

Amendments to the Oregon Probate Code
Report of the Probate Modernization Work Group
on
HB 3006, HB 3007, and HB 3008

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From the Office of
Director Sandy Weintraub

I. Introductory summary

Oregon adopted its probate statutes in 1969. Although the legislature has amended the statutes through the years, amendments had been piecemeal and the probate statutes had not undergone a thorough review since 1969. Some sections needed updating due to changes in society and some sections needed clarification because lawyers working with these sections reported uncertainty about their meanings. The goals of the project have been to clarify and modernize statutory sections as appropriate, while leaving intact the parts of the probate 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, and the Circuit Courts (both probate judges and staff). The Work Group began working through the probate statutes and beginning in 2015 recommended bills that have been enacted into law by the Oregon Legislature. The following bills, with changes to the chapters indicated, have been enacted: Senate Bill 379 (2015) (Chapter 112); House Bill 4102-A3 (2016) (Chapter 111 and technical corrections to Chapter 112); House Bill 2986 (2017) (Chapters 111, 113, 114, 115, and 116, and related Chapters 18 and 125). The Work Group now has recommendations for changes to Chapters 113, 114, 115, 116. Legislative Counsel has prepared HB 3006, HB 3007, and HB 3008 with these changes.

The current Work Group members are: Lane Shetterly, Chair of the Work Group, OLC Commissioner and Attorney; Sandy Weintraub, Director of the Oregon Law Commission ; Susan N. Gary, Reporter for the Work Group, OCL Commissioner and Professor at University of Oregon School of Law; Marisa N. James, Senior Deputy Legislative Counsel; Cleve Abbe, Lawyers Title of Oregon LLC; Kathy Belcher, Attorney; Victoria Blachly, Attorney; Susan Bower, Department of Justice Charitable Activities Section; Judge Claudia Burton, Marion County; Retired Judge Rita Cobb, Washington County; Shannon Conley, Attorney; John Draneas, Attorney; Heather Gilmore, Attorney; Christopher Hamilton, Attorney; Robin Hunting, Clerk in the Civil Case Unit for Clackamas County; Sara Kearsley, Attorney; Rebecca Kueny, Attorney; Bryan Marsh, Probate Coordinator/Attorney: Oregon Judicial Department; Gretchen Merrill, Senior Assistant Attorney General: Oregon Department of Justice; Rick Mills, Policy Analyst: Oregon Department of Human Services; Jeff Petty, Clackamas County Probate Coordinator; Bonnie Richardson, Attorney; Matthew Schrumpf, Assistant Attorney General: Oregon Department of Justice; Ken Sherman, Attorney; Linda Thomas-Bush, VP & Senior Trust Officer: U.S. Bank; Jennifer Todd, Attorney; Amy Zubko, Oregon State Bar. P. Jeff Cheyne, Attorney, was a valued member of the Work Group until his untimely death.

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

Technological and social changes have affected the way people manage and dispose of their property. Lawyers working with the probate statutes have identified ways in which the statutes could be improved, both by modernizing some provisions and by clarifying provisions where the language is unclear.

The probate statutes provide two options for probate: (1) full probate, which in Oregon is not as burdensome as in some states but has more requirements and therefore costs more than in other states, and (2) a small estate affidavit process, which is limited to estates defined as small in terms of property and lacks some of the requirements of notice that a full probate has. For some estates, the protections of a full probate may not be needed, but a personal representative may be necessary to transfer an asset, exercise a power of appointment, or bring a wrongful death proceeding.

The proposed amendments provide better guidance for people administering small estates and better protection for creditors of the decedent and heirs or beneficiaries. The proposal also provides a more streamlined process for a probate that must be opened but has no assets, including guidance about what happens when assets are discovered, and provides specific rules for estates involving wrongful death claims.

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 was provided with a copy of the sections of the Uniform Probate Code (“UPC”) that correspond to the topics being discussed. The UPC had been annotated to indicate where the UPC differs from the ORS, so the Work Group could discuss those differences and decide whether to recommend something similar to the UPC for a particular provision. In addition, the Work Group considered statutes from other states where appropriate, including the Washington nonintervention probate statutes.

