuels Yoelin Kantor LLP
Susan Bower, Department of Justice, Charitable Activities Section
Judge Claudia Burton, Marion County Circuit Court
Judge Rita Cobb, Washington County Circuit Court
Mark Comstock, OLC Commissioner and Attorney
John Draneas, Draneas & Huglin PC

Heather Gilmore, Heather O. Gilmore PC
Judge Donald Hull, Samuel's Law
Robin Huntting, Clerk in the Civil Case Unit for Clackamas County Courthouse
Gretchen Merrill, Department of Justice, Civil Recovery Section
Marsha Murray-Lusby, Dunn Carney Allen Higgins & Tongue LLP
Professor Scott Shepard, Willamette University College of Law
Ken Sherman, Sherman Sherman Johnnie & Hoyt LLP
Jennifer Todd, Private Attorney
Prof. Bernie Vail, OLC Commissioner and Professor at Lewis & Clark Law School

The Staff Members are:

Laura Handzel, Deputy Director, Oregon Law Commission
Nita Kumar, Law Clerk, Oregon Law Commission
Marisa James, Deputy Legislative Counsel

Attorney Jeff Cheyne was a valued member of the Work Group until he passed away in July of 2016. This Work Group also benefited from the contributions of many Interested Persons who regularly attended meetings.

III. Statement of the problem area and objectives of the measure

Technological and social changes have affected the way people manage and dispose of their property. The bill amends Chapters 111, 113, 114, 115, and 116 to modernize the statutes and clarify provisions where language is currently unclear. A few related chapters are amended for consistency.

IV. Review of legal solutions existing or proposed elsewhere

The Work Group approached the project by using the ORS provisions as the baseline. The Work Group reviewed the legislative history of the current ORS provisions, considered sections of the Uniform Probate Code ("UPC") that corresponded to the topics being discussed, and discussed statutes from other states where appropriate.

V. The measure

Section 1: This section amends ORS 111.005(15), the definition of "estate." A new subsection is added to the definition of "estate" to clarify that personal property of a decedent is included in the estate, even if the property is located outside Oregon. This provision simply confirms the common law rule. The Work Group recognizes that it will not be binding on a court of another state but hopes it will serve as a general reminder of the common law rules.

Section 2: This section adds two new subsections to ORS 111.085, providing that when someone takes a distribution from an Oregon estate, the person submits to

personal jurisdiction in Oregon for any matter involving the estate. The new provision does not preclude other methods of obtaining jurisdiction over a distributee.

Section 3: ORS 111.215 addresses notice of a hearing when an order or judgment is sought. The amendments provide that the court may authorize notice by electronic means and that the Department of Human Services or the Oregon Health Authority may adopt rules permitting the acceptance of electronic notice.

Sections 4-6: ORS 113.005 provides for the appointment of a special administrator to protect property of a decedent before a personal representative is appointed. The Work Group wanted to balance the need for a bond to protect the persons interested in an estate with the concern that in some situations a bond could create an unnecessary expense. The Work Group considered providing a minimum in the statute but concluded that a minimum was not necessary. The amendments to ORS 113.005 emphasize the importance of a bond and provide additional guidance to the court in setting the bond. The amendments clarify how a special administrator is appointed and how the bond is set. A new section (Section 6 of the bill) provides that a court can waive the bond under circumstances in which the property will be protected. Section 41 of the bill amends ORS 22.020 to remove a restriction on the use of letters of credit in lieu of a bond in probate matters. This is because in some cases a letter of credit will provide both sufficient protection and greater flexibility.

Section 7: The requirement in ORS 113.035 that the decedent's social security number or taxpayer identification number be included on a petition for appointment of a personal representative was removed. The term "executor" was changed to "personal representative." (This updating change in language was made throughout the statutory sections affected by this bill.)

Sections 8: Section 8 adds a new section to Chapter 113, set forth in Section 9. The new section creates an alternative compensation scheme for the personal representative.

The Work Group heard concerns from the probate judges that finding someone willing to serve as a personal representative for an estate with modest assets and complicated property issues can be difficult. If no family member is available to serve, a professional fiduciary may be unwilling to serve if compensation is based on a percentage of the value of the estate under ORS 116.173(3). The new provision allows a personal representative to request that compensation be determined in a different manner, presumably on an hourly basis. The personal representative must request the alternative means of determining compensation in the petition to be appointed, and cannot make the request after the appointment. The petition must include "specific facts" demonstrating that compensation determined in the usual way will likely be inadequate. The court then has discretion to grant the request, but only if the court finds that the usual method for determining compensation would be inadequate.

The Work Group discussed whether to permit a request for an alternative form of compensation later in the administration of the estate. A personal representative

may agree to appointment and then later learn about problems with the property of the estate that will severely reduce the fees the personal representative will receive. The Work Group concluded that it needed to balance a variety of interests and that requiring the request in the petition was the best solution. Although a variety of concerns were raised, the goal is to make it possible to find a personal representative willing to serve.

The Work Group noted that a reason for fees based on a percentage of the assets of an estate is that hourly fees do not compensate a personal representative for the liability that comes with administering a large estate.

The Work Group discussed the possibility that someone might petition for the alternative compensation as a way to drain money from an insolvent estate. Of particular concern was the worry that if the estate was required to pay estate recovery of government benefits provided by the Department of Human Services, a family member might try to inflate the fees of the personal representative in order to obtain more money from the estate. The Work Group concluded that the judges will properly exercise discretion to prevent abusive use of this new provision. The new provision requires notice to the Department of Human Services and the Oregon Health Authority so that they have both notice and time to object.

A personal representative who has been appointed subject to this alternative compensation provision can later elect to be compensated as provided in ORS 116.173(3).

Section 9: The amendments appearing on page six at lines 14, 19 and 27 delete “differently” or “different compensation” and instead insert “a different method of compensation.” The intent is to make it clear that the request for different compensation that is included in the petition for appointment is only a request for a different method of determining the personal representative's compensation; it is not a request for approval of a specific amount of compensation up front.

The amendments appearing on page six at line 30 adds language to clarify that if the Department of Human Services, the Oregon Health Authority, or anyone with a right to object to a request for different compensation, does not object to the request for the different *method* of compensation up front, they still can object to the *amount* of compensation that the personal representative actually requests in the final account.

Section 10: This section modernizes the language in ORS 113.045.

Section 11: ORS 113.055(1) now states that a court will consider an affidavit of an attesting witness at the “*ex parte* review,” and not the “*ex parte* hearing” of a petition for probate. The bill amends the notice period in ORS 113.055(2) to provide that a motion contesting an attesting witness must be filed 30 days after the personal representative delivers or mails notice, rather than 30 days after the will is admitted to probate. This change makes it more likely that an interested party will get notice in time to respond.

Section 12: ORS 113.075 provides rules related to the filing of a will contest but in its current form does not require someone contesting a will to provide notice to the people who may be affected. A new subsection requires someone filing a will contest to give notice to the heirs and devisees identified in the petition for probate. Although some other persons might be interested in the estate, the Work Group concluded that requiring notice to the people named in the petition for probate of the will was sufficient. The Work Group did not want to create undue hurdles to the filing of a contest, given the benefits of getting the will contest filed quickly.

If the personal representative has provided notice to the Department of State Lands, the contestant must also provide notice to that department. Further, if any devisee under the contested will is a charity, the contestant must give notice to the Attorney General.

Section 13: This section adjusts the order of priority set forth in ORS 113.085 for naming a personal representative. One adjustment is that the surviving spouse of the decedent takes priority over everyone other than someone named in the will only if the surviving spouse is a distributee of the estate. Other relatives of the decedent had fallen in the category of “nearest of kin” and that provision is changed to give priority (after a surviving spouse who is a distributee) first to a person who is both a distributee and an intestate heir, followed by a person who is a distributee but not an intestate heir. The amended statute does not create priority based on degree of kinship of persons who are distributees, but the Work Group concluded that the court would consider the suitability of any person as a personal representative in making the appointment. A new subsection states that the court may require a person asking to be appointed as personal representative to attempt to notify other people with higher priority.

Section 14: ORS 113.095 is amended to replace the term “incompetent,” with “incapacitated or financially incapable,” which corresponds with the terminology under ORS Chapter 125.

Section 15: The Work Group discussed the problems faced by Oregonians of limited means in obtaining bonds. Sometimes the family member who would be the best choice as personal representative cannot be considered because the person cannot meet the bonding requirement. The countervailing concern, however, is the importance of a bond in some circumstances. The Work Group concluded that the statute could provide more flexibility to the court for limiting the bond but also should clarify that a court can require a bond even a will waives a bond.

Much of ORS 113.105 is rewritten, to modernize and clarify the language. One substantive change is that the amendment removes the authority of the court to waive a bond if all devisees and heirs agree to the waiver. The Work Group concluded that the general discretion in the court regarding waiver was preferable. The amended language says that the court may waive or reduce the bond if the personal representative states the reasons for the waiver and describes known creditors of the

estate. Further, the court may waive or reduce the bond if the personal representative provides written confirmation from a financial institution that the institution holds property of the estate that can be withdrawn only with an order of the court. Also, the court may waive or reduce the bond if the sale or other disposition of property is restricted.

Section 16: ORS 113.125 is amended to replace the words “executor” and “administrator” with “personal representative.”

Section 17: An amendment to ORS 113.165 extends the time period for filing the inventory from 60 days to 90 days. The Work Group noted that extensions for time are frequently requested. In listing property the personal representative provides estimates of value, and the statute is clarified by changing the term “true cash value” to “fair market value.”

Section 18: ORS 113.185 is amended to modernize the language (changing “appraisement” to “appraisal”).

Section 19: This section amends ORS 113.195 to create a new section (4), which allows a court to remove a personal representative “for other good cause shown.” The Work Group discussed the need that sometimes arises when a personal representative is not unqualified for the position but if left in the position could harm the estate. The goal of the amendment is to give the court discretion to remove a personal representative before the problems become too great. The Work Group does not intend this provision to suggest that the court compare family members with each other to determine the “best” or “most suitable” person for the position. The testator’s nomination of a personal representative should be honored in most cases, and after a personal representative is appointed, the appointment creates a presumption of suitability. Only if serious problems arise should a court use the new subsection to remove the personal representative. The fact that another family member might be more suitable should not be considered “good cause” for purposes of this subsection.

Section 20: Language in ORS 113.205 is modernized.

Section 22: Language in ORS 113.215 is modernized.

Section 23: A cross-reference in ORS 113.238 is updated.

Section 24: ORS 114.005 provides that a surviving spouse and dependent children of a decedent can continue to live in the house for a year after the death of the decedent. If the spouse is not paying the mortgage, this situation can create a liquidity problem for the estate. The Work Group decided to leave the provision in the statutes but to add a new subsection that permits the court, for good cause shown, to waive or alter the right to stay in the house.

