

SB 308 A STAFF MEASURE SUMMARY

Carrier: Rep. Morgan

House Committee On Judiciary

Action Date: 03/13/23

Action: Do Pass the A-Eng bill.

Vote: 10-0-0-0

Yeas: 10 - Andersen, Bynum, Chaichi, Conrad, Kropf, Lewis, Morgan, Reynolds, Tran, Wallan

Fiscal: Has minimal fiscal impact

Revenue: No revenue impact

Prepared By: Lucy Ohlsen, LPRO Analyst

Meeting Dates: 3/9, 3/13

WHAT THE MEASURE DOES:

Modifies small estate affidavit procedure to allow the procedure to be used in circumstances where a decedent created a trust before death but did not fully fund the trust.

ISSUES DISCUSSED:

- Ability to avoid full probate when unnecessary
- Estate planning attorney malpractice
- Monetary limits for small estate under current law

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Senate Bill 308 A is brought by the Oregon State Bar Estate Planning and Administration Section. Oregon's probate code provides a streamlined procedure for transferring the personal and real property of a deceased person when the value of that property falls within specified monetary limits. This avoids the necessity of going through the full probate process, which requires, among other things, the appointment of a personal representative. To initiate the streamlined procedure, a person who claims a right to the property files a "small estate affidavit," pursuant to ORS 114.515, with the probate clerk. Currently, this process often cannot be used when a decedent had created a trust prior to their death but did not fund or fully fund the trust. A probate is frequently required to transfer ownership of the decedent's assets to the trust.

Senate Bill 308 A would modify the small estate affidavit procedure to allow the procedure to be used to transfer assets from a decedent's name to a trust created by the decedent and would change the name of the procedure from "small estate affidavit" to "simple estate affidavit."

**Testimony before the House Judiciary Committee
in support of SB 308 A
On behalf of the Oregon State Bar
Estate Planning and Administration Section**

March 9, 2023

Chair Kropf and Members of the Committee:

My name is June Wiyrick Flores. I am an attorney in Portland. I am here today as a representative of the Oregon State Bar's Estate Planning and Administration Section. The Section is made up of over 1,200 attorneys from all parts of Oregon, who represent clients both in preparing plans for their estates helping families resolve those plans when someone passes.

The Oregon State Bar (OSB) is a public corporation and an instrumentality of the court with over 15,000 active members. The Oregon State Bar serves the public interest by: regulating the legal profession and improving the quality of legal services; supporting the judiciary and improving the administration of justice; and advancing a fair, inclusive and accessible justice system.

Senate Bill 308 A

Senate Bill 308 A changes the name of the small estate affidavit to a simple estate affidavit and permits the process to be used in an additional situation.

Currently a small estate affidavit may be filed if the estate has not more than \$75,000 in personal property and not more than \$200,000 in real property. This bill will allow the simple estate affidavit to also be used if any excess value of the estate is attributable entirely to property that was devised to the trustee of a trust of which the decedent was the settlor, and which was created before the decedent's death.

The bill was amended in the Senate after consultation with stakeholders. This bill now includes a requirement to include a copy of the trust agreement or a certification of the trust with the affidavit as part of the submission to the court.

This bill will eliminate the need for many individuals to go through a costly probate process, when the majority of the estate is already contained within a trust and there are few, if any, decisions for a probate court to make.

Thank you for your consideration of SB 308 A. I am happy to answer any questions.

CHAPTER 17

AN ACT

SB 308

Relating to decedent's estates; creating new provisions; and amending ORS 111.200, 113.238, 114.505, 114.510, 114.515, 114.517, 114.520, 114.525, 114.535, 114.537, 114.540, 114.542, 114.545, 114.550, 114.552, 114.555, 114.650, 119.021, 119.026, 119.062, 130.150, 238.390, 238.458, 708A.655 and 723.844.