V. The proposal

Legislative counsel drafted three bills to carry out the proposal. These bills are described separately, in the order of the bill number. HB 3006 adopts rules for estates with no known assets, HB 3007 amends the rules for small estates administered by affidavit, and HB 3008 adopts rules for estates with personal injury or wrongful death claims.

A. HB 3006 – This bill amends Chapters 113, 115, and 116.

HB 3006 creates procedures that improve the administration process for an estate with no known assets that require administration (a “no-asset estate”).¹ Sometimes a

¹ The Work Group understands that, at the most literal level, a decedent will almost always leave some assets, even if nothing more than his or her clothes and personal items; but the focus of the Work Group was on those estates lacking assets that would reasonably be expected to require some probate administration.

probate estate must be opened in order to give a personal representative authority, even though no assets will be distributed through the estate. For example, a personal representative may need to be appointed only to exercise for the limited purpose of exercising a power of appointment over an otherwise non-probate asset. The amendments in HB 3006 make some full-probate requirements not apply when a probate has no assets. The requirements that do not apply are to protect estate assets, so if an estate has no known assets, the requirements are not needed. If assets are later discovered, the personal representative must file an amended inventory with the court and comply with rules that did not apply when it was believed that the estate had no assets. The amendments create a procedure for a personal representative to follow when the personal representative learns about or obtains assets in what had been a no-asset estate.

HB 3006 also allows a personal representative in a full probate to file a statement in lieu of required annual and final accountings, if the distributees of the estate consent. Currently, the personal representative may file a statement in lieu of the final accounting if the distributees all consent and all creditors are paid.

Section 1: ORS 113.035 lists the information that must be included in a petition for appointment of a personal representative and for the probate of a will. Section 1 of the bill adds to ORS 113.035 a requirement that if the petition states that the estate has no assets, the petition state the reason for filing the petition.

Section 2: This section amends ORS 113.105, which addresses the amount of the bond for the personal representative. No bond will be required if the petition states that the petitioner knows of no estate assets. If the personal representative later learns of assets belonging to the estate, the personal representative must file a motion to set or waive the bond, within 30 days of filing the inventory showing assets.

If the only asset in the estate is real property subject to foreclosure, and the decedent had no equity in the real property, the estate is not a no-asset estate. The real property is an asset that must be administered

Section 3. ORS 113.155 requires the personal representative to publish notice to interested persons. Section 3 creates an exception to this duty for an estate with no known assets. If the personal representative later learns of assets, the personal representative must begin publishing notice within 30 days after filing the inventory showing assets.

Section 4. ORS 113.165 creates a duty to file an inventory. Section 4 adds language requiring the personal representative in a no-asset estate to file an inventory stating that no property of the estate has come into the possession or knowledge of the personal representative.

Section 5. ORS 113.175 is amended to provide that if a personal representative of a no-asset estate learns about assets of the estate, the personal representative must file an inventory listing the assets within 30 days after learning about the assets.

Section 6. ORS 115.003 requires a personal representative to make a diligent effort to search for creditors of the decedent, to give notice to each creditor identified, and to file proof of compliance with the court. Section 6 adds a provision stating that this duty does not apply to the personal representative of a no-asset estate, but that if the personal representative later learns about assets of the estate, the personal representative must comply with ORS 115.003. The period for compliance begins with the date of the inventory showing the newly discovered assets.

Section 7. ORS 115.135 provides rules for the allowance and disallowance of claims presented the personal representative. If the estate is a no-asset estate, the personal representative need not take action when a claim is presented. However, if the personal representative later learns about assets of the estate, the personal representative must respond to claims presented before the personal representative received or learned about the assets. The personal representative has 60 days after filing the inventory that lists the newly discovered assets to disallow the claim.

Sections 8 and 9. Section 8 adds a new section, Section 9, to Chapter 116. The new section permits the personal representative of a no-asset estate to close the estate four months after the delivery and mailing of a notice required at the start of the probate. The procedure in the new section applies only if the estate continues to be a no-asset estate. The personal representative must send a copy of the motion to close the estate to everyone who would be entitled to a final account if the estate had held assets. The recipients of the notice have 20 days in which to file objections with the court. The judgment closing the estate discharges the personal representative. Although the judgment acts as a bar to actions against the personal representative, a court can, within a year following the judgment, permit an action if the judgment was taken through misrepresentation or fraud of the personal representative or mistake or excusable neglect of the claimant. This authority tracks the rule in ORS 116.213 for personal representatives of estates with assets.