This section makes three clarifying changes that are not substantive changes. The limit that applies if the decedent has less than a fee interest is intended to encompass

month-to-month rentals as well as an estate for the lifetime of another (the language that was removed). New language clarifies that the occupants of the dwelling must not only insure the dwelling but also pay the cost for the insurance. A new subsection clarifies that the dwelling is subject to the rights of anyone with a security interest in the dwelling.

Section 24 also modernizes language in ORS 114.005, changing “mechanic’s” and “materialman’s” liens to “construction” liens and “abode” to “dwelling.”

Section 25: This section adds a cross-reference in ORS 114.325(1). The ability of the personal representative to sell property may have been restricted as a way to limit the size of the bond under ORS 113.105.

Section 26: ORS 114.630 is updated by removing a reference to inheritance taxes.

Section 27: The revisions to ORS 115.005 provide guidance on what constitutes presentment of a claim.

The amended language recognizes that a creditor may file a claim with the court, but makes clear that doing so does not constitute presentment to the personal representative. Filing with the court does not provide special status over any other claim. Some creditors, particularly the Department of Human Services, like to file their claims with the court to provide information the court can consider when reviewing the final accounts. However, filing with the court creates no obligation on the court.

To present a claim a creditor must mail or personally deliver the claim to the personal representative at the address in the petition, the address provided for presentation of claims, or the address for presentation of claims provided in the published notice, as specified in the statute. The personal representative may also authorize presentment by electronic mail or facsimile transmittal.

The time for barring claims is expanded to 45 days from 30 days for creditors to whom the personal representative was required to deliver or mail a notice.

Section 28: ORS 115.065 is revised to address the ambiguity regarding a creditor with a claim secured by a security interest in property. ORS 115.056(1) is amended to clarify the creditor’s continued right to foreclose on the security interest. Presentment to the personal representative does not waive the security interest in the property.

Section 29: The Work Group wanted to clarify the effect of a money judgment that creates a judgment lien against real property owned by a decedent. The bill amends the provisions in ORS 115.070 to clarify the treatment of a creditor with a judgment. Additional changes are made to ORS 18.312 in Section 42 of the bill.

In ORS 115.070, if the judgment was not a lien against property at the date of the decedent’s death, the creditor will present the claim in the usual manner but with a

copy of the judgment attached. If the judgment was a lien against property on the date of the decedent's death, then the lien shall be treated as a claim for which the creditor holds security, under ORS 115.065.

Section 30: ORS 115.125 provides for the priority of claims when an estate is insolvent. The bill adds, as a priority item, expenses of administration of a protective proceeding for the decedent before the decedent's death, placing those expenses at the level of priority of expenses of administration of the probate estate. The Work Group concluded that expenses related to a protective proceeding should be given a high level of priority when the protected person dies.

Medical expenses of the last illness of the decedent receive priority and include compensation of persons attending the decedent. These expenses receive priority above claims by other creditors of the estate, including the Department of Human Services for reimbursement of assistance paid to the decedent. In an insolvent estate family members may try to avoid payments to creditors by requesting compensation for "attending the decedent" in the last illness. Family members may inflate the time spent and include compensation for visiting the decedent during the last illness. The amendment limits compensation to that "which the persons are otherwise entitled by law." The intent of ORS 115.125 is to compensate a caregiver who is entitled to wages but not a family member who visits a grandparent in the hospital. The amendment is not intended to change presumptions created under case law, for example a presumption that a family member visiting a decedent did not expect compensation.

Section 31: ORS 115.135 provides for the disallowance of claims. The Work Group heard from probate judges that the courts see across-the-board denials of claims. The Work Group considered imposing a good faith requirement for denial of a claim, but concluded that determining what constitutes good faith for denial was problematic. The considerations included worries that adding a good faith would heighten conflict and increase litigation. Under existing law the court can surcharge a personal representative if the court finds that the personal representative denied a claim in bad faith. Those provisions, ORS 114.265, 114.395, are sufficient to cover potential misbehavior related to claims.

In order to limit the across-the-board denials, Section 31 amends ORS 115.135 to require that a notice of disallowance of a claim include a statement of the reason for a disallowance. To protect against matters that the statement of a reason will unfairly limit the personal representative, additional language clarifies that the statement of a reason does not constitute an admission by the personal representative and does not preclude the assertion of other defenses to the claim.

Work Group members thought that in some cases disallowance results from a lack of understanding of the meaning of disallowance. A personal representative may conclude that in an insolvent estate claims should be disallowed because they cannot be paid. Section 31 adds a new subsection to ORS 115.135 clarifying that a claim will be paid only if there are assets in the estate to pay the claim. Allowance of a claim is an admission of liability but does not ensure payment.

Section 32: This section amends ORS 115.145 to clarify that if a claimant wants to challenge the disallowance of a claim in the estate proceeding, the claimant must file the request with the court.

Section 33: ORS 116.083 is amended to change references to “voucher” to “evidence of disbursement.” The statute was also updated to include irrevocable letter of credit.

The Work Group noted that the final account must include a statement that taxes have been paid, but often taxes are not yet due. Section 33 amends ORS 116.083(3)(a) to provide that the statement concerning taxes must say that taxes due have been paid, that tax returns due have been filed, and that any estate tax return that is required to be filed has been filed.

The Work Group discussed the need to request a reserve for remaining fees and expenses. Section 33 adds to ORS 116.083 a requirement that the final account include any request to retain a reserve for the payment of taxes and related expenses as a way to signal the authority to request such a reserve. The Work Group discussed whether the statute should explicitly mention the court’s authority to require a supplemental accounting when a reserve has been created. The Work Group concluded that the need for a supplemental accounting rarely arises, given the limited nature of reserves, so the court can use its existing authority to require a supplemental accounting in cases where that would be appropriate.

Section 33 also adds a requirement that the final account include a statement describing the determination of compensation of the personal representative.

The provisions related to a statement in lieu of final account are amended to require a statement describing a request for a reserve. In addition, the requirement that all distributees of an estate consent to the filing of a statement in lieu of final account is changed to limit the necessary consents to distributees other than distributees who receive a specific bequest or a cash bequest and have been paid in full.

Section 34: ORS 116.093 provides for notice when the personal representative files the final account and petition for a judgment of distribution. Section 34 adds a requirement that notice be given to the Attorney General if a charity is a residual beneficiary or if the will provides a specific devise for a charity and the charity will not receive the full amount of that specific devise. A charity named as a devisee may not be able to protect its interests, and the Attorney General needs information about the estate to determine whether excessive fees or other problems have unfairly reduced the charity’s interest in the estate. Note that this requirement of notice to the Attorney General applies to final accounts under ORS 116.093, and not to statements in lieu of final account, which are governed by ORS 116.083.

Section 34 deletes subsection (1)(d) of ORS 116.093 because the other categories capture everyone who would have an interest in the estate. Additional changes in Section 34 modernize the language of ORS 116.093.

Section 35: Under ORS 116.113, when a final account or statement in lieu of final account is filed, the court will issue a judgment of final distribution. Only one document—one judgment—is needed to approve the final account and authorize distributions. Section 35 adds to the list of the findings that appear in the judgment findings concerning any reserve requested and attorney fees. Section 35 also clarifies that under ORS 116.113 the court can approve a statement in lieu of final account as well as a final account.

Section 36: ORS 116.173 provides the rules for determining compensation for the personal representative. In general, fees are based on a percentage of the value of the estate “subject to the jurisdiction of the court,” with the percentage decreasing as the value of the estate increases. Section 36 amends ORS 116.173 to provide better guidance in determining how the value of the estate should be determined.

The amendments address the changes in the value of the estate that may occur during administration. The goal is to capture the initial value of the estate plus increases during administration from income and capital gains. The amendments also provide that each asset should be valued at its highest value, determined by considering the inventory, any amended or supplemental inventory, any interim or final account, and any statement in lieu of final account.

A new subsection provides that despite a provision in the will authorizing fees at a particular level, if the estate is insolvent, the compensation of the personal representative cannot exceed the amounts specified in the statute.

This section adds a cross-reference to the alternative determination of compensation under the new provision added in Section 9 of this bill.

Section 37: This section amends ORS 116.183 to allow an attorney an opportunity to create a record, if the court reduces the attorney fees requested. A new subsection provides that an attorney can submit additional information in support of the reasonableness of the fee and then let the judge make the decision. A new subsection (2)(c) is also added, which states that ORCP 68 (requiring that requests be in a particular form) does not apply to requests for attorney fees under this section.

Section 38: Language in ORS 116.223 is modernized.

Section 39: This section amends ORS 116.263 to change “chose in action” to “right to sue” and to require that if a foreign personal representative submits an affidavit the affidavit be accompanied by proof of the foreign personal representative’s authority.

Section 40: Language in ORS 116.343 is modernized.

Section 41: ORS 22.020 states that an irrevocable letter of credit cannot be used lieu of a bond in connection with various court proceedings. Section 41 amends ORS 22.020 so that the prohibition on letters of credit no longer applies to probate

proceedings. In some estates providing a letter of credit will be an appropriate alternative to a bond, and the Work Group wanted to make a letter of credit an option.

Section 42: ORS 18.312 provides that a lienholder cannot collect a judgment against a decedent except by making a claim against the estate or by meeting the requirements of ORS 18.312(2). A new subsection to ORS 18.312 provides that when the property subject to the lien ceases to be property of the estate, the stay imposed by ORS 18.312(1) no longer applies. The new subsection makes clear that when property subject to a lien is distributed, the lien continues with the property and the lienholder may execute the lien after the property is no longer property of the estate. If the claim is not satisfied during the administration of the estate, when the property subject to a lien is transferred out of the estate, the lienholder can enforce the lien against the property.

Sections 43 – 61. These sections modernize language or conform language to other changes made in this bill in the following statutes: ORS 86.809, 111.025, 111.205, 111.245, 111.255, 112.315, 113.065, 113.145, 113.242, 114.385, 114.525, 115.003, 115.025, 115.105, 116.043, 116.243, 125.525, 316.387, and 406.100.

Sections 62-77: These sections relate to effective dates and applicability of the amendments.

Section 78: This section explains that unit captions are provided only for the convenience of the reader.

VI. Conclusion

This measure should be adopted because it furthers the work of the Oregon Law Commission's Probate Modernization Work Group, which has put forth successful measures in the last several sessions in an effort to update Oregon's Probate Code. The Work Group is informed by some of the best legal minds in the state on the topic. It includes a wide range of private practitioners, judges, court clerks, agency representatives, as well as academics who have come together to provide well-tailored solutions to practical questions.