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

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

SIMPLE ESTATE AFFIDAVIT

SECTION 2. ORS 114.510 is amended to read:

114.510. (1) A person who meets the requirements of ORS 114.515 may file a *[small]* **simple** estate affidavit only with regard to an estate in which:

(a)(A) Not more than \$75,000 of the fair market value of the estate is attributable to personal property; and

[(b)] (B) Not more than \$200,000 of the fair market value of the estate is attributable to real property[.]; or

(b) **The decedent died testate and:**

(A) **Not more than \$75,000 of the fair market value of the estate is attributable to specifically devised personal property;**

(B) **Not more than \$200,000 of the fair market value of the estate is attributable to specifically devised real property; and**

(C) **The balance of the fair market value of the estate is attributable to property that is devised to the trustee of a trust of which the decedent was a settlor, as defined in ORS 130.010, and which came into existence prior to the decedent's date of death.**

(2)(a) The fair market value of the estate **under subsection (1) of this section** shall be determined *[under this section]*:

[(a)] (A) As of the date of death; or

[(b)] (B) If the date of death is more than one year before the date of filing of the affidavit, as of a date within 45 days before the filing of the affidavit.

[(3)] (b) In determining fair market value under this *[section]* **subsection**, the fair market value of the entire interest in the property included in the estate shall be used without reduction for liens or other debts.

SECTION 3. ORS 114.515, as amended by section 6, chapter 68, Oregon Laws 2022, is amended to read:

114.515. (1) If the estate of a decedent meets the requirements of ORS 114.510, any of the following persons may file a *[small]* **simple** estate affidavit with the clerk of the probate court in any county where there is venue for a proceeding seeking the

appointment of a personal representative for the estate:

(a) One or more of the claiming successors of the decedent.

(b) If the decedent died testate, any person named as personal representative in the decedent's will.

(c) The Director of Human Services, the Director of the Oregon Health Authority or an attorney approved under ORS 114.517, if the decedent received public assistance as defined in ORS 411.010, received medical assistance as defined in ORS 414.025 or received care at an institution as defined in ORS 179.010, and it appears that the assistance or the cost of care may be recovered from the estate of the decedent.

(2) A person may not file a *[small]* **simple** estate affidavit if:

(a) The person would be disqualified from acting as a personal representative under ORS 113.095; or

(b) The person has been convicted of a felony in Oregon or in another jurisdiction.

(3) A *[small]* **simple** estate affidavit may not be filed until 30 days after the death of the decedent.

(4) A *[small]* **simple** estate affidavit must contain the information required in ORS 114.525 and shall be made a part of the probate records. If the affiant is an attorney approved by the Director of Human Services or the Director of the Oregon Health Authority, a copy of the document approving the attorney must be attached to the affidavit.

(5) The clerk of the probate court shall charge and collect the fee established under ORS 21.145 for the filing of a *[small]* **simple** estate affidavit, except that a fee may not be charged or collected for the filing of an amended affidavit.

(6)(a) Except as provided in subsection (7) of this section, the affiant shall file an amended *[small]* **simple** estate affidavit in the following circumstances:

(A) To correct a material error or omission in a previous affidavit.

(B) To include property not described in a previous affidavit.

(b) The amended affidavit must include all information required under ORS 114.525 and state the value of the property as of the date used to prepare the original affidavit.

(7) If the fair market value of the property of the estate exceeds the value limitations for a *[small]* **simple** estate under ORS 114.510 (1)(a) or the **decedent's testamentary bequests do not meet the requirements of ORS 114.510 (1)(b)**, an affiant may not file an amended *[small]* **simple** estate affidavit under subsection (6) of this section and the affiant's authority with regard to the estate is terminated, except that the affiant shall deliver assets of the estate in the affiant's possession upon request by a personal representative appointed under ORS 113.085. The affiant shall promptly file notice with the court that the estate of the decedent is not subject to ORS 114.505 to 114.560 and shall serve a copy

of the notice on each person who received a copy of the previous affidavit.

(8) The clerk of the probate court may acknowledge a [small] **simple** estate affidavit upon presentation of the identification of the affiant and the affiant's statement under penalty of perjury.

SECTION 3a. ORS 114.525 is amended to read:

114.525. (1) A [small] **simple** estate affidavit must:

(a) Contain a notice in substantially the following form, printed in at least 14-point bold type immediately below the caption on the first page of the [small] **simple** estate affidavit:

**NOTICE OF DUTY TO PAY DEBT OR
TURN OVER PROPERTY**

To: Any person to whom a copy of this [small] **simple** estate affidavit is mailed or delivered.

Under ORS 114.535, if you owe a debt to the decedent or have personal property of the decedent, you must pay the debt or turn over the property to the affiant. If you refuse, the affiant may ask the court to compel you to pay the debt or turn over the property and you could be responsible for the affiant's attorney fees.

