



**Testimony in Support of SB 728
to the House Committee on Judiciary
Civil Law Subcommittee**

May 3, 2021

Chair Power and members of the committee,

Thank you for the opportunity to submit testify in support of Senate Bill 728. The mission of the Oregon State Bar is to serve the public interest by regulating the legal profession and improving the quality of legal services.

Since 2013 the Oregon Law Commission's Probate Modernization Workgroup has reviewed Oregon's probate code with the intent to identify and update ambiguous or out-of-date language and processes. This session, SB 728 corrects ambiguous language, modernizes notice provisions, and clarifies the role and responsibilities of the personal representative and the role of the probate courts among many other changes.

The Probate Modernization Workgroup is made up of attorneys, judges, representatives from the Oregon Department of Justice, the Oregon Department of Human Services, bankers, and trust company representatives among others. Throughout the process, representatives from the Oregon State Bar's Elder Law and Estate Planning and Administration Sections have been actively involved in the process as well. These stakeholders have systematically tackled a dense and daunting project and made lasting and positive changes to Oregon's probate code.

Thank you for your time and consideration,

Respectfully submitted on behalf of the Oregon State Bar



Hon. Mark A. Peterson
Executive Director

Jennifer Gates
Chair

Kenneth C. Crowley
Vice Chair

Margurite Weeks
Treasurer

Maurice J. Holland
Executive Director (1992-2005)

Douglas A. Haldane
Executive Director (1982-1988)

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*Executive Director
(1977-1981; 1988-1992)*

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**Testimony before the
House Committee on the Judiciary
Civil Law Subcommittee
in support of Senate Bill 728**

May 3, 2021

Chair Power and Members of the Committee:

My name is Mark Peterson and I taught at the Lewis & Clark Law School for 28 years, including teaching the Oregon Pleading and Practice course for many years. On behalf of the Oregon Council on Court Procedures' Legislative Advisory Committee, I am writing to you today in my capacity as the Executive Director of the Council in support of Senate Bill 728.

The Council on Court Procedures is a statutory entity (ORS 1.725-1.760) made up of lawyers, judges, and a public member, that drafted the Oregon Rules of Civil Procedure (ORCP) and is tasked with continually updating the ORCP. The Council meets on a two-year cycle, and drafts amendments to the ORCP that are promulgated to the Legislature prior to every odd-year session. If the Legislature declines to act on the proposed changes, the promulgated amendments take effect on January 1 of the following year.

Section 24 of S.B. 728 addresses an issue that has been before the Council during the last two biennia.¹ An overwhelming majority of Council members were in favor of addressing this problem, but felt that the issue was arguably outside of the Council's purview, and would be more appropriately addressed through legislation. We are very grateful to the Oregon Law Commission for allowing this concept to be included in this bill.

¹ For a somewhat expanded explanation of the Council's deliberations and conclusions on this issue, please see the relevant portions of the Council's biennial transmittal letter to the Legislature ([https://counciloncourtprocedures.org/Content/Promulgations/2020-2021 Council on Court Procedures Promulgation Letter to Legislature.pdf](https://counciloncourtprocedures.org/Content/Promulgations/2020-2021%20Council%20on%20Court%20Procedures%20Promulgation%20Letter%20to%20Legislature.pdf)) and the Council's final Rule 23/34 report ([https://counciloncourtprocedures.org/Content/2019-2021 Biennium/2020-04-11 Council on Court Procedures Report on Survivorship of Actions and Rules 23 and 34.pdf](https://counciloncourtprocedures.org/Content/2019-2021%20Biennium/2020-04-11%20Council%20on%20Court%20Procedures%20Report%20on%20Survivorship%20of%20Actions%20and%20Rules%2023%20and%2034.pdf)).


In Oregon, civil actions are allowed to continue against persons who are deceased. If a defendant dies after a case begins, a plaintiff can seek to substitute the personal representative of the defendant's estate for the defendant and allow the case to continue. If a defendant dies before a case is filed, existing law permits the case to be filed against the defendant's estate within a year of the defendant's death.