CHAPTER 169

AN ACT

HB 2986

Relating to estates; creating new provisions; and amending ORS 18.312, 22.020, 86.809, 111.005, 111.025, 111.085, 111.205, 111.215, 111.245, 111.255, 112.315, 113.005, 113.035, 113.045, 113.055, 113.065, 113.075, 113.085, 113.095, 113.105, 113.125, 113.145, 113.165, 113.185, 113.195, 113.205, 113.215, 113.225, 113.238, 113.242, 114.005, 114.325, 114.385, 114.525, 114.630, 115.003, 115.005, 115.025, 115.065, 115.070, 115.105, 115.125, 115.135, 115.145, 116.043, 116.083, 116.093, 116.113, 116.173, 116.183, 116.223, 116.243, 116.263, 116.343, 125.525, 316.387 and 406.100.

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

ORS CHAPTER 111

SECTION 1. ORS 111.005, as amended by section 1, chapter 42, Oregon Laws 2016, is amended to read:

111.005. As used in ORS chapters 111, 112, 113, 114, 115, 116 and 117, unless the context requires otherwise:

(1) "Abate" means to reduce a devise on account of the insufficiency of the estate to pay all claims, expenses and devises in full.

(2) "Action" includes suits and legal proceedings.

(3) "Administration" means any proceeding relating to the estate of a decedent, whether the decedent died testate, intestate or partially intestate.

(4) "Advancement" means a gift by a decedent to an heir or devisee with the intent that the gift satisfy in whole or in part the heir's share of an intestate estate or the devisee's share of a testate estate.

(5) "Assets" includes real, personal and intangible property.

(6) "Claim" includes liabilities of a decedent, whether arising in contract, in tort or otherwise.

(7) "Court" or "probate court" means the court in which jurisdiction of probate matters, causes and proceedings is vested as provided in ORS 111.075.

(8) "Decedent" means a person who has died.

(9)(a) "Descendant" means a person who is descended from a specific ancestor and includes an adopted child and the adopted child's descendants.

(b) When used to refer to persons who take by intestate succession, "descendant" does not include a person who is the descendant of a living descendant.

(10) "Devise," when used as a noun, means property disposed of by a will.

(11) "Devise," when used as a verb, means to dispose of property by a will.

(12) "Devisee" means a person designated in a will to receive a devise.

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

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

(15)(a) "Estate" means the real and personal property of a decedent, as from time to time changed in form by sale, reinvestment, substitutions or otherwise, augmented by any accretions or additions or diminished by any decreases or distributions.

(b) "Estate" includes tangible and intangible personal property of a decedent domiciled in Oregon, wherever the property is situated.

(16) "Funeral" includes the burial or other disposition of the remains of a decedent, any plot or tomb and other necessary incidents to the disposition of the remains, any memorial ceremony or other observance and related expenses.

(17) "General devise" means a devise chargeable generally on the estate of a testator so that the devise is not distinguishable from other parts of the estate and does not constitute a specific devise.

(18) "Heir" means any person who is or would be entitled under intestate succession to property of a person upon that person's death.

(19) "Interested person" includes heirs, devisees, children, spouses, creditors and any others having a property right or claim against the estate of a decedent that may be affected by the proceeding. "Interested person" also includes fiduciaries representing interested persons.

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

(21) "Intestate succession" means succession to property of a decedent who dies intestate or partially intestate.

(22) "Issue" means a descendant or descendants.

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

(24) "Net intestate estate" means any part of the net estate of a decedent not effectively disposed of by the will.

(25) "Personal property" includes all property other than real property.

(26) "Personal representative" includes executor, administrator, administrator with will annexed and administrator de bonis non, but does not include special administrator.

(27) "Property" includes both real and personal property.

(28) "Real property" includes all legal and equitable interests in land, in fee and for life.

(29) "Settlement" includes, as to the estate of a decedent, the full process of administration, distribution and closing.

(30) "Specific devise" means a devise of a specific thing or specified part of the estate of a testator that is so described as to be capable of identification. A specific devise is a gift of a part of the estate identified and differentiated from all other parts.

(31) “Will” includes codicil and also includes a testamentary instrument that merely appoints [*an executor*] **a personal representative** or that merely revokes or revives another will.

SECTION 2. ORS 111.085 is amended to read:

111.085. (1) The jurisdiction of the probate court includes, but is not limited to:

[(1)] (a) Appointment and qualification of personal representatives.

[(2)] (b) Probate and contest of wills.

[(3)] (c) Determination of heirship.

[(4)] (d) Determination of title to and rights in property claimed by or against personal representatives, guardians and conservators.

[(5)] (e) Administration, settlement and distribution of estates of decedents.

[(6)] (f) Construction of wills, whether incident to the administration or distribution of an estate or as a separate proceeding.

[(7)] (g) Guardianships and conservatorships, including the appointment and qualification of guardians and conservators and the administration, settlement and closing of guardianships and conservatorships.

[(8)] (h) Supervision and disciplining of personal representatives, guardians and conservators.

[(9)] (i) Appointment of a successor testamentary trustee where the vacancy occurs prior to, or during the pendency of, the probate proceeding.

(2) The distributees of an estate administered in Oregon are subject to the jurisdiction of the courts of Oregon regarding any matter involving the distributees’ interests in the estate. By accepting a distribution from an estate, the distributee submits personally to the jurisdiction of the courts of this state regarding any matter involving the estate.

(3) This section does not preclude other methods of obtaining jurisdiction over a person to whom assets are distributed from an estate.

SECTION 3. ORS 111.215 is amended to read:

111.215. (1) Except as otherwise specifically provided in ORS chapters 111, 112, 113, 114, 115, 116 and 117, whenever notice is required to be given of a hearing on any petition or other matter upon which an order **or judgment** is sought, the petitioner or other person filing the matter shall cause notice of the date, time and place of the hearing to be given to each person interested in the subject of the hearing or to the attorney of the person, if the person has appeared by attorney or requested that notice be sent to the attorney of the person, in any one or more of the following ways and within the following times:

(a) By mailing a copy [*thereof*] **of the notice** addressed to the person or the attorney of the person at least 14 days before the date set for the hearing.

(b) By delivering a copy [*thereof*] **of the notice** to the person personally or to the attorney of the person at least five days before the date set for the hearing.

(c) If the address of any person is not known or cannot be ascertained with reasonable diligence, by publishing a copy [*thereof*] **of the notice** once in each of three consecutive weeks in a newspaper of general circulation in the county where the hearing is to be held, the last publication of which shall be at least 10 days before the date set for the hearing.

(2) Upon good cause shown the court may change the requirements as to the method or time of giving notice for any hearing. **The court may authorize notice by electronic means under this subsection.**

(3) Proof of the giving of notice must be made at or before the hearing and filed in the proceeding.

(4) The Department of Human Services and the Oregon Health Authority may adopt rules allowing for the department or authority to accept electronic notice in lieu of the notice required under subsection (1) of this section.

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SECTION 4. ORS 113.005, as amended by section 20, chapter 42, Oregon Laws 2016, is amended to read:

113.005. (1) If, prior to appointment and qualification of a personal representative, property of a decedent is in danger of loss, injury or deterioration, or disposition of the remains of a decedent is required, the court may appoint a special administrator to take charge of the property or the remains. The petition for appointment [*shall*] **must** state the reasons for special administration and specify the property, so far as known, requiring administration, and the danger to which it is subject.

[(2) *The special administrator shall qualify by filing a bond in the amount set by the court, conditioned upon the special administrator faithfully performing the duties of the trust.*]

(2)(a) Except as provided in section 6 of this 2017 Act, the special administrator may not act, and letters may not be issued to the special administrator, until the special administrator provides a bond to the clerk of the court. The bond must be for the security and benefit of all interested persons and must be conditioned upon the special administrator faithfully performing the duties of the position. The bond must be executed by a surety qualified under ORCP 82 D to G.

(b) The amount of the bond set by the court under this subsection must be adequate to protect interested persons. In setting the amount of the bond, the court shall consider:

(A) The nature, liquidity and apparent value of the property subject to administration.

(B) The anticipated income during administration.

(C) The probable indebtedness and taxes.

(3) The **court may authorize the special administrator [*may*] to:**

(a) **Arrange for and** incur expenses for the funeral 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; and

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

(c) Administer property of the estate.

(4) The special administrator [*shall*] **may** not approve or reject claims of creditors or pay claims or expenses of administration or take possession of assets of the estate other than those in danger of loss, injury or deterioration pending the appointment of a personal representative.

(5) Upon the appointment and qualification of a personal representative the powers of the special administrator [*shall*] cease. Within 30 days after the issuance of letters testamentary **or letters of administration** to a personal representative, the special administrator shall make and file an account and deliver to the personal representative the assets of the estate in the possession of the special administrator. If the personal representative objects to the account of the special administrator, the court shall hear the objections, and, whether or not objections are made, shall examine the account.

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

SECTION 5. Section 6 of this 2017 Act is added to and made a part of ORS chapter 113.

SECTION 6. (1) A special administrator is not required to provide a bond to the court under ORS 113.005 (2) if a will provides that no bond is required of the person appointed as special administrator, but the court may, for good cause, require a bond notwithstanding any provision in a will that no bond is required.

(2) Upon a request by the special administrator, the court may waive the requirement of a bond if:

(a) The request states the reasons why the waiver is requested; and

(b) The request describes the known creditors of the estate, if the special administrator will administer property of the estate.

(3) Upon a request by the special administrator, the court may waive or reduce the requirement of a bond if the court orders the special administrator to provide written confirmation from a financial institution that property of the estate is held by the financial institution subject to withdrawal only on order of the court.

SECTION 7. ORS 113.035 is amended to read:

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

(1) The name, age, domicile, post-office address[,] **and** 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.

(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 there are omissions from the information relating to devisees.

(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.

(9) 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 parent of the decedent willfully deserted the decedent or neglected without just and sufficient cause to provide proper care and maintenance for the decedent, as provided by ORS 112.047.

(10) 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 peti-

tion, 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.

(11) 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.

SECTION 8. Section 9 of this 2017 Act is added to and made a part of ORS chapter 113.

SECTION 9. (1) A petition for the appointment of a personal representative under ORS 113.035 may include a request for the compensation of the personal representative to be determined by a different method than as provided in ORS 116.173 (3). The petition must set forth specific facts showing that the compensation calculated under ORS 116.173 (3) would be inadequate to compensate the personal representative for the reasonable value of the personal representative's services. The court may grant the request if the court finds that compensation as provided in ORS 116.173 (3) would be inadequate.

(2) If the petition includes a request for a different method of compensation under this section:

(a) The petitioner shall give notice and a copy of the petition to the distributees of the estate, the Department of Human Services and the Oregon Health Authority. The notice shall allow 20 days for filing objections to the petition unless the court allows a different time.

(b) A judgment appointing a personal representative under ORS 113.035 may not be entered until the court has held a hearing on the petition including the request or the time for filing objections to the petition has expired without an objection being filed.