(b) State the name and post-office address of the affiant.

(c) State the authority under which the affiant is filing the [small] **simple** estate affidavit, as provided in ORS 114.515.

(d) State that the [small] **simple** estate affidavit is made under ORS 114.505 to 114.560.

(e) State the name, age, domicile and post-office address and last four digits of the Social Security number of the decedent.

(f) State the date and place of the decedent's death.

(g) Describe and state the fair market value of all property in the estate, valued as provided in ORS 114.510, including a legal description of any real property.

(h) State that no personal representative of the estate has been appointed in Oregon, that there is no pending petition for appointment of a personal representative of the estate in Oregon and that the estate is not currently being administered in Oregon.

(i) State whether the decedent died testate or intestate.

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

(k) If the decedent died testate, list the devisees of the decedent and the last address of each devisee as known to the affiant and state that a copy of the will and a copy of the affidavit showing the date of

filing will be delivered to each devisee or mailed to the devisee at the last-known address.

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

(m) State that reasonable efforts have been made to ascertain creditors of the estate.

(n) List the claims against the estate that are undisputed by the affiant and that remain unpaid or on account of which the affiant or any other person is entitled to reimbursement from the estate, including the known or estimated amounts of the claims and the names and addresses of the creditors as known to the affiant, and state that a copy of the affidavit showing the date of filing will be delivered to each creditor who has not been paid in full or mailed to the creditor at the last-known address.

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

(p)(A) State the mailing address for presentment of claims; and

(B) If the affiant wishes to authorize creditors to present claims by electronic mail or facsimile communication, state the electronic mail address or facsimile number for presentment of claims.

(q) List anticipated administrative expenses and attorney fees, if any.

(r) State that the affiant is not disqualified from acting as an affiant under ORS 114.515 (2).

(s) State that a copy of the affidavit showing the date of filing and a copy of the death record will be mailed or delivered to the Department of Human Services or to the Oregon Health Authority, as prescribed by rule by the department or authority.

(t) State, to the best of the affiant's knowledge, whether the decedent was incarcerated in a correctional facility in this state at any time in the 15 years before the decedent's death and, if the decedent was incarcerated in a correctional facility in this state at any time in the 15 years before the decedent's death, state that a copy of the affidavit showing the date of filing and a copy of the death record will be mailed or delivered to the Department of Corrections.

(u) State that undisputed claims against the estate will be paid as provided in ORS 114.545.

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

(A) A claim is presented to the affiant within four months of the filing of the affidavit or amended affidavit at the address, electronic mail address or facsimile number stated in the affidavit for presentation of claims; or

(B) A petition for appointment of a personal representative of the estate is filed within the time allowed under ORS 114.555.

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

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

(B) A petition for appointment of a personal representative of the estate is filed within the time allowed under ORS 114.555.

(2) The affiant shall file a certified copy of the death record of the decedent as a confidential document.

(3) If the decedent died testate, the affiant shall file simultaneously with the [small] **simple** estate affidavit:

(a)(A) The original will; or

(B) If the original will is filed in an estate proceeding in another jurisdiction, a certified copy of the original will; and

(b) Proof of the will meeting the requirements of ORS 113.055.

(4) If the simple estate affidavit is filed under ORS 114.510 (1)(b), the affiant shall also file simultaneously with the simple estate affidavit a copy of the trust instrument or a certification of the trust under ORS 130.860.

SECTION 4. ORS 114.537 is amended to read:

114.537. (1) If a person who is eligible to file a [small] **simple** estate affidavit is aware that the decedent was the sole lessee or the last surviving lessee of a safe deposit box or was the owner of the contents of a safe deposit box at the time of the decedent's death, the claiming successor or other person may not file a [small] **simple** estate affidavit until the person requests an inventory of the box under ORS 708A.655, if the lessor of the box is an Oregon operating institution as defined in ORS 706.008, or under ORS 723.844, if the lessor of the box is a credit union as defined in ORS 723.008. Upon receiving the request, the lessor of the box shall cause an inventory of the contents of the box to be made. The lessor shall retain the original inventory in the box and shall provide a copy of the inventory to the person requesting the inventory. The person requesting the inventory shall take the contents of the box into consideration in determining whether the estate of the decedent is within the limits prescribed by ORS 114.510. If the person files a [small] **simple** estate affidavit, the affidavit must contain a statement of the value of the contents of the box.