Occasionally, a plaintiff may file a case, e.g., as a consequence of a motor vehicle collision, against a defendant not knowing that the defendant has died during the interim. Usually, the plaintiff will quickly discover the problem and will simply refile the case correctly against the defendant's estate so that the case may proceed. However, if the case against the deceased defendant was filed very close to the expiration of the statute of limitations, the plaintiff may not learn of the defendant's death until after the statute of limitations has run. Oregon appellate courts have ruled that, in such a circumstance, the case may not be refiled, nor may the estate be substituted for the deceased defendant in the original suit. Essentially, the plaintiff is out of luck; the case cannot proceed and the plaintiff is left without redress for the harm inflicted as a result of the deceased defendant's negligent acts or omissions.

Section 24 addresses this problem by creating a limited 90-day window during which the plaintiff may amend the original complaint and substitute the personal representative of the defendant's estate as the defendant. This section does not create a new cause of action or extend any statutes of limitations. It simply ensures that an injured party is not left unable to seek redress because the victim was unaware of a defendant's death.

Thank you again for allowing me to submit this testimony on this bill. Additional information regarding the Council's discussions of this and other issues is available in the minutes section of this biennium's page of the Council's website at <https://counciloncourtprocedures.org/current-biennium/>. If you have any additional questions, please do not hesitate to contact me at ccp@lclark.edu.

Sincerely,



Mark A. Peterson
Executive Director

cc: Council Legislative Advisory Committee

Kenneth C. Crowley
Hon. David Euan Leith
Meredith Holley
Margurite Teresa Weeks
Hon. John A. Wolf

SB 728 STAFF MEASURE SUMMARY

Carrier: Rep. Wallan

House Committee On Judiciary**Action Date:** 05/18/21**Action:** Do Pass.**Vote:** 10-0-0-0**Yeas:** 10 - Bynum, Dexter, Helm, Kropf, Lewis, Morgan, Noble, Power, Wallan, Wilde**Fiscal:** No fiscal impact**Revenue:** No revenue impact**Prepared By:** Channa Newell, Counsel**Meeting Dates:** 5/3, 5/5, 5/18**WHAT THE MEASURE DOES:**

Provides specific authorities, processes, and definitions in probate proceedings. Allows substitution of personal representative of defendant's estate for deceased defendant within 90 days of commencing action if defendant died before statute of limitation ran on claim or within 60 days after the action is commenced. Specifies that a court may require a hearing on any petition or motion in a probate proceeding. Applies many Oregon Rules of Civil Procedure to probate proceedings. Applies Oregon Evidence Code to contested issues in probate proceedings. Formalizes court authority to compel production of documents and oversee fiduciaries. Provides definitions. Clarifies persons who qualify as "interested person" within probate code. Specifies uniform content and process for probate notices. Clarifies decisions that may be contained in limited judgment. Requires a personal representative who files motion for possession of real property to give notice of the motion to all adult occupants of the real property. Repeals current statute on declaratory judgment in trusts and estates and stenographic recording of probate proceedings. Makes technical changes.

ISSUES DISCUSSED:

- Examples of situations in which Oregon Rules of Civil Procedure would apply
- Ability of probate court to determine possession of property
- Interaction between property rights and probate

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

The Oregon Law Commission's Probate Modernization Work Group has been reviewing the probate statutes since 2013. Their efforts have resulted in enacted legislation in the 2015, 2016, 2017, and 2019 sessions. During the 2019-2021 interim, the Work Group undertook process, notice, and court authority updates to the Probate Code.

Senate Bill 728 is the product of the Probate Modernization Work Group with an addition from the Oregon Council on Court Procedures. The measure specifies which Oregon Rules of Court Procedure apply to probate proceedings and clarifies that the Oregon Evidence Code applies to contested hearings. Several technical updates are made and modifications to notice provisions provided. Additionally, the measure allows for a 90-day window for a plaintiff to substitute the personal representative of a defendant's estate in an action against the defendant if the defendant dies before the statute of limitation runs or within 60 days after the action is commenced.

CHAPTER 282

AN ACT

SB 728

Relating to decedents' estates; creating new provisions; amending ORS 12.190, 21.200, 28.050, 111.005, 111.085, 111.095, 111.105, 111.115, 111.205, 111.215, 111.218, 111.235, 111.245, 111.255, 111.275, 113.125, 114.225, 114.275, 115.195 and 116.183; and repealing ORS 28.040 and 111.265.