(3) If the court allows the petitioner's request for a different method of compensation under this section, the personal representative may, at any time prior to or at the time of the filing of the final account or the statement in lieu of the final account under ORS 116.083, elect to be compensated as provided in ORS 116.173 (3).

(4) Failure by the department, the authority or a distributee to object to a request for a different method of compensation under this section does not preclude the department, the authority or a distributee from objecting to the amount of the personal representative's compensation set forth in the final account filed under ORS 116.083 on the basis that the compensation exceeds the reasonable value of the services actually provided by the personal representative.

SECTION 10. ORS 113.045 is amended to read:

113.045. (1) Upon appointment, a personal representative shall deliver or mail to [an estate administrator of] the Department of State Lands [appointed

under ORS 113.235] 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 proof of the delivery or mailing with the court.

(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 Department of State Lands [appointed under ORS 113.235] a notice indicating that an heir or devisee cannot be identified and found. The personal representative shall file proof of the delivery or mailing with the court.

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

SECTION 11. ORS 113.055 is amended to read:

113.055. (1) Upon [an ex parte hearing] the **ex parte review** of a petition for the probate of a will, an affidavit of an attesting witness may be used instead of the personal presence of the witness in court. The witness may give evidence of the execution of the will by attaching the affidavit to the will or to a photographic or other facsimile copy of the will[,] and may identify the signature of the testator and witnesses to the will by use of the will or the copy. The affidavit shall be received in evidence by the court and have the same weight as to matters contained in the affidavit as if the testimony were given by the witness in open court. The affidavit of the attesting witness may be made at **or after** the time of execution of the will [or at any time thereafter].

(2) However, upon motion of any person interested in the estate filed within 30 days [after the order admitting the will to probate is made] **from the date the personal representative first delivers or mails information under ORS 113.145 (1)**, the court may require that the witness making the affidavit be brought before the court. If the witness is outside the reach of a subpoena, the court may order that the deposition of the witness be taken.

(3) If the evidence of none of the attesting witnesses is available, the court may allow proof of the will by testimony or other evidence that the signature of the testator or at least one of the witnesses is genuine.

(4) In the event of contest of the will or of probate [thereof] **of the will** in solemn form, proof of any facts shall be made in the same manner as in an action tried without a jury.

SECTION 12. ORS 113.075 is amended to read:

113.075. (1) Any interested person may contest the probate of the will or the validity of the will or assert an interest in the estate for the reason that:

(a) The will alleged in the petition **for probate** 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.

(2) An action described in subsection (1) of this section *[shall]* **must** be commenced by the filing of a petition in the probate proceedings, except that an action described in subsection (1)(c) of this section may be commenced by the filing of a separate action in any court of competent jurisdiction.

(3) An action described in subsection (1) of this section *[shall]* **must** be commenced before the later of:

(a) Four months after the date of delivery or mailing of the information described in ORS 113.145 if that information was required to be delivered or mailed to the person on whose behalf the *[petition]* **action under subsection (1) of this section** is filed; or

(b) Four months after the first publication of notice to interested persons if the person on whose behalf the *[petition]* **action under subsection (1) of this section** is filed was not required to be named in the petition **for probate** as an interested person.

(4)(a) **A person who commences an action under subsection (1) of this section shall give notice of the action to heirs and devisees identified in the petition for probate or amended petition for probate, and to the Department of State Lands if the personal representative has delivered or mailed information to the department under ORS 113.045.**

(b) **If any devisee under the contested will is a charitable trust as described in ORS 130.170, a public benefit corporation as defined in ORS 65.001 or a religious organization, a person who commences an action under subsection (1) of this section shall give notice to the Attorney General of the action.**

[(4)] (5) A cause of action described in subsection (1)(c) of this section *[shall]* **may** not be presented as a claim under ORS chapter 115.

SECTION 13. ORS 113.085 is amended to read:

113.085. (1) Except as provided in subsection *[(2)]* (3) of this section, upon the filing of the petition **under ORS 113.035**, if there is no will or **if** there is a will and it has been proved, the court shall appoint a qualified person *[it]* **the court** finds suitable as personal representative, giving preference in the following order:

(a) The *[executor]* **personal representative** named in the will.

(b) **If the surviving spouse of the decedent is a distributee of the estate**, the surviving spouse of the decedent or the nominee of the surviving spouse of the decedent.

[(c)] *The nearest of kin of the decedent or the nominee of the nearest of kin of the decedent.*

(c) **If the person is a distributee of the estate, a person who would be entitled to property of the decedent under intestate succession.**

(d) **Any other distributee of the estate.**

[(d)] (e) The Director of Human Services or the Director of the Oregon Health Authority, or an attorney approved under ORS 113.086, if the decedent received public assistance as defined in ORS 411.010, received medical assistance as defined in ORS 414.025 or received care at an institution described in ORS 179.321 (1) and it appears that the assistance or the cost of care may be recovered from the estate of the decedent.

[(e)] (f) The Department of Veterans' Affairs, if the decedent was a protected person under ORS 406.050 (10)[,] and the department has joined in the petition for such appointment.

[(f)] (g) Any other person.

(2) **Before the court appoints a personal representative under subsection (1)(b) to (g) of this section, the court may require the petitioner to make a reasonable attempt to notify persons of higher priority than the proposed personal representative under subsection (1)(b) to (g) of this section.**

[(2)] (3) Except as provided in subsection *[(3)]* (4) of this section, the court shall appoint the Department 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 Department of State Lands in the administration of the estate. Any funds received by the Department of State Lands in the capacity of personal representative may be deposited in accounts, separate and distinct from the General Fund, established *[with]* **in** the State *[Treasurer]* **Treasury**. Interest earned by such account shall be credited to that account.

[(3)] (4) The court may appoint a person other than the Department 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 Department of State Lands *[appointed under ORS 113.235]* approving the filing of the petition by the person. Except as provided by rule adopted by the Director of the Department of State Lands, *[an estate administrator]* **the department** 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 14. ORS 113.095 is amended to read:

113.095. A person is not qualified to act as personal representative if the person is:

[(1)] *An incompetent.*

(1) **Incapacitated or financially incapable, as those terms are defined in ORS 125.005.**

(2) A minor.

(3) A person suspended for misconduct or disbarred from the practice of law, during the period of suspension or disbarment.

(4) A person who has resigned from the Oregon State Bar when charges of professional misconduct are under investigation or when disciplinary proceedings are pending against the person, until the person is reinstated.

(5) A licensed funeral service practitioner unless the decedent was:

(a) A relative of the licensed funeral service practitioner; or

(b) A licensed funeral service practitioner who was a partner, employee or employer in the practice of the licensed funeral service practitioner who is petitioning for appointment as personal representative.

SECTION 15. 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 Department of State Lands, the Department of Veterans' Affairs, the Director of Human Services, the Director of the Oregon Health Authority or an attorney approved under ORS 113.086, the personal representative may 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.]*

(1)(a) Except as provided in subsections (2) to (4) of this section, the personal representative may not act, and letters may not be issued to the personal representative, until the personal representative provides a bond to the clerk of the court. The bond must be for the security and benefit of all interested persons and must be conditioned upon the personal representative faithfully performing the duties of the position. The bond must be executed by a surety qualified under ORCP 82 D to G.

[(2)] (b) The amount of the bond set by the court [shall] under this subsection must 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)] (A) The nature, liquidity and apparent value of the assets of the estate.

[(b)] (B) The anticipated income during administration.

[(c)] (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 re-

quirement 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.]

(2) Subsection (1) of this section does not apply if:

(a) The will provides that no bond is required, but the court may, for good cause, require a bond notwithstanding any provision in a will that no bond is required;

(b) The personal representative is the sole heir or devisee, but the court may, for good cause, require a bond notwithstanding the fact that the personal representative is the sole heir or devisee; or

(c) The personal representative is the Department of State Lands, the Department of Veterans' Affairs, the Director of Human Services, the Director of the Oregon Health Authority or an attorney approved under ORS 113.086.

(3) Upon a request by the personal representative, the court may waive the requirement of a bond if:

(a) The request states the reasons why the waiver is requested; and

(b) The request describes the known creditors of the estate.

(4) The court may waive or reduce the requirement of a bond to the extent that:

(a) The personal representative provides written confirmation from a financial institution that property of the estate is held by the financial institution subject to withdrawal only on order of the court; or

(b) The court restricts the sale, encumbrance or other disposition of property of the estate without prior court approval.

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

SECTION 16. ORS 113.125 is amended to read:

113.125. (1) **The court shall issue** letters testamentary or letters of administration [*shall be issued*] to the personal representative appointed by the court upon the filing with the clerk of the court the bond, if any, required by the court.

(2) Letters testamentary may be in the following form:

LETTERS TESTAMENTARY

No. _____

THIS CERTIFIES that the will of _____, deceased, has been proved and _____ has (have) been appointed and is (are) at the date hereof the duly appointed, qualified and _____ acting _____ ([Executor(s)] or Administrator(s)] **Personal Representative(s)** with

the Will Annexed) of the will and estate of the decedent.

IN WITNESS WHEREOF, I, as Clerk of the Circuit Court of the State of Oregon for the County of _____, in which proceedings for administration upon the estate are pending, [do hereby] subscribe my name and affix the seal of the court this ____ day of _____, 2__.

_____ Clerk of the Court

By _____ Deputy

(Seal)

(3) Letters of administration may be in the following form:

LETTERS OF ADMINISTRATION

No. _____

THIS CERTIFIES that _____ has (have) been appointed and is (are) at the date hereof the duly appointed, qualified and acting [administrator(s)] **personal representative(s)** of the estate of _____, deceased, and that no will of the decedent has been proved in this court.

IN WITNESS WHEREOF, I, as Clerk of the Circuit Court of the State of Oregon for the County of _____, in which proceedings for administration upon the estate are pending, [do hereby] subscribe my name and affix the seal of the court this ____ day of _____, 2__.

_____ Clerk of the Court

By _____ Deputy

(Seal)

SECTION 17. ORS 113.165 is amended to read:

113.165. Within [60] **90** days after the date of appointment, unless a longer time is granted by the court, a personal representative shall file in the estate proceeding an inventory of all [the] property of the estate that has come into the possession or knowledge of the personal representative. The inventory shall show the estimates by the personal representative of the respective [true cash] **fair market** values as of the date of the death of the decedent of the properties described in the inventory.

SECTION 18. ORS 113.185 is amended to read:

113.185. (1) The personal representative may employ a qualified and disinterested appraiser to assist the personal representative in the appraisal of any property of the estate the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of property.

(2) The court in its discretion may direct that all or any part of the property of the estate be appraised by one or more appraisers appointed by the court.

(3) [Property for which appraisal is required shall be appraised at its true cash value as of the date of the death of the decedent. Each appraisal shall] **An appraisal under this section must** be in writing and [shall] **must** be signed by the appraiser making it.