(2) If an affiant becomes aware after the filing of a [small] **simple** estate affidavit that the decedent was the sole lessee or the last surviving lessee of a safe deposit box or was the owner of the contents of a safe deposit box at the time of the decedent's death, the affiant shall promptly request an inventory of the box under ORS 708A.655, if the lessor of the box is an Oregon operating institution as defined in ORS 706.008, or under ORS 723.844, if the lessor of the box is a credit union as defined in ORS 723.008. Upon receiving the request, the lessor of the box shall cause an inventory of the contents of the

box to be made. The lessor shall retain the original inventory in the box and shall provide a copy of the inventory to the affiant. If the estate of the decedent remains within the limits prescribed by ORS 114.510 after consideration of the value of the contents of the box, the affiant shall file an amended [small] **simple** estate affidavit under ORS 114.515 (6). Upon receiving a certified copy of the amended affidavit, the lessor shall allow the affiant to take possession of the contents of the box. If the estate of the decedent exceeds the limits prescribed by ORS 114.510 after consideration of the value of the contents of the box, the affiant may not file an amended [small] **simple** estate affidavit and shall file notice with the court that the estate of the decedent is not subject to ORS 114.505 to 114.560 and shall serve a copy of the notice on the lessor of the box. The lessor of the box shall deliver the contents of the box to the personal representative for the decedent, or to such other person as may be provided for under the terms of the lease of the box.

SECTION 5. ORS 114.540 is amended to read:

114.540. (1)(a) A claim against an estate with respect to which a [small] **simple** estate affidavit is filed may be presented to the affiant within four months after the affidavit was filed. If an amended [small] **simple** estate affidavit is filed under ORS 114.515 (6), claims against the estate may be presented within four months after the filing of the amended affidavit.

(b) Except as provided in ORS 114.550 **or 130.350**, a claim presented after the limitations described in paragraph (a) of this subsection is barred.

(c) Filing a claim with the court does not constitute presentation to the affiant.

(d)(A) Except as provided in subparagraph (B) of this paragraph, a claim is presented to the affiant when the claim is mailed or personally delivered to the affiant at the mailing address for presentment of claims included in the [small] **simple** estate affidavit under ORS 114.525.

(B) If the affiant authorized creditors to present claims by electronic mail or facsimile communication in the [small] **simple** estate affidavit as provided in ORS 114.525, a claim is presented to the affiant when it is sent to the electronic mail address or the facsimile number designated by the affiant for presentment of claims, unless the sender receives a notice that the electronic mail was not delivered or the facsimile communication was not successful. If the affiant denies receiving the electronic mail or facsimile communication, the burden of proof is on the creditor to demonstrate that the electronic mail was properly addressed and sent or that the facsimile communication was properly addressed and successfully delivered or transmitted.

(e) Each claim presented to the affiant must include the information required by ORS 115.025.

(2)(a) A claim presented to the affiant that was not listed in the [small] **simple** estate affidavit shall be considered allowed as presented unless within 60 days after the date of presentment of the claim the

affiant mails or delivers a notice of disallowance of the claim in whole or in part to the claimant and any attorney for the claimant. A notice of disallowance of a claim must 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:

(A) The claimant files a petition for summary determination as provided in ORS 114.542; or

(B) A petition for appointment of a personal representative of the estate is filed within the time allowed under ORS 114.555.

(b) Statement of a reason for disallowance under this subsection is not an admission by the affiant and does not preclude the assertion of other defenses to the claim.

SECTION 6. ORS 238.390 is amended to read:

238.390. (1) If a member of the system dies before retiring, the amount of money, if any, credited at the time of death to the member account of the member in the fund shall be paid to the beneficiaries designated by the member. For this purpose a member may designate as a beneficiary any person or the executor or administrator of the estate of the member or a trustee named by the member to execute an express trust in regard to such amount. The termination of a person's membership in the system pursuant to ORS 238.095 (1) or (2) invalidates any designation of beneficiary made by the person before the termination of membership.