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

ADMINISTRATION OF DECEDENTS' ESTATES

SECTION 1. Sections 2 and 3 of this 2021 Act are added to and made a part of ORS chapter 111.

SECTION 2. (1) As used in this section:

(a) "Probate proceeding" means a proceeding under ORS chapter 111, 112, 113, 114, 115, 116 or 117 for the administration of a decedent's estate.

(b) "Probate proceeding" does not include:

(A) A proceeding for summary determination of a claim under ORS 115.145 (1)(b); or

(B) A declaratory judgment action under ORS chapter 28.

(2) Except as otherwise provided in ORS 111.205, 111.218, 112.588, 113.005, 113.105, 114.720, 115.315, 116.083 or 116.253, the Oregon Rules of Civil Procedure and the Oregon Evidence Code do not apply to probate proceedings.

(3) Notwithstanding subsection (2) of this section:

(a) ORCP 12 applies to any probate proceeding.

(b) ORCP 9, 10 A, 16 B, 16 D, 17, 18, 19, 21, 22, 23, 25, 27, 29, 30, 31, 33, 34 A to F, 36 to 43, 44 A, B, D and E, 46, 47, 53, 55, 62, 64 A and C to G, 65, 67, 68, 71, 72 and 78 apply to a contested issue in a probate proceeding.

(c) The Oregon Evidence Code applies to a contested issue in a probate proceeding.

(4) For the purposes of applying the Oregon Rules of Civil Procedure to a contested issue in a probate proceeding:

(a) "Plaintiff" means any party asserting a claim for relief, whether by way of petition or motion; and

(b) "Defendant" means:

(A) Any party against whom the claim is asserted;

(B) Any party objecting to the petition or motion; or

(C) If the court issues a show cause order, the party subject to the order.

(5)(a) For the purposes of this section, an issue in a probate proceeding is contested if it is or arises from:

(A) A petition or motion for declaratory judgment, including a will contest;

(B) A petition to remove a court-appointed fiduciary;

(C) A petition or motion for affirmative relief of any sort against a person;

(D) A petition or motion to apportion the proceeds of a wrongful death settlement;

(E) If filed by a person other than the personal representative:

(i) A motion to increase the amount of the bond of the personal representative, or to require a new bond;

(ii) A petition to restrict the powers of the personal representative;

(iii) A petition to determine heirship;

(iv) A petition for instructions; or

(v) A petition to appoint a fiduciary other than the fiduciary nominated in the will admitted to probate;

(F) Any other petition or motion to which another person has filed an objection; or

(G) Any other petition, motion or show cause order determined by the court to be a contested issue in a probate proceeding.

(b) Notwithstanding paragraph (a) of this subsection, unless otherwise determined by the court, the following are not contested issues in probate proceedings:

(A) A petition for summary review of administration of a small estate under ORS 114.550;

(B) A petition or motion for summary determination of a claim as provided in ORS 114.542 or 115.145 (1)(a); or

(C) An application for an order directing payment of a claim under ORS 115.185.

(6) Nothing in this section is intended to affect the burden of proof or standard of proof that is applied in probate proceedings.

SECTION 3. Hearing. (1) The court may require that a hearing be held on any petition or motion in a probate proceeding.

(2) A hearing must be held on a petition or a motion in a probate proceeding if an objection to the petition or motion is filed and the objection is not withdrawn before the hearing.

SECTION 4. ORS 111.005 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.]

(19)(a) "Interested person" means any person having a property right in or claim against the estate of a decedent that may be affected by the proceeding.

(b) "Interested person" includes a decedent's heir, devisee, child, spouse or creditor if the heir, devisee, child, spouse or creditor has a

property right in or claim against the decedent's estate.

(c) "Interested person" also includes a fiduciary representing a person described in paragraph (a) or (b) of this subsection.

(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 a personal representative or that merely revokes or revives another will.

SECTION 5. ORS 111.085 is amended to read:

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

(a) Appointment and qualification of personal representatives.

(b) Probate and contest of wills.

(c) Determination of heirship.

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

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

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

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

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

(i) [Appointment of a successor testamentary trustee where the vacancy occurs prior to, or during the pendency of, the probate proceeding.] **If a testamentary trustee vacancy occurs during a probate proceeding and the will does not name a trustee or successor trustee who is able to serve, appointment of a testamentary trustee or successor testamentary trustee.**

(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 6. ORS 111.095 is amended to read:

111.095. (1) **A probate court has** the general legal and equitable powers of a circuit court [apply to a probate court].