(4) Each appraiser is entitled to be paid a reasonable fee from the estate for services and to be reimbursed from the estate for necessary expenses.

SECTION 19. ORS 113.195 is amended to read:

113.195. (1) When a personal representative ceases to be qualified as provided in ORS 113.095, or becomes incapable of discharging duties, the court shall remove the personal representative.

(2) When a personal representative has been unfaithful to or neglectful of the trust, the court may remove the personal representative.

(3) When a personal representative has failed to comply with ORS 113.092, the court may remove the personal representative.

(4) For other good cause shown, the court may remove the personal representative.

[4] (5) When grounds for removal of a personal representative appear to exist, the court, on its own motion or on the petition of any interested person, shall order the personal representative to appear and show cause why the personal representative should not be removed. A copy of the order to show cause and of the petition, if any, shall be served upon the personal representative and upon the surety of the personal representative as provided in ORS 111.215.

SECTION 20. ORS 113.205 is amended to read:

113.205. (1) Every power exercisable by copersonal representatives may be exercised by the survivors or survivor of them when the appointment of one is terminated, unless the will provides otherwise.

(2) Where one of two or more persons named as [coexecutors] **copersonal representatives** is not appointed, those appointed may exercise all the powers incident to the office, unless the will provides otherwise.

SECTION 21. ORS 113.215 is amended to read:

113.215. (1) When a personal representative dies, is removed by the court, or resigns and the resignation is accepted by the court, the court may appoint, and, if the personal representative was the sole or the last surviving personal representative and administration is not completed, the court shall appoint another personal representative in place of the personal representative.

(2) If, after a will has been proven and letters testamentary or **letters** of administration [with the will annexed] have been issued, the will is set aside, declared void or inoperative, the letters testamentary or **letters** of administration [with the

will annexed] shall be revoked and letters of administration issued.

(3) If, after administration has been granted, a will of the decedent is found and proven, the letters of administration shall be revoked and letters testamentary or **letters** of administration [*with the will annexed*] shall be issued.

(4) When a successor personal representative is appointed, the successor has all the rights and powers of the predecessor or of the [*executor*] **personal representative** named in the will, except that the successor [*shall*] **may** not exercise powers given in the will [*which*] **that** by its terms are personal to the personal representative named [*therein*] **in the will**.

SECTION 22. ORS 113.225 is amended to read:

113.225. (1) If the personal representative dies, is removed by the court or resigns after the notice to interested persons required by ORS 113.155 has been published but before the expiration of four months from the date of first publication, the successor personal representative shall cause notice to interested persons to be published as if the successor were the original personal representative. The republished notice shall state:

(a) That the original personal representative died, was removed by the court or resigned[.].

(b) The date of death, removal or resignation and the date of appointment of the new personal representative. [*It also shall state*]

(c) That all persons having claims against the estate shall present [*them,*] **the claims to the new personal representative as provided in ORS 115.005** within four months after the date of the first publication of the republished notice[, *to the new personal representative, at the address designated in the republished notice for the presentation of claims*], or [*they*] **the claims** may be barred.

(2) [No] Notice by the successor personal representative [*shall be*] **is not** required under subsection (1) of this section if the original personal representative dies, is removed by the court, or resigns after the expiration of four months from the date of the first publication of the notice to interested persons.

SECTION 23. ORS 113.238 is amended to read:

113.238. (1) A 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 Department of State Lands [*appointed under ORS 113.235*].

(2) Except as provided by ORS 708A.430 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 Department of State

Lands [*appointed under ORS 113.235*]. 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)] (4) or to an affiant authorized under ORS 114.520 to file an affidavit under ORS 114.515.

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

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SECTION 24. ORS 114.005 is amended to read:

114.005. (1) **Except as provided in subsection (3) of this section**, the spouse and dependent children of a decedent **occupying the principal dwelling of the decedent at the time of the decedent's death**, or any of them, may continue to occupy the [*principal place of abode of the decedent*] **dwelling** until:

(a) One year after the death of the decedent; or[.].

(b) If the [*estate therein is an estate of leasehold or an estate for the lifetime of another*] **decedent's interest in the dwelling is a leasehold or otherwise less than a fee interest**, until one year after the death of the decedent or the earlier termination of the [*estate*] **interest**.

(2) During [*that*] **an occupancy under subsection (1) of this section**:

[(1)] (a) The occupants [*shall*] **may** not commit or permit waste to the [*abode*] **dwelling**, or cause or permit [*mechanic's or materialman's*] **construction liens** or other liens to attach [*thereto*] **to the dwelling**.

[(2)] (b) The occupants shall **pay the cost** to keep the [*abode*] **dwelling** insured, to the extent of the fair market value of the improvements, against fire and other hazards within the extended coverage provided by fire insurance policies, **with loss payable to the estate**. [*In the event of loss or damage from those hazards, to the extent of the proceeds of the insurance, they shall restore the abode to its former condition.*]

[(3)] (c) The occupants shall pay taxes and improvement liens on the [*abode as payment thereof*] **dwelling as payment of the liens** becomes due.

[(4)] (d) The [*abode*] **dwelling** is exempt from execution to the extent that [*it*] **the dwelling** was exempt when the decedent was living.

(e) **The dwelling is subject to the rights of persons having a security interest in the dwelling**.

(3) **For good cause shown, the court may waive or alter the provisions of subsection (1) of this section.**

SECTION 25. ORS 114.325 is amended to read:

114.325. (1) **Except as provided in subsection (2) of this section, and subject to ORS 113.105**, a personal representative has power to sell, mortgage,

lease or otherwise deal with property of the estate without notice, hearing or court order.

(2) Exercise of the power of sale by the personal representative is improper, except after notice, hearing and order of the court, if:

(a) The sale is in contravention of the provisions of the will; or

(b) The property is specifically devised and the will does not authorize its sale.]; or]

[*(c) A bond of the personal representative has been required and filed, the sale price of the property to be sold exceeds \$5,000 and the bond of the personal representative has not been increased by the amount of cash to be realized on the sale, unless the court has directed otherwise.*]

SECTION 26. ORS 114.630 is amended to read:

114.630. (1) Except as otherwise provided in ORS 114.600 to 114.725, the augmented estate consists of all of the following property, whether real or personal, movable or immovable, or tangible or intangible, wherever situated:

(a) The decedent's probate estate as described in ORS 114.650.

(b) The decedent's nonprobate estate as described in ORS 114.660 and 114.665.

(c) The surviving spouse's estate, as described in ORS 114.675.

(2) The value attributable to any property included in the augmented estate under ORS 114.600 to 114.725 must be reduced by the amount of all enforceable claims against the property and all encumbrances on the property. Any exemption or deduction that is allowed for the purpose of determining estate [*or inheritance*] taxes on the augmented estate and that is attributable to the marriage of the decedent and the surviving spouse inures to the benefit of the surviving spouse as provided in ORS 116.343 (2).

(3) The value attributable to any property included in the augmented estate includes the present value of any present or future interest and the present value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal Social Security Act.

(4) The value attributable to property included in the augmented estate is equal to the value that would be used for purposes of federal estate and gift tax laws if the property had passed without consideration to an unrelated person on the date that the value of the property is determined for the purposes of ORS 114.600 to 114.725.

(5) In no event may the value of property be included in the augmented estate more than once.

ORS CHAPTER 115

SECTION 27. ORS 115.005 is amended to read:

115.005. (1)(a) Claims against the estate of a decedent, other than claims of the personal represen-

tative as a creditor of the decedent, shall be presented to the personal representative. **Filing a claim with the court does not constitute presentation to the personal representative. Except as provided in paragraph (b) of this subsection, a claim is presented to the personal representative when the claim is mailed or personally delivered to the personal representative at:**

(A) The address for the personal representative included in the petition for appointment of the personal representative under ORS 113.035;

(B) The address provided for presentation of claims under ORS 115.003; or

(C) The address provided for presentation of claims in the published notice under ORS 113.155 or 113.225.

(b) In addition to the addresses for the presentation of claims under paragraph (a) of this subsection, the personal representative may authorize creditors to present claims by electronic mail or facsimile communication to a designated electronic mail address or facsimile number. If the personal representative authorizes alternative methods of presentation under this subsection, a claim is presented to the personal representative when it is sent to the electronic mail address or the facsimile number designated by the personal representative for the presentation of claims, unless the sender receives a notice that the electronic mail was not delivered or the facsimile communication was not successful. If the personal representative denies receiving the electronic mail or facsimile communication, the burden of proof is on the creditor to demonstrate that the electronic mail was properly addressed and sent or that the facsimile communication was properly addressed and successfully delivered or transmitted.

(2) Except as provided in subsection (3) of this section, a claim is barred from payment from the estate if not presented within the statute of limitations applicable to the claim and 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] **45** 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.

(3) A claim against the estate presented after claims are barred under subsection (2) of this section shall be paid from the estate if the claim:

(a) Is presented before the expiration of the statute of limitations applicable to the claim and before the personal representative files the final account;

(b) 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) Would be allowable but for the time at which the claim is presented.

(4) A claim against an estate may be paid under subsection (3) of this section only after payment of all expenses having priority over claims under ORS 115.125 and payment of all previously presented claims.

(5) 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 only, any proceeding to establish liability of the decedent or the personal representative for which the decedent or personal representative is protected by liability insurance at the time the proceeding is commenced.

SECTION 28. ORS 115.065 is amended to read:

115.065. (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*. **A creditor who presents a claim under this subsection does not waive the creditor's security interest and may recover a deficiency as provided in subsection (5) of this section.**

(2) If the claim is presented, *[it] the claim* shall describe the security **generally**. If the security is an encumbrance that is recorded, it is sufficient to describe the encumbrance by reference to the *[book, page,] book and page or document number*, date and place of recording **or filing**.

(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.

SECTION 29. ORS 115.070 is amended to read:

115.070. If a judgment was entered on a claim prior to the death of the decedent **but was not a lien against property of the estate on the date of the decedent's death**, 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]* **A claim for**

which a judgment was entered prior to the death of the decedent 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 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 **under ORS 115.065**. In all other respects a claim *[which] that* has been reduced to judgment shall have the same priority under ORS 115.125 as *[it] the claim* would have had were it not reduced to judgment.

SECTION 30. ORS 115.125, as amended by section 23, chapter 42, Oregon Laws 2016, is amended to read:

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

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

(b) Expenses of administration **of the estate, and subject to preferences established under federal law, expenses of administration of any protective proceeding in which the decedent was the protected person authorized by the court in the protective proceeding.**

(c) Expenses of a plain and decent funeral.

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

(e) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent **to which the persons are otherwise entitled by law.**

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

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

(h) Child support arrearages.

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

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

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

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

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

(L) The claim of the Department of Human Services or the Oregon Health Authority for the care and maintenance of the decedent at a state institution, as provided in ORS 179.610 to 179.770.