Section 10. ORS 116.083 provides rules for the filing of annual and final accounts by the personal representative. Section 10 amends the law with respect to the administration of estates that have assets. Section 10 adds a provision permitting the personal representative to submit a statement in lieu of an annual accounting, if the distributees consent in writing. The account must include a list of unpaid claims and must be sent to each creditor whose claim remains allowed and unpaid. An unpaid creditor may require the personal representative to file an accounting simply by giving notice to the personal representative. No motion or order is required in order to compel the personal representative to file an accounting in that case; the notice from the creditor itself is sufficient.

Subsection (3)(a) provides that if the distributees consent, the personal representative may file a statement in lieu of an annual account (subject to the requirements for doing so that apply) “[u]nless otherwise provided by order of the court.” It is the intent of the that apply to the estate in question; it is not intended that this section authorize a court to enter an order that applies to all estates, or to all of a certain class of estates. An

order prohibiting a statement in lieu of an annual account may be entered on the motion of an interested party or on the court's own motion, but must be based on the circumstances of the estate for which the order is entered.

The distributees can revoke their consent to the filing of a statement in lieu of annual account, by notice to the court. If courts use this subsection to impose a standing order that personal representatives must file annual accounts, the statutory rule should be re-examined.

Subsection (3)(b) lists all the information that must be included in a statement in lieu of account. Subsection (3)(b)(C) requires that the statement include a copy of the most recent statement for each financial account owned by the estate. "Each" is intended to emphasize that all accounts must be reported, and "financial account" includes accounts held in banks, brokerage companies, credit unions, and other similar entities.

Section 11. This section updates a cross-reference in 116.113.

Section 12. The section addresses when the changes apply. The provisions related to no-asset estates apply to estates in which the petition to appoint a personal representative is filed on or after the effective date of the Act. The statement in lieu of annual accountings applies to accounts required to be filed on or after the effective date.

CHAPTER 414

AN ACT

HB 3006

Relating to probate; creating new provisions; and amending ORS 113.035, 113.105, 113.155, 113.165, 113.175, 115.003, 115.135, 116.083 and 116.113.

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

SECTION 1. ORS 113.035 is amended to read:

113.035. Any interested person or 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 must include the following information, so far as known:

(1) The name, age, domicile, post-office address and date and place of death 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 petition, the petition shall also state the contents of the will and indicate that it is lost, destroyed or otherwise unavailable and that it was not revoked.

(11) A statement of the extent and nature of assets of the estate, **if any**, to enable the court to set the amount of bond of the personal representative.

(12) If the petition states that no assets of the estate are known to the petitioner under subsection (11) of this section, a statement of the purpose for filing the petition.

SECTION 1a. If House Bill 3008 becomes law, ORS 113.035, as amended by section 1 of this 2019 Act, is amended to read:

113.035. Any interested person or 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 must include the following information, so far as known:

(1) The name, age, domicile, post-office address and date and place of death 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 petition, the petition shall also state the contents of the will and indicate that it is lost, destroyed or otherwise unavailable and that it was not revoked.

(11) A statement of the extent and nature of assets of the estate, if any, to enable the court to set the amount of bond of the personal representative.

(12) If the petition states that no assets of the estate are known to the petitioner under subsection (11) of this section **and the petition is not filed under section 5, chapter 166, Oregon Laws 2019 (Enrolled House Bill 3008)**, a statement of the purpose for filing the petition.

(13) If the petition is filed under section 5, chapter 166, Oregon Laws 2019 (Enrolled House Bill 3008), a statement that the petitioner is filing the petition for the sole purpose of pursuing a wrongful death claim, and the other information required under section 5, chapter 166, Oregon Laws 2019 (Enrolled House Bill 3008).

SECTION 2. ORS 113.105 is amended to read:

113.105. (1)(a) Except as provided in subsections (2) to [(4)] (5) 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 **in an amount set by 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.

(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 assets of the estate.

(B) The anticipated income during administration.

(C) The probable indebtedness and taxes.