(2) [The same validity, finality and presumption of regularity shall be accorded to] The determinations, orders and judgments of a probate court [as to] **have the same validity, finality and presumption of regularity as** those of a circuit court.

(3) A probate court has full, legal and equitable powers to make declaratory judgments, as provided in ORS 28.010 to 28.160, in all matters involved in the administration of an estate, including matters pertaining to the title of real property and ownership of personal property, the determination of heirship and the distribution of the estate.

(4) **A court having jurisdiction over a probate proceeding may:**

(a) **Compel the attendance of, or require the response to inquiries by and production of documents subject to discovery under ORCP 36 from, any person, including a beneficiary, creditor, fiduciary or any other person who may have knowledge about the decedent's taxes, financial affairs or property.**

(b) **Exercise jurisdiction over any transaction entered into by a fiduciary to determine if a conflict of interest existed and enter an appropriate order or judgment with respect to the transaction.**

(c) **Surcharge a fiduciary and any surety for any loss caused by failure of a fiduciary to perform a fiduciary duty or any other duty imposed by ORS chapter 111, 112, 113, 114, 115, 116 or 117.**

(d) **Determine ownership of title for real or personal property.**

(e) **Subject to ORS chapter 90, require delivery of possession of property of the decedent, including records, accounts and documents relating to that property.**

(f) **Require the fiduciary to produce any and all records that might provide information about the condition of the estate's property.**

(g) **Remove a fiduciary whenever that removal is in the best interests of the interested persons of an estate.**

(h) **Appoint a successor fiduciary when a fiduciary has died, resigned or been removed.**

(i) **Impose any conditions and limitations upon the fiduciary that the court considers appropriate, including limitations on the duration of the appointment.**

(j) **Without hearing or upon such hearing as the court may prescribe, rule on any matter concerning the administration, settlement or distribution of the estate, including the fiduciary's authority, the court's approval of the fiduciary's actions or the court's instructions to the fiduciary.**

SECTION 7. ORS 111.105 is amended to read:

111.105. (1) Except as otherwise provided in this section, no issue determined in a probate court **exercising probate jurisdiction** shall be tried again on appeal or otherwise reexamined in a manner other than those appropriate to issues determined by a court of record with general jurisdiction.

(2) Appeals from a circuit court [sitting in] **exercising probate jurisdiction** shall be taken to the Court of Appeals in the manner provided by law for appeals from the circuit court.

(3) Appeals from a county court [sitting in] **exercising probate jurisdiction** shall be taken to the circuit court and Court of Appeals in the manner provided by ORS 5.120.

SECTION 8. ORS 111.115 is amended to read:

111.115. (1) An estate proceeding may be transferred at any time from a county court to the circuit court for the county by order of the county court.

(2) An estate proceeding commenced in a county court and in which the county judge is a party or directly interested must be transferred from the county court to the circuit court for the county by order of the county court.

(3) Upon transfer of an estate proceeding from a county court to the circuit court for the county under this section:

(a) The county clerk shall certify and cause to be filed in the records of the circuit court all original papers, **records** and proceedings pertaining to the estate proceeding; and

(b) Jurisdiction over the estate proceeding vests in the circuit court as if the jurisdiction had been originally and exclusively vested in the circuit court.

SECTION 9. ORS 111.205 is amended to read:

111.205. [No particular pleadings or forms 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.]

(1) A probate proceeding is commenced by the filing of a petition in a court with jurisdiction over probate proceedings. Petitions to commence probate proceedings are authorized in ORS chapters 113 and 117.

(2) No particular pleadings or forms of pleadings are required in the exercise of jurisdiction of probate courts. All petitions, inventories, reports and accountings in a probate proceeding must be in writing and include a declaration under penalty of perjury in the form required by ORCP 1 E. The declaration must be made by at least one of the persons making the pleading or by the attorney for the person, or in the case of a business entity by an authorized agent. A declarant who is physically outside the boundaries of the United States must make an unsworn declaration under ORS 194.800 to 194.835.

(3) Actions in a probate proceeding are not triable by a jury except as otherwise provided by law.