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

(n) All other claims against the estate.

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

SECTION 31. ORS 115.135 is amended to read:

115.135. (1) A claim presented to the personal representative shall be considered allowed as presented unless within 60 days after the date of [pre-*sentment*] **presentation** of the claim **as provided in ORS 115.005** the personal representative mails or delivers a notice of disallowance of the claim in whole or in part to the claimant and, if any, the attorney of the claimant. The personal representative shall file in the estate proceeding the claim as presented and a copy of the notice of disallowance.

(2) A notice of disallowance of a claim shall **state the reason for the disallowance and** inform the claimant that the claim has been disallowed in whole or in part and, to the extent disallowed, will be barred unless the claimant proceeds as provided in ORS 115.145. **Statement of a reason for disallowance under this subsection is not an admission by the personal representative and does not preclude the assertion of other defenses to the claim.**

(3) The personal representative may rescind the previous allowance of an unpaid claim, if the claim was allowed because of error, misinformation or excusable neglect. Not less than 30 days before the date of the filing of the final account the personal representative shall give notice of rescission of previous allowance of a claim to the claimant and, if any, the attorney of the claimant in the same manner and containing the same information as a notice of disallowance.

(4) If allowed, the claim shall be paid only to the extent of the assets of the estate available for the payment of the claim pursuant to the priorities established in ORS 115.115 and 115.125.

SECTION 32. ORS 115.145 is amended to read:

115.145. (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 **with the court** 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.

ORS CHAPTER 116

SECTION 33. ORS 116.083 is amended to read:

116.083. (1) A personal representative shall make and file in the estate proceeding an account of the personal representative's administration:

(a) Unless the court orders otherwise, annually within 60 days after the anniversary date of the personal representative's appointment.

(b) Within 30 days after the date of the personal representative's removal or resignation or the revocation of the personal representative's letters.

(c) When the estate is ready for final settlement and distribution.

(d) At such other times as the court may order.

(2) Each account must include the following information:

(a) The period of time covered by the account.

(b) The total value of the property with which the personal representative is chargeable according to the inventory, or, if there was a prior account, the amount of the balance of the prior account.

(c) All money and property received during the period covered by the account.

(d) All disbursements made during the period covered by the account. [Vouchers for] **Evidence of disbursements** must accompany the account, unless otherwise provided by order or rule of the court, or unless the personal representative is a trust company that has complied with ORS 709.030, but that personal representative shall:

(A) Maintain the [vouchers] **evidence of disbursement** for a period of not less than one year following the date on which the order approving the final account is entered;

(B) Permit interested persons to inspect the [vouchers] **evidence of disbursement** and receive

copies [thereof] **of the evidence** at their own expense at the place of business of the personal representative during the personal representative's normal business hours at any time prior to the end of the one-year period following the date on which the order approving the final account is entered; and

(C) Include in each annual account and in the final account a statement that the [vouchers are] **evidence of disbursement** is not filed with the account but [are] **is** maintained by the personal representative and may be inspected and copied as provided in subparagraph (B) of this paragraph.

(e) The money and property of the estate on hand.

(f) [Such] **Any** other information [as] **that** the personal representative considers necessary to show the condition of the affairs of the estate or as the court may require.

(g) A declaration under penalty of perjury in the form required by ORCP 1 E, or an unsworn declaration under ORS 194.800 to 194.835, if the declarant is physically outside the boundaries of the United States.

(3) When the estate is ready for final settlement and distribution, the account must also include:

(a) A statement that any required estate tax return has been filed.

[a)] **(b)** A statement that all Oregon income taxes, [inheritance or] estate taxes and personal property taxes **that are due**, if any, have been paid, or if not [so] paid, that payment of those taxes has been secured by bond, deposit or otherwise, and that all [required] tax returns **currently due** have been filed.

(c) Any request to retain a reserve for the determination and payment of any additional taxes, interest and penalties, and of all related reasonable expenses.

(d) A statement describing the determination of the compensation of the personal representative under the will or under section 9 of this 2017 Act or ORS 116.173 (3) and (4).

[b)] **(e)** A petition for a judgment authorizing the personal representative to distribute the estate to the persons and in the portions specified [therein] **in the judgment.**

[4] *If the distributees consent thereto in writing and all creditors of the estate have been paid in full other than creditors owed administrative expenses that require court approval, the personal representative, in lieu of the final account otherwise required by this section, may file a statement that includes the following:*

(4)(a) The personal representative may file a statement under this subsection in lieu of the final account otherwise required by this section if:

(A) The distributees, other than distributees whose only distribution is a cash or specific bequest that will be paid or satisfied in full, consent in writing; and

(B) All creditors of the estate, other than creditors owed administrative expenses that require court approval, have been paid in full.

(b) A statement under this subsection must include:

[a)] **(A)** The period of time covered by the statement.

[b)] **(B)** A statement that all creditors [have been paid in full] **of the estate**, other than creditors owed administrative expenses that require court approval, **have been paid in full.**

[c)] **(C)** The statement and petition **and any request for a reserve under** [referred to in] subsection (3) of this section.

[d)] **(D)** A declaration under penalty of perjury in the form required by ORCP 1 E, or an unsworn declaration under ORS 194.800 to 194.835, if the declarant is physically outside the boundaries of the United States.

(5) Notice of time for filing objections to the statement described in subsection (4) of this section is not required.

(6) The Chief Justice of the Supreme Court may by rule specify the form and contents of accounts that must be filed by a personal representative.

SECTION 34. ORS 116.093 is amended to read:

116.093. (1) Upon filing the final account and petition for a judgment of distribution, the personal representative shall [fix] **set** a time for filing objections [thereto in a notice thereof] **to the account and petition.** Not less than 20 days before the time [fixed in the notice] **set**, the personal representative shall [cause a copy of the notice to be mailed] **mail a copy of the final account and petition for judgment and notice of the time set for objections** to:

(a) Each [heir] **distributee** at the last-known address of the **distributee** [heir, if the decedent died intestate].

[b] *Each devisee at the last-known address of the devisee, if the decedent died testate.*

[c)] **(b)** Each creditor who has not received payment in full and whose claim has not otherwise been barred.

[d] *Any other person known to the personal representative to have or to claim an interest in the estate being distributed.*

(2) If a charitable trust as described in ORS 130.170, a public benefit corporation as defined in ORS 65.001 or a religious organization is a residuary beneficiary of the estate, or if a charitable trust, a public benefit corporation or a religious organization will receive less under the judgment than the amount of a specific devise to the trust, corporation or organization, the personal representative shall mail the notice under subsection (1) of this section to the Attorney General.

[2)] **(3)** The notice need not be mailed to the personal representative.

[(3)] (4) Proof of the mailing to those persons entitled to notice shall be filed in the estate proceeding at or before approval of the final account.

[(4)] (5) If the Department of Human Services has presented a claim under ORS chapter 411 or ORS 416.310 to 416.340, 416.350 or 417.010 to 417.080, or the Oregon Health Authority has presented a claim under ORS chapter 414 or ORS 416.310 to 416.340, 416.350 or 416.510 to 416.990, or the Department of Corrections has presented a claim under ORS 179.620 (3), and the claim has not been settled or paid in full, the personal representative shall mail to the appropriate agency a copy of the final account at the same time, and shall make proof of the mailing in the same manner, as the notice provided for in this section.

[(5)] (6) The Oregon Health Authority may adopt rules designating the Department of Human Services as the appropriate department to receive the final account for claims presented by the authority under subsection [(4)] (5) of this section.

SECTION 35. ORS 116.113 is amended to read:

116.113. (1) If no objections to the final account and petition for distribution are filed, or if objections are filed, upon the hearing **or upon the filing of a statement in lieu of the final account under ORS 116.083 (4)**, the court shall enter a general judgment of final distribution. In the judgment the court shall designate the persons in whom title to the estate available for distribution is vested and the portion of the estate or property to which each is entitled under the will, by agreement approved by the court or pursuant to intestate succession. The judgment shall also contain any findings of the court in respect to:

- (a) Advancements.
- (b) Election against will by the surviving spouse.
- (c) Renunciation.
- (d) Lapse.
- (e) Adjudicated controversies.
- (f) Partial distribution, which shall be confirmed or modified.
- (g) Retainer.
- (h) Claims for which a special fund is set aside, and the amount set aside.
- (i) Contingent claims that have been allowed and are still unpaid.
- (j) **Any reserve requested under ORS 116.083.**
- (k) **Attorney fees.**

[(j)] (L) Approval of the final account **or the statement filed in lieu of the final account under ORS 116.083 (4)** in whole or in part.

[(2)] *The personal representative is not entitled to approval of the final account until Oregon income and personal property taxes, if any, have been paid and appropriate receipts and clearances therefor have been filed, or until payment of those taxes has been secured by bond, deposit or otherwise, provided, however, that no such receipts or clearances shall be required with regard to damages accepted upon settlement of a claim or recovered on a judgment in an action for wrongful death as provided in ORS 30.010 to 30.100.]*

[(3)] (2) If, by agreement approved by the court, property is distributed to persons in whom title is vested by the judgment of final distribution otherwise than as provided by the will or pursuant to intestate succession, the judgment operates as a transfer of the property between those persons.

[(4)] (3) The judgment of final distribution is a conclusive determination of the persons who are the successors in interest to the estate and of the extent and character of their interest *[therein]*, subject only to the right of appeal and the power of the court to vacate the judgment.

SECTION 36. ORS 116.173 is amended to read:

116.173. (1) **As used in this section, "property subject to the jurisdiction of the court" means:**

(a) **All property owned by the decedent at the time of death that is subject to administration;**

(b) **All income received during the course of the administration of the estate;**

(c) **All gains realized on the sale or disposition of assets during the course of the administration of the estate, to the extent that the gain realized on each asset sold or disposed of exceeds the value of the asset as provided in subsection (2) of this section; and**

(d) **All unrealized gains on assets acquired during the course of administration of the estate.**

(2) **For purposes of this section, each asset shall be valued at its highest value as reported in the inventory, any amended or supplemental inventory, any interim account or the final account or statement in lieu of the final account filed under ORS 116.083, which may be based upon revaluation of the asset to reflect its then current fair market value.**

[(1)] (3) **Unless the court has granted a request for a different determination of the compensation of the personal representative under section 9 of this 2017 Act**, upon application to the court a personal representative is entitled to receive compensation for services as provided in this section. If there is more than one personal representative acting concurrently **or consecutively**, the compensation *[shall]* **may** not be increased, but may be divided among *[them]* **the personal representatives** as they agree or as the court may order. The compensation is a commission upon the whole estate, as follows:

(a) Upon the property subject to the jurisdiction of the court, *including income and realized gains*:

(A) Seven percent of any sum not exceeding \$1,000.

(B) Four percent of all above \$1,000 and not exceeding \$10,000.