(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[.]; **or**

(d) The petition for appointment of the personal representative states that no assets of the estate are known to the petitioner.

(3) If no bond was required under subsection (2)(d) of this section and assets of the estate later come into the possession or knowledge of the personal representative, the personal representative shall, within 30 days after filing the inventory or supplemental inventory first showing assets of the estate, file a motion to set or waive the bond as provided in this section.

[(3)] (4) 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)] (5) 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)] (6) Nothing in this section affects the provisions of ORS 709.240, relating to a trust company acting as personal representative.

SECTION 3. ORS 113.155 is amended to read:

113.155. (1) **Except as provided in subsection (5) of this section,** upon appointment a personal representative shall cause a notice to interested persons to be published once in each of three consecutive weeks in:

(a) A newspaper published in the county in which the estate proceeding is pending; or

(b) If no newspaper is published in the county in which the estate proceeding is pending, a newspaper designated by the court.

(2) 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 requiring all persons having claims against the estate to present them, within four months after the date of the first publication of the notice to the personal representative at the address designated in the notice for the presentation of claims or they may be barred;

(e) The date of the first publication of the notice; and

(f) A statement advising all persons whose rights may be affected by the proceeding that additional information may be obtained from the records of the court, the personal representative or the attorney for the personal representative.

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

(4) A personal representative shall file in the estate proceeding proof of the publication of notice required by this section. The proof shall include a copy of the published notice.

(5)(a) This section does not apply if the petition for appointment of the personal representative states that no assets of the estate are known to the petitioner and no assets of the estate have come into the possession or knowledge of the personal representative.

(b) If the petition for appointment of the personal representative states that no assets of the estate are known to the petitioner and assets of the estate later come into the possession or knowledge of the personal representative, the personal representative shall, within 30 days after the filing of the inventory or supplemental inventory first showing assets of the estate, commence publication of notice to interested persons as provided in this section.

SECTION 4. ORS 113.165 is amended to read:

113.165. Within 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 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 fair market values as of the date of the death of the decedent of the properties described in the inventory. **If no property of the estate has come into the possession or knowledge of the personal representative, the personal representative shall file an inventory stating that no property of the estate has come into the possession or knowledge of the personal representative.**

SECTION 5. ORS 113.175 is amended to read:

113.175. (1) Whenever any property of the estate not included in the inventory comes into the possession or knowledge of the personal representative, the personal representative shall either file in the estate proceeding a supplemental inventory within

30 days after the date of receiving possession or knowledge, or include the property in the next accounting.

(2) If the inventory states that no assets of the estate are known to the petitioner and assets of the estate later come into the possession or knowledge of the personal representative, the personal representative shall file in the estate proceeding a supplemental inventory within 30 days after receiving possession or knowledge of the assets.

SECTION 6. ORS 115.003 is amended to read:

115.003. (1) **Except as provided in subsection (6) of this section,** 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) **or (6)** 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*]. **The personal representative is not required 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) **or (6)** 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 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) **or (6)** 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.

(6)(a) This section does not apply if the petition for appointment of the personal representative states that no assets of the estate are known to the petitioner and no assets of the estate have come into the possession or knowledge of the personal representative.

(b) If the petition for appointment of the personal representative states that no assets of the estate are known to the petitioner and assets of the estate later come into the possession or knowledge of the personal representative, the personal representative shall comply with this section. The three-month period for compliance with subsection (1) of this section begins on the date of filing of the inventory or supplemental inventory first showing assets of the estate.

SECTION 7. ORS 115.135 is amended to read:

115.135. (1) Except as provided in subsection (5) of this section, a claim presented to the personal representative shall be considered allowed as presented unless within 60 days after the date of 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.

(5)(a) If the petition for appointment of the personal representative states that no assets of the estate are known to the petitioner and no assets of the estate have come into the possession or knowledge of the personal representative, the personal representative has no duty to allow or disallow claims presented to the personal representative.

(b) If the petition for appointment of the personal representative states that no assets or property of the estate are known to the petitioner and assets of the estate later come into the possession or knowledge of the personal representative, a claim presented to the personal representative before the filing of the inventory or supplemental inventory first showing assets of the estate shall be considered allowed as presented unless within 60 days after the date of filing of the inventory or supplemental inventory 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.