SECTION 10. ORS 111.215 is amended to read: 111.215. (1)(a) A notice required under ORS chapter 111, 112, 113, 114, 115, 116 or 117 must contain the following:

(A) The name, address and telephone number of the person giving the notice and the nature of that person's interest in the estate;

(B) A statement where objections may be filed and the deadline for filing those objections, if any; and

(C) A statement that the objection must include a plain and concise statement of the basis for the objection.

(b) The notice must be accompanied by copies of any relevant documents filed or to be filed with the court.

(2)(a) Except as otherwise specifically provided in ORS [chapters] chapter 111, 112, 113, 114, 115, 116 [and] or 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] in ORS chapter 111, 112, 113, 114, 115, 116 or 117, the petitioner or other person filing the [matter] docu-

ment 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,] the personal representative, to each interested person whose interests may be affected by the substance of the document or the grant or denial of the requested action or relief.

(b) If the person giving notice under this section knows that a person who is entitled to notice under paragraph (a) of this subsection is represented by a fiduciary, the notice must also be given to the person's fiduciary.

(c) If a person who is entitled to notice under paragraph (a) of this subsection is a minor, as that term is defined in ORS 125.005, the notice must be given to the minor's parents and, if the minor is 14 years of age or older, to the minor.

(d) As used in this subsection, "parent" means a parent as defined in ORS 419A.004 whose rights have not been terminated or whose rights were terminated but reinstated under ORS 419B.532.

(3) Except as otherwise specifically provided in ORS chapter 111, 112, 113, 114, 115, 116 or 117, a notice described in subsection (1) or (2) of this section must be given in one or more of the following ways [in any one or more of the following ways and within the following times]:

(a) [By mailing a copy of the notice addressed to the person or the attorney of the person at least 14 days before the date set for the hearing.] By first class mail to the person's place of residence or business.

(b) [By delivering a copy 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.] By personal delivery at the person's place of residence or business.

(c) If the person consents in writing to electronic notice, or if the notice is being given to the Department of Human Services or the Oregon Health Authority and the department or authority has adopted rules allowing for the department or authority to accept electronic notice, by properly directed electronic mail.

(d) If the person has appeared by attorney or has requested that notice be sent to the person's attorney, by mailing or delivery to the person's attorney. If notice is given to a person's attorney consistent with this paragraph, the person giving notice is not required to also send notice to the person.

[(c)] (e) If the [address] place of residence or business of any person is not known or cannot be ascertained with reasonable diligence, by publishing a copy 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] probate court sits[, the last publication of which shall be at least 10 days before the date set for the hearing].

(f) Upon good cause shown any other method determined by the court to be reasonably suitable under the circumstances and likely to result in receipt of the notice, including notice by electronic mail irrespective of whether the person has consented to electronic service.

[(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.]

(4)(a) Except as otherwise ordered by the court or specifically provided in ORS chapter 111, 112, 113, 114, 115, 116 or 117, the notice described in subsection (1) of this section must be given no later than 15 days before the earlier of the date for filing objections to the petition or other pleading or the date set for the hearing.

(b) If a notice of time for filing objections or of the date set for a hearing is published as provided in subsection (3)(e) of this section, the last date of publication of the notice shall be at least 15 days before the earlier of the date for the filing of objections to the petition or motion or the date set for the hearing.

[(3)] (5) Proof of the giving of notice described in subsection (1) of this section must be made at or before the hearing, if any, 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.]

(6) The time within which an act is to be done under ORS chapter 111, 112, 113, 114, 115, 116 or 117 is determined under ORS 174.120 and 174.125.

SECTION 11. ORS 111.218 is amended to read:

111.218. (1) [When proof of mailing, or other delivery of notice or other documents, is required to be filed in probate court, proof shall be made in the form required by ORCP 9 C.] **Proof of service must be made for all documents for which statutes require giving notice. If notice of a document is not required, no proof of service is required.**

(2) **Proof of service of a document may be on the document filed in the form of a certificate of service that specifies the date of mailing or other service or may be by a separate filing.**

[(2)] (3) [When] Proof of publication [is] required to be filed in probate court[, proof shall] **must** be made in the form required by ORCP 7 F.