(C) Three percent of all above \$10,000 and not exceeding \$50,000.

(D) Two percent of all above \$50,000.

(b) One percent of the property, exclusive of life insurance proceeds, not subject to the jurisdiction

of the court but reportable for Oregon [*inheritance or*] estate tax or federal estate tax purposes.

[(2)] (4) In all cases, further compensation as is just and reasonable may be allowed by the court for any extraordinary and unusual services, **including services** not ordinarily required of a personal representative in the performance of duties as a personal representative.

[(3)] (5) When a decedent by will has made special provision for the compensation of a personal representative[,]:

(a) The personal representative is not entitled to any other compensation for services unless prior to appointment the personal representative signs and files with the clerk of the court a written renunciation of the compensation provided by the will.

(b) If the assets of the estate are insufficient to pay in full all expenses or claims of the estate, the compensation of the personal representative may not exceed the compensation provided by subsections (3) and (4) of this section.

SECTION 37. ORS 116.183 is amended to read:

116.183. (1) A personal representative shall be allowed in the settlement of the final account all necessary expenses incurred in the care, management and settlement of the estate, including reasonable fees of appraisers, attorneys and other qualified persons employed by the personal representative. A partial award of such expenses, including fees, may be allowed prior to settlement of the final account upon petition, showing that the final account reasonably cannot be filed at that time, and upon notice as directed by the court.

(2)(a) An award of reasonable attorney fees under this section shall be made after consideration of the customary fees in the community for similar services, the time spent by counsel, counsel's experience in such matters, the skill displayed by counsel, [*the excellence of*] the result obtained, any agreement as to fees [*which may exist*] between the personal representative and the counsel of the personal representative, the amount of responsibility assumed by counsel considering the total value of the estate, and [*such*] other factors as may be relevant. No single factor [*shall be*] is controlling.

(b) Before the court awards attorney fees in an amount less than the amount requested by the personal representative, the court must allow the attorney an opportunity to submit additional materials supporting the requested amount.

(c) ORCP 68 does not apply to requests for attorney fees under this section.

[(2)] (3) A personal representative who defends or prosecutes any proceeding in good faith and with just cause, whether successful or not, is entitled to receive from the estate necessary expenses and disbursements, including reasonable attorney fees, in the proceeding.

SECTION 38. ORS 116.223 is amended to read:

116.223. The personal representative shall cause to be recorded in the deed records of any county in which real property belonging to the estate is situated, a [*personal representative's*] deed **from the personal representative** executed in the manner required by ORS chapter 93. The execution of the [*personal representative's deed shall*] **deed does** not place the personal representative in the chain of title to the property [*so*] conveyed unless the personal representative is also an heir, devisee or claiming successor to the property conveyed.

SECTION 39. ORS 116.263 is amended to read:

116.263. (1) Three months or more after the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession of personal property or an instrument evidencing a debt, obligation, stock or [*chose in action*] **right to sue** belonging to the estate of the nonresident decedent may make payment of the indebtedness, in whole or in part, or deliver the personal property or the instrument evidencing the debt, obligation, stock or [*chose in action*] **right to sue** to the foreign personal representative of the nonresident decedent, upon an affidavit made by or on behalf of the foreign personal representative, **accompanied by proof of the foreign personal representative's authority**, stating:

(a) The date of the death of the nonresident decedent;

(b) That no local administration or application therefor is pending in this state; and

(c) That the foreign personal representative is entitled to payment or delivery.

(2) Payment or delivery made in good faith on the basis of the affidavit is a discharge of the debtor or person having possession of the personal property.

(3) Payment or delivery may not be made under this section if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the foreign personal representative.

SECTION 40. ORS 116.343 is amended to read:

116.343. (1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purpose of the gift inures to the benefit of the person bearing that relationship or receiving the gift, except that when an interest is subject to a prior present interest that is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or estate taxes of a foreign country paid by the decedent or the estate

of the decedent inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for [*inheritance, succession or*] estate taxes [*or taxes in the nature thereof*] in respect to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment [*thereof*] **the tax** to the extent that, or in proportion as, the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an [*inheritance*] **estate** tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in ORS 116.313, and to that extent no apportionment shall be made against the property. This subsection does not apply to any case in which the result will be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal Revenue Code (26 U.S.C. 2053(d)) relating to deduction for state estate taxes on transfers for public, charitable or religious uses.

IRREVOCABLE LETTERS OF CREDIT

SECTION 41. ORS 22.020 is amended to read:

22.020. (1) In any cause, action, proceeding or matter before any court, board or commission in this state or upon appeal from any action of any such court, board or commission, where bond or security deposit of any character is required or permitted for any purpose, it is lawful for the party required or permitted to furnish such security or bond to deposit, in lieu thereof, in the manner provided in ORS 22.020 to 22.070, money, an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, a certified check or checks on any state or national bank within this country payable to the officer with whom such check is filed, satisfactory municipal bonds negotiable by delivery, or obligations of the United States Government negotiable by delivery, equal in amount to the amount of the bond or security deposit so required or permitted.

(2) Notwithstanding subsection (1) of this section, an irrevocable letter of credit may not be furnished to a court in lieu of other security or bond to be deposited in any criminal offense, action, proceeding or matter before any court, in a protective proceeding under ORS chapter 125, or in any cause, action, proceeding or matter before any court under ORS 105.395, [*111.185, 113.005, 113.035, 113.105, 113.115, 114.325 and*] or 125.715. In any other type of civil cause, action, proceeding or matter before any court, an irrevocable letter of credit may be furnished pursuant to subsection (1) of this section subject to approval of its terms by the parties and to its being in the form and amount prescribed by statute, rule or order of the court.

STAYS OF EXECUTION

SECTION 42. ORS 18.312 is amended to read:

18.312. (1) Except as provided in subsection (2) of this section, execution may not be issued against the property of a deceased party. Except as provided in subsection (2) of this section, a judgment against a deceased party may be collected only by making a claim against the estate of the deceased party in the manner prescribed by ORS chapter 115 or ORS 114.505 to 114.560.

(2) This section does not prevent the issuance of execution and sale of property pursuant to a judgment of foreclosure and sale of property of the decedent. If the amount realized from the sale of property is not sufficient to satisfy the judgment and collection of the deficiency is otherwise allowed by law, the amount of the deficiency may be collected by making a claim against the estate in the manner prescribed by ORS chapter 115 or ORS 114.505 to 114.560.

(3) The stay imposed by subsection (1) of this section:

(a) Expires when the property ceases to be property of the estate, including but not limited to upon conveyance of the property by the personal representative to a third party or upon distribution by the personal representative; and

(b) Does not diminish the lien effect of a judgment or bar execution based on a lien when execution commences after the property ceases to be property of the estate.

CONFORMING AMENDMENTS AND MODERNIZATION

SECTION 43. ORS 86.809 is amended to read:

86.809. The charge of a trustee for the performance of powers and duties of foreclosure by advertisement and sale imposed under ORS 86.705 to 86.815 shall not exceed 50 percent of the compensation allowable to [*an executor or administrator*] **a personal representative** under ORS 116.173 **(3)** or a minimum charge of \$100. Such compensation shall be based upon the amount due on the obligation, both principal and interest, at the time of the trustee's sale.

SECTION 44. ORS 111.025 is amended to read:

111.025. For purposes of ORS chapters 111 to 116, the Oregon Tax Court is not a court having probate jurisdiction and is limited to the trial of appeals on [*inheritance or*] estate tax matters.

SECTION 45. ORS 111.205 is amended to read:

111.205. No particular pleadings or forms [*thereof*] **of pleadings** are required in the exercise of jurisdiction of probate courts. The mode of procedure in the exercise of jurisdiction is in the nature of an action not triable by right to a jury except as otherwise provided by statute. The proceedings shall

be in writing and upon the petition of a party in interest or the order of the court. All petitions, reports and accounts in proceedings before a probate court must include a declaration under penalty of perjury in the form required by ORCP 1 E, or an unsworn declaration under ORS 194.800 to 194.835, if the declarant is physically outside the boundaries of the United States, made by at least one of the persons making the petitions, reports and accounts or by the attorney for the person, or in case of a corporation by its agent. The court exercises its powers by means of:

- (1) A petition of a party in interest.
- (2) A notice to a party.
- (3) A subpoena to a witness.
- (4) Orders and judgments.
- (5) An execution or warrant to enforce its orders and judgments.

SECTION 46. ORS 111.245 is amended to read:

111.245. (1) Proof of documents pursuant to ORS chapters 111, 112, 113, 114, 115, 116 and 117 may be made as follows:

(a) Of a will, by a certified copy *[thereof]* **of the will.**

(b) That a will has been probated or established in a foreign jurisdiction, by a certified copy of the order admitting the will to probate or evidencing its establishment.

(c) Of letters testamentary or **letters** of administration, by a certified copy *[thereof]* **of the letters.** The certification may include a statement that the letters have not been revoked.

(2) A document or order filed or entered in a foreign jurisdiction may be proved by a copy *[thereof]* **of the document or order**, certified by a clerk of the court in which the document or order was filed or entered or by any other official having legal custody of the original document or order.

SECTION 47. ORS 111.255 is amended to read:

111.255. If a document or part *[thereof]* **of a document** is not in the English language, a translation certified by the translator to be accurate may be attached *[thereto]* **to the document** and shall be regarded as sufficient evidence of the contents of the document, unless objection is made *[thereto]*. In the absence of objection, if any person relies in good faith on the accuracy of the translation the person shall not be prejudiced *[thereafter]* because of its inaccuracy.

SECTION 48. ORS 112.315 is amended to read:

112.315. Unless a will evidences a different intent of the testator, the divorce or annulment of the marriage of the testator after the execution of the will revokes all provisions in the will in favor of the former spouse of the testator and any provision *[therein]* **in the will** naming the former spouse as *[executor]* **personal representative**, and the effect of the will is the same as though the former spouse did not survive the testator.

SECTION 49. ORS 113.065 is amended to read:

113.065. (1) The written will of a testator who died domiciled outside this state, which upon probate may operate upon property in this state, may be admitted to probate upon petition *[therefor]*, by filing a certified copy of the will and a certified copy of the order admitting the will to probate or evidencing its establishment in the jurisdiction where the testator died domiciled.

(2) A will offered for probate under this section may be contested for a cause *[which]* **that** would be grounds for rejection of a will of a testator who died domiciled in this state.

SECTION 50. 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 (8) and (9) who were required to be named in the petition for appointment of a personal representative, at the addresses *[therein]* shown **in the petition**, information that *[shall]* **must** 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;

(g) If information under this section is required to be delivered or mailed to a person described in ORS 113.035 (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; and

(h) If information under this section is required to be delivered or mailed to a person described in ORS 113.035 (9), a statement that the rights of the person in the estate may be barred unless the person proceeds as provided in ORS 112.049 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 **the personal representative's** ap-

pointment, 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 of the delivery or mailing required by this section or a waiver of notice as provided under ORS 111.225. The proof [*shall*] **must** 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), (7), (8) or (9), the personal representative shall:

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

(b) Promptly deliver or mail information [*as described*] **specified** 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 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 record of the decedent to the Department of Human Services and the Oregon Health Authority or as otherwise provided by rule adopted by the **department and the** authority.