(2) If a member dies before retiring and has not designated a beneficiary under subsection (1) of this section, the Public Employees Retirement Board shall pay the amount of money, if any, credited at the time of death to the member account of the deceased member to a personal representative appointed for the estate of the deceased member. *[If a small estate affidavit has been filed under ORS 114.505 to 114.560, and the amount of money credited to the account does not exceed the maximum amount of personal property for which a small estate affidavit may be filed under ORS 114.505 to 114.560, the board shall pay the amount to the person who filed the affidavit.]* **If a simple estate affidavit has been filed under ORS 114.515, the board shall pay the amount to the person who filed the affidavit if:**

(a) The estate of the decedent remains within the limits prescribed by ORS 114.510 (1)(a) after consideration of the amount of money credited at the time of death to the member account; or

(b) The estate of the decedent meets the requirements of ORS 114.510 (1)(b).

(3) The beneficiary designated under subsection (1) of this section may elect to receive the amount payable in actuarially determined monthly payments for the life of such beneficiary as long as such monthly payments are at least \$200.

(4) Accrued benefits due a retired member at the time of death are payable to the designated beneficiary or as provided in subsection (2) of this section.

For the purpose of determining accrued benefits due a retired member at the time of death, accrued benefits are considered to have ceased as of the last day of the month preceding the month in which the retired member dies; but if Option 2 or Option 3 under ORS 238.305 has been elected as provided in this chapter and the beneficiary survives the retired member, the benefits to the beneficiary shall commence as of the first day of the month in which the retired member dies, and payment of benefits under Option 2 or Option 3 shall cease with the payment for the month preceding the month in which the beneficiary dies.

(5) If a member dies before retiring and has designated a beneficiary under subsection (1) of this section, but the beneficiary dies before the member, or dies before distribution is made under this section, the Public Employees Retirement Board shall pay the amount of money, if any, that would otherwise have been paid to the beneficiary to a personal representative appointed for the estate of the deceased beneficiary. *[If a small estate affidavit has been filed under ORS 114.505 to 114.560, and the amount of money that would have been paid to the beneficiary does not exceed the maximum amount of personal property for which a small estate affidavit may be filed under ORS 114.505 to 114.560, the board shall pay the amount to the person who filed the small estate affidavit on behalf of the estate of the beneficiary.]* **If a simple estate affidavit regarding the deceased beneficiary's estate has been filed under ORS 114.515, the board shall pay the amount to the person who filed the simple estate affidavit if:**

(a) The estate of the deceased beneficiary remains within the limits prescribed by ORS 114.510 (1)(a) after consideration of the amount of money that would have been payable to the deceased beneficiary; or

(b) The estate of the deceased beneficiary meets the requirements of ORS 114.510 (1)(b).

(6) Interest upon the member account of the member shall accrue until the date that the amount in the member account is distributed. Any balance in the variable account of the deceased member is considered to be transferred to the regular account of the member as of the date of death. The board shall establish procedures for computing and crediting interest on the balance in the member account for the period between the date of death and date of distribution.

(7) Payment by the board of amounts in the manner provided by this section completely discharges the board and system on account of the death, and shall hold the board and system harmless from any claim for wrongful payment.

CONFORMING AMENDMENTS

SECTION 7. ORS 111.200 is amended to read:
111.200. (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] **simple** 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 8. ORS 113.238 is amended to read:

113.238. (1) A person who has knowledge that a decedent died wholly intestate, that the decedent owned property subject to probate in Oregon and that the decedent died without a known heir shall give notice of the death within 48 hours after acquiring that knowledge to the State Treasurer.

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

(a) Applies to a guardian or conservator for the decedent; and

(b) Does not apply to a personal representative appointed under ORS 113.085 (4) or to an affiant authorized under ORS 114.520 to file a [small] **simple** estate affidavit under ORS 114.515.

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

SECTION 9. ORS 114.505 is amended to read:

114.505. As used in ORS 114.505 to 114.560:

(1) “Affiant” means the person or persons signing a [small] **simple** estate affidavit.

(2) “Claiming successors” means:

(a) If the decedent died intestate, the heir or heirs of the decedent, or if there is no heir, an estate administrator of the State Treasurer appointed under ORS 113.235;

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

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

(3) “[Small] **Simple** estate affidavit” means an affidavit or amended affidavit filed under ORS 114.515.