SECTION 12. ORS 111.235 is amended to read:

111.235. (1) Any interested person[, on or before the date set for a hearing,] **or the personal representative may file a written [objections] objection to a petition or motion previously filed.**

(2) **An objection filed under this section must:**

(a) **Include a plain and concise statement of the basis for the objection;**

(b) **Be served on the persons described in ORS 111.215 (2); and**

(c) **Be filed on or before the final date for the filing of objections to the petition or motion.**

(3) **If no objections are filed before the final date for the filing of objections to the petition or motion, or if all filed objections are withdrawn, the court may sign the proposed order or judgment without further notice.**

SECTION 13. ORS 111.245 is amended to read:

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

(a) Of a will, by a certified copy of the will.

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

(c) Of letters testamentary or letters of administration, by a certified copy 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 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 14. ORS 111.255 is amended to read:

111.255. If [a document] **all** or part of a document is not in the English language, a translation certified by the translator to be accurate may be attached to the document. **If no objection is made to the certified translation, [and shall be regarded as sufficient evidence of the contents of the document, unless objection is made. In the absence of objection, if] any person who relies in good faith on the accuracy of the translation [the person shall] may not be prejudiced because of its inaccuracy.**

SECTION 15. ORS 111.275 is amended to read:

111.275. (1) The court in a probate proceeding [under ORS chapters 111, 112, 113, 114, 115, 116 and 117] may enter a limited judgment only for the following decisions of the court:

(a) A decision on a petition for appointment or removal of a personal representative, **including a successor personal representative.**

(b) A decision in a will contest filed in the probate proceeding.

(c) **A decision to require delivery of possession of property of the decedent, including records, accounts or documents relating to the property.**

(d) **A decision to determine ownership of title for real or personal property.**

(e) **A decision on a petition or motion for support or elective share.**

[(c)] (f) A decision on an objection to [an] **a final accounting.**

[(d)] (g) A decision on a request made in the proceeding for a declaratory judgment under ORS 111.095.

[(e)] (h) A decision on a request for an award of expenses under ORS 116.183.

[(f)] A decision on a petition filed under ORS 112.238 admitting a writing for probate or otherwise acknowledging the validity and intent of the writing.]

(i) A decision on surcharge of a fiduciary or a surety.

[(g)] (j) Such decisions of the court as may be specified by rules or orders of the Chief Justice of the Supreme Court under ORS 18.028.

(k) Any other decision that is a final determination of the rights of one or more persons.

(2) A court may enter a limited judgment under this section only if the court determines that there is no just reason for delay. The judgment document need not reflect the court's determination that there is no just reason for delay.

SECTION 16. ORS 113.125 is amended to read:

113.125. (1) The court shall issue letters testamentary or letters of administration 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) The letters testamentary or letters of administration must reflect any conditions or limitations imposed by the court on the fiduciary.

[(2)] (3) 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 _____ (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, subscribe my name and affix the seal of the court this _____ day of _____, 2____.

_____ Clerk of the Court

By _____ Deputy

(Seal)

[(3)] (4) 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 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, subscribe my name and affix the seal of the court this _____ day of _____, 2____.

_____ Clerk of the Court

By _____ Deputy

(Seal)

SECTION 17. ORS 114.225 is amended to read:

114.225. (1) A personal representative has a right to and shall take possession and control of the estate of the decedent, but the personal representative is not required to take possession of or be accountable for property in the possession of an heir or devisee unless in the opinion of the personal representative possession by the personal representative is reasonably required for purposes of administration.

(2) If a personal representative files a motion for delivery of possession of real property under ORS 111.095 (4)(e):

(a) The personal representative shall state in the motion why ORS chapter 90 does not apply.

(b) The personal representative shall give notice as provided in ORS 111.215 of the motion to all adult occupants of the real property whose names can be determined with reasonable effort. In addition, the personal representative shall attach written notice in a secure manner to the main entrance of any dwelling unit that is the subject of the motion.

SECTION 18. ORS 114.275 is amended to read:

114.275. A personal representative shall proceed with the administration, settlement and distribution of the estate without adjudication, order or direction of the court, except as otherwise provided in ORS chapters 111, 112, 113, 114, 115, 116 and 117. However, a personal representative or any interested person may apply to the court for [authority, approval or instructions on any matter concerning the administration, settlement or distribution of the estate, and the court, without hearing or upon such hearing as it may prescribe, shall instruct the personal representative or rule on the matter as may be appropriate] relief pursuant to ORS 111.095 (4).