SECTION 51. ORS 113.242, as amended by section 21, chapter 42, Oregon Laws 2016, is amended to read:

113.242. (1) An estate administrator of the Department of State Lands appointed under ORS 113.235 may take custody of the property of a decedent who died owning property subject to probate in Oregon upon the [*estate administrator*] **department** receiving notice that:

(a) The decedent died wholly intestate and without a known heir as described in ORS 113.238 (3); 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 Department of State Lands appointed under ORS 113.235 may:

(a) Incur expenses for the funeral 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 Department 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.

SECTION 52. ORS 114.385 is amended to read:

114.385. A person dealing with or assisting a personal representative without actual knowledge that the personal representative is improperly exercising the power of the personal representative is protected as if the personal representative properly exercised the power. The person is not bound to inquire whether the personal representative is properly exercising the power of the personal representative, and is not bound to inquire concerning the provisions of any will or any order of court that may affect the propriety of the acts of the personal representative. No provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge [*thereof*] **of the provision or order**. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection expressed in this section extends to a person dealing with or assisting a personal representative appointed under ORS 113.085 without actual knowledge that the personal representative was not qualified as provided in ORS 113.095 or that the appointment of the personal representative involved procedural irregularity.

SECTION 53. ORS 114.525 is amended to read:

114.525. An affidavit filed under ORS 114.515 [*shall*] **must**:

(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 record [*shall*] **must** 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*] **must** 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 and the interest, if any, that will escheat;

(9) State that reasonable efforts have been made to ascertain creditors of the estate;[.]

(10) 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]* **of the expenses and claims** 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)] (11) 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]* **of the claim** 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)] (12) State that a copy of the affidavit showing the date of filing will be mailed or delivered to the Department of Human Services or to the Oregon Health Authority, as prescribed by rule by the **department** or authority;

[(12)] (13) 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]* **presentation** of claims; or

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

[(13)] (14) 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 54. ORS 115.003 is amended to read:

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.

(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.

(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]~~ **45** 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.

(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 of compliance with subsections (1) and (2) of this section. The proof 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.

(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.

SECTION 55. ORS 115.025 is amended to read:

115.025. Each claim presented shall:

(1) Be in writing.

(2) Describe the nature and the amount *[thereof]* **of the claim**, if ascertainable.

(3) State the names and addresses of the claimant and, if any, the attorney of the claimant.

SECTION 56. ORS 115.105 is amended to read:

115.105. A claim of a personal representative shall be filed with the clerk of the court within the time required by law for *[presentment]* **presentation** of claims. Upon application by the personal representative or by any interested person the claim may be considered by the court on the hearing of the final account of the personal representative or prior to the hearing of the final account upon notice to interested persons.

SECTION 57. ORS 116.043 is amended to read:

116.043. If, after the distribution of property under ORS 116.013, it appears that all or any part of the property distributed is required for the payment of claims and expenses of administration, including determined and undetermined state and federal tax liability, the personal representative shall petition the court to order the return of the property. Notice of the hearing on the petition shall be given as provided in ORS 111.215. Upon the hearing the court may order the distributee to return **all or part of** the property distributed *[or any part thereof]*, or to pay *[its]* **the value of the property** as of the time of distribution, and may specify the time within which the return or payment must be made. If the property is not returned or the payment is not made within the time ordered, the person failing to return the property or pay *[the]* **its** value may be adjudged in contempt of court and judgment may be entered against the person and the sureties of the person, if any.

SECTION 58. 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 *[an estate administrator of]* the Department of State Lands *[appointed under ORS 113.235]* 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 59. ORS 125.525 is amended to read:

125.525. An order terminating *[a]* **the conservatorship of a living person** shall direct the conservator to deliver the assets in the possession of the conservator to the protected person:

(1) Immediately, to the extent that the assets are not required for payment of expenses of administration and debts incurred by the conservator for the account of the estate of the protected person; and

(2) Upon entry of an order approving the final accounting or surcharging the conservator, to the extent of any balance remaining.

SECTION 60. ORS 316.387 is amended to read:

316.387. (1) In the case of any tax for which a return is required under this chapter from a decedent or a decedent's estate during the period of administration, the Department of Revenue may give

notice of deficiency as described in ORS 305.265 within 18 months after a written election for a final tax determination is made by the personal representative, administrator, trustee or other fiduciary representing the estate of the decedent. This election must be filed after the return is made and filed in the form and manner as may be prescribed by the department by rule.

(2) Notwithstanding the provisions of subsection (1) of this section, if the department finds that gross income equal to 25 percent or more of the taxpayer's income reported has been omitted from the taxpayer's return, notice of the deficiency may be given at any time within five years after the return was filed.

(3) The limitations to the giving of a notice of deficiency provided in this section shall not apply to a deficiency resulting from false or fraudulent returns, or in cases where no return has been filed. If the Commissioner of Internal Revenue or other authorized official of the federal government makes a correction resulting in a change of the decedent's or the estate of the decedent's tax for state income tax purposes, then notice of a deficiency under any law imposing tax upon or measured by income for the corresponding tax year may be mailed within one year after the department is notified by the fiduciary or the commissioner of such federal correction, or within the applicable 18-month or five-year period prescribed in subsections (1) and (2) of this section, respectively, whichever period later expires.

(4) After filing the decedent's return, the personal representative, administrator, trustee or other fiduciary may apply in writing for discharge from personal liability for tax on the decedent's income. After paying any tax for which the personal representative, administrator, trustee or other fiduciary is subsequently notified, or after expiration of nine months since receipt of the application and during which no notification of tax liability is made, the discharge becomes effective. A discharge under this subsection does not discharge the personal representative, administrator, trustee or other fiduciary from liability to the extent that assets of the decedent's estate are still in the possession or control of the personal representative, administrator, trustee or other fiduciary. The failure of a personal representative to make application and otherwise proceed under this subsection shall not affect the protection available to the personal representative under ORS *[116.113 (2),]* 116.123 and 116.213.

(5) For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the department, on behalf of the state, may agree upon the amount of taxes at any time due or to become due from such fiduciaries under this chapter or transferees of an estate as provided in ORS 314.310 with respect to a tax return or returns of or for a decedent individual or an estate or trust, and payment in accordance with such agreement shall be in full satisfaction of the taxes to which the agreement relates.

SECTION 61. ORS 406.100 is amended to read:

406.100. If the Department of Veterans' Affairs is appointed as a conservator under ORS 406.050, a personal representative under ORS 113.085, a fiduciary by the United States Department of Veterans Affairs or a representative payee by the United States Social Security Administration, the Department of Veterans' Affairs shall have a claim against the estate of the protected person, the decedent, the veteran or the veteran's beneficiaries for purposes of ORS 406.050 (8) or (9), for all of the following:

(1) Reasonable expenses incurred by the department in the execution or administration of the estate.

(2) After the appointment of the department as conservator, reasonable compensation for ordinary and unusual services, as set forth by rule by the department.

(3) After the appointment of the department as personal representative, compensation as provided in ORS 116.173 (3) and (4) or section 9 of this 2017 Act.

(4) With prior approval by the court having probate jurisdiction over the estate, fees charged to the department by the Attorney General for advice or assistance in the performance of the department's duties as conservator or personal representative of the estate.

(5) After the appointment of the department as a fiduciary by the United States Department of Veterans Affairs, compensation as determined by the United States Department of Veterans Affairs.

(6) After the appointment of the department as representative payee by the United States Social Security Administration, compensation as determined by the administration.

APPLICABILITY

SECTION 62. Section 6 of this 2017 Act and the amendments to ORS 113.005 by section 4 of this 2017 Act apply to special administrators appointed on or after the effective date of this 2017 Act.

SECTION 63. Section 9 of this 2017 Act and the amendments to ORS 113.035 by section 7 of this 2017 Act apply to petitions for appointment of a personal representative filed on or after the effective date of this 2017 Act.

SECTION 64. The amendments to ORS 113.055 by section 11 of this 2017 Act apply to motions filed under ORS 113.055 on or after the effective date of this 2017 Act.

SECTION 65. The amendments to ORS 113.075 by section 12 of this 2017 Act apply to actions commenced under ORS 113.075 on or after the effective date of this 2017 Act.

SECTION 66. The amendments to ORS 113.085 and 113.095 by sections 13 and 14 of this 2017 Act apply to petitions filed under ORS 113.035 on or after the effective date of this 2017 Act.

SECTION 67. The amendments to ORS 113.105 by section 15 of this 2017 Act apply to personal representatives appointed on or after the effective date of this 2017 Act.

SECTION 68. The amendments to ORS 113.165 by section 17 of this 2017 Act apply to inventories filed on or after the effective date of this 2017 Act.

SECTION 69. The amendments to ORS 113.195 by section 19 of this 2017 Act apply to personal representatives appointed before, on or after the effective date of this 2017 Act.

SECTION 70. The amendments to ORS 114.005 by section 24 of this 2017 Act apply to all persons occupying a dwelling of a decedent, whether the decedent died before, on or after the effective date of this 2017 Act.

SECTION 71. The amendments to ORS 113.225 and 115.005 by sections 22 and 27 of this 2017 Act apply to claims mailed, delivered or sent on or after the effective date of this 2017 Act.

SECTION 72. The amendments to ORS 116.083 by section 33 of this 2017 Act apply to accounts and statements filed on or after the effective date of this 2017 Act.

SECTION 73. The amendments to ORS 116.093 by section 34 of this 2017 Act apply to notices required to be mailed on or after the effective date of this 2017 Act.

SECTION 74. The amendments to ORS 116.113 by section 35 of this 2017 Act apply to judgments entered on or after the effective date of this 2017 Act.

SECTION 75. The amendments to ORS 116.173 by section 36 of this 2017 Act apply to applications for compensation of the personal representative made on or after the effective date of this 2017 Act.

SECTION 76. The amendments to ORS 116.183 by section 37 of this 2017 Act apply to awards of attorney fees made on or after the effective date of this 2017 Act.

SECTION 77. The amendments to ORS 18.312 by section 42 of this 2017 Act apply to stays imposed before, on or after the effective date of this 2017 Act.

CAPTIONS

SECTION 78. The unit captions used in this 2017 Act are provided only for the convenience of the reader and do not become part of the

statutory law of this state or express any legislative intent in the enactment of this 2017 Act.

Approved by the Governor May 25, 2017

Filed in the office of Secretary of State May 26, 2017

Effective date January 1, 2018