SECTION 10. ORS 114.517 is amended to read:

114.517. The Director of Human Services, or the director’s designated representative, or the Director of the Oregon Health Authority, or the director’s

designated representative, may approve in writing attorneys who are eligible to file a *[small]* **simple** estate affidavit if the decedent received public assistance as defined in ORS 411.010, received medical assistance as defined in ORS 414.025 or received care at an institution as defined in ORS 179.010, and it appears that the assistance or the cost of care may be recovered from the estate of the decedent. An attorney approved under this section does not represent the Director of Human Services or the Director of the Oregon Health Authority when the attorney files a *[small]* **simple** estate affidavit.

SECTION 11. ORS 114.520 is amended to read:

114.520. (1) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming successor may not file a *[small]* **simple** estate affidavit unless the creditor has received written authorization from the State Treasurer. Except as provided by rule adopted by the State Treasurer, the State Treasurer shall consent to the filing of a *[small]* **simple** estate affidavit by a creditor only if it appears after investigation that the estate is insolvent.

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

(a) Give written authorization to the creditor for the filing of a *[small]* **simple** estate affidavit by the creditor; or

(b) Inform the creditor that the State Treasurer will file a *[small]* **simple** estate affidavit as claiming successor.

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

NOTE: Section 12 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 13. ORS 114.535 is amended to read:

114.535. (1) The affiant may deliver a certified copy of a *[small]* **simple** estate affidavit to any person who has possession of personal property belonging to the estate or who was indebted to the decedent. Except as provided in this section, upon receipt of the certified copy, the person shall pay the

debt or transfer, deliver, provide access to and allow possession of the personal property to the affiant.

(2) Subject to ORS 114.537, if a certified copy of a *[small]* **simple** estate affidavit is delivered under subsection (1) of this section to a person that controls access to personal property belonging to the estate of the decedent, including personal property held in a safe deposit box for which the decedent was the sole lessee or the last surviving lessee, the person shall:

(a) Provide the affiant with access to the decedent's personal property; and

(b) Allow the affiant to take possession of the personal property.

(3) Subject to ORS 114.537, if a certified copy of a *[small]* **simple** estate affidavit is delivered under subsection (1) of this section to a person who owes a debt to the decedent or has received property of the decedent under ORS 446.616, 708A.430, 723.466 or 803.094, or a similar statute providing for the transfer of property of an estate that is not being probated, the person shall pay the debt or transfer, deliver, provide access to or allow possession of the property to the affiant if the person would be required to pay the debt or transfer, deliver, provide access to or allow possession of the property to a personal representative of the estate.

(4) Any person that pays a debt owing to the decedent or transfers, delivers, provides access to or allows possession of property of a decedent in the manner provided by this section is discharged and released from any liability or responsibility for the debt or property in the same manner and with the same effect as if the debt had been paid or the property had been transferred or delivered to a personal representative of the estate of the decedent.

(5) The affiant may deliver a certified copy of a *[small]* **simple** estate affidavit to a transfer agent of any corporate security registered in the name of the decedent. The transfer agent shall change the registered ownership on the books of the corporation to the affiant or the person named in the affidavit entitled to it, as directed by the affiant.

(6)(a) If a person to whom a certified copy of a *[small]* **simple** estate affidavit is delivered under this section refuses to pay a debt or deliver, transfer, provide access to or allow possession of personal property as required by this section, the affiant may serve a written demand by certified mail on the person to pay the debt or deliver, transfer, provide access to or allow possession of the personal property. The demand must state that, if the person fails to pay the debt or deliver, transfer, provide access to or allow possession of the personal property, the affiant may file a motion to compel payment of the debt or delivery of, transfer of or access to the personal property.

(b) If the person fails to pay the debt or deliver, transfer, provide access to or allow possession of the personal property within 30 days after service of a demand under paragraph (a) of this subsection, the affiant may file a motion to compel payment of the debt or delivery of, transfer of or access to the per-

sonal property. The court may enter a judgment awarding reasonable attorney fees to the prevailing party if the court finds that the affiant filed the motion without an objectively reasonable basis or the person refused to pay the debt or deliver, transfer, provide access to or allow possession of any personal property without an objectively reasonable basis.

(7) If a *[small]* **simple** estate affidavit was signed by the Director of Human Services, the Director of the Oregon Health Authority or an attorney approved under ORS 114.517, the Director of Human Services, the Director of the Oregon Health Authority or the attorney