SECTION 19. ORS 115.195 is amended to read:

115.195. (1) A claim that has been disallowed by the personal representative may not be allowed by any court except upon some competent, satisfactory evidence other than the testimony of the claimant.

(2)(a) Notwithstanding subsection (1) of this section, claims for recovery of public assistance as defined by ORS 411.010 or medical assistance as defined in ORS 414.025 may be allowed based on evidence in the form of documents from the Department of Human Services or the Oregon Health Authority that contain information relating to that public assistance or medical assistance, such as the date that services were provided to the decedent, the classification of those services, the name of the provider or the provider's identification number, and the amount of the public assistance or medical assistance payment made for the services. The documents may be prints obtained from microfilm or microfiche, or printouts from computer records or other electronic storage medium.

(b) [Notwithstanding ORS 40.460 and 40.510,] A document described in **paragraph (a)** of this subsection is prima facie evidence of the information contained in the document and is not excluded from introduction as hearsay, and extrinsic evidence of authenticity of the document as a condition precedent to admissibility is not required, if the document bears a seal that on its face is the seal of the Director of Human Services or the designee of the director, or the Director of the Oregon Health Authority or the designee of the director, and:

[(a)] (A) For a print obtained from microfilm or microfiche, also bears a statement indicating that the print is a true copy of the microfilm or microfiche record, signed by a person who purports to be an officer or employee of the department or the authority; or

[(b)] (B) For a printout from computer records or other electronic storage medium, also bears a statement indicating that the printout accurately reflects the data retrieved, signed by a person who purports to be an officer or employee of the department or the authority.

SECTION 20. 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 coun-

sel, the result obtained, any agreement as to fees 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 other factors as may be relevant. No single factor 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.]

(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 21. ORS 21.200 is amended to read:

21.200. (1) In any action or other proceeding subject to a fee under ORS 21.135, 21.145, [or] 21.160 or 21.170, a \$111 fee must be paid by the party filing one of the following motions and by the party responding to the motion:

(a) A motion for summary judgment under ORCP 47.

(b) A motion for judgment notwithstanding the verdict under ORCP 63.

(c) A motion for new trial under ORCP 64.

(d) A motion for relief from judgment under ORCP 71.

(e) A motion for preliminary injunction under ORCP 79.

(f) A motion seeking remedies for contempt of court.

(2) The fees provided for in this section may not be collected from the state, a county, a city or a school district.

(3) The fees provided for in this section may not be collected for motions made to an arbitrator or mediator in an arbitration or mediation required or offered by a court, or to any motion relating to an arbitration or mediation required or offered by a court.

(4) The clerk shall file a motion or response that is subject to a fee under this section only if the fee required by this section is paid when the motion or response is submitted for filing.

SECTION 22. ORS 28.050 is amended to read:

28.050. The enumeration in ORS 28.010, [to 28.040] 28.020 or 28.030 does not limit or restrict the exercise of the general powers conferred in ORS 28.010, in any proceedings where declaratory relief is sought, in which a judgment will terminate the controversy or remove an uncertainty.

SECTION 23. ORS 28.040 and 111.265 are repealed.

DECEASED DEFENDANTS IN CIVIL ACTIONS

SECTION 24. ORS 12.190 is amended to read:

12.190. (1) If a person entitled to bring an action dies before the expiration of the time limited for its commencement, an action may be commenced by the personal representative of the person after the expiration of that time, and within one year after the death of the person.

(2)(a) If a person against whom an action may be brought dies before the expiration of the time limited for its commencement, an action may be commenced against the personal representative of the person after the expiration of that time, and within one year after the death of the person.

(b) **Notwithstanding paragraph (a) of this subsection, if an action is commenced against a defendant who dies before the expiration of the time limited for commencement of the action or within 60 days after the action is commenced, a party may amend the complaint within 90 days after the action is commenced to substitute the**

personal representative of the defendant's estate for the deceased defendant. An amendment under this paragraph relates back to the date the complaint was filed.

MISCELLANEOUS

SECTION 25. Application. The amendments to ORS 12.190 by section 24 of this 2021 Act apply to actions commenced before, on or after the effective date of this 2021 Act.

SECTION 26. Captions. The unit and section captions used in this 2021 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 2021 Act.

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