SECTION 8. Section 9 of this 2019 Act is added to and made a part of ORS chapter 116.

SECTION 9. (1) If the petition for appointment of the personal representative states that no assets of the estate are known to the petitioner and no assets of the estate have come into the possession or knowledge of the personal representative, the personal representative may move to close the estate no earlier than four months after the latest date of delivery or mailing of the information described in ORS 113.145.

(2) The motion must state that no assets of the estate have come into the possession or knowledge of the personal representative and that the purpose for filing the petition under ORS 113.035 has been accomplished.

(3) The personal representative shall set a time for filing objections to the motion to close the estate. Not less than 20 days before the time set, the personal representative shall mail a copy of the motion to close the estate to the persons who would be entitled to receive a copy of the final account under ORS 116.093.

(4) If the court grants the motion, the court shall enter a general judgment closing the estate and discharging the personal representative. The discharge so entered operates as a release of the personal representative from further duties and as a bar to any action against the personal representative. The court may, in its discretion and upon such terms as may be just, within one year after entry of the judgment of

discharge, permit an action to be brought against the personal representative if the judgment of discharge was taken through fraud or misrepresentation of the personal representative or through the mistake, inadvertence, surprise or excusable neglect of the claimant.

SECTION 10. 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 resignation.

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

~~[(c)]~~ (d) When the estate is ready for final settlement and distribution.

~~[(d)]~~ (e) 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. 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 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 evidence of disbursement and receive copies 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 evidence of disbursement is not filed with the account but 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) Any other information that the personal representative considers necessary to show the condi-

tion 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)(a) Unless otherwise provided by order of the court, the personal representative may file a statement under this subsection in lieu of the account required under subsection (1)(a) or (b) of this section if the distributees consent in writing.

(b) A statement under this subsection must include:

(A) The period of time covered by the statement;

(B) A description and statement of the value of the money and property on hand at the beginning and ending of the period of time covered by the statement;

(C) A copy of the most recent statement received before the accounting for each financial account owned by the estate;

(D) A list of the unpaid claims that are allowed or disputed, including the name of the creditor, a description of the claim, the amount of the claim, the priority of the claim under ORS 115.125 and the reason the claim has not been paid;

(E) A statement describing why the estate is not ready for final settlement and distribution; and

(F) 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.

(c) Upon filing a statement under this subsection, the personal representative shall mail a copy of the statement to each creditor of the estate whose claim has not been paid in full and is allowed or disputed. Within 30 days after the date of the mailing of the statement, a creditor entitled to receive the statement under this paragraph may, by written notice to the personal representative, require the personal representative to make and file an account of the personal representative's administration under subsection (1) of this section within 30 days of the date of the creditor's notice.

~~[(3)]~~ (4) 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.

(b) A statement that all Oregon income taxes, estate taxes and personal property taxes that are due, if any, have been paid, or if not paid, that payment of those taxes has been secured by bond, deposit or otherwise, and that all 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 ORS 113.038 or 116.173 (3) and (4).

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

[(4)(a)] **(5)(a)** The personal representative may file a statement under this subsection in lieu of the final account otherwise required by **subsection (4) of 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) The period of time covered by the statement.

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

(C) The statement and petition and any request for a reserve under subsection [(3)] **(4)** of this section.

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

[(6)] **(7)** 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 11. 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)] **(5)**, 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.

(L) Approval of the final account or the statement filed in lieu of the final account under ORS 116.083 [(4)] **(5)** in whole or in part.

(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.

(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, subject only to the right of appeal and the power of the court to vacate the judgment.

SECTION 12. (1) **Section 9 of this 2019 Act and the amendments to ORS 113.035, 113.105, 113.155, 113.165, 113.175, 115.003, 115.135 and 116.113 by sections 1 to 7 and 11 of this 2019 Act apply to estates in which a petition to appoint a personal representative is filed on or after the effective date of this 2019 Act.**

(2) **The amendments to ORS 116.083 by section 10 of this 2019 Act apply to accounts required to be filed on or after the effective date of this 2019 Act.**

Approved by the Governor June 17, 2019

Filed in the office of Secretary of State June 18, 2019

Effective date January 1, 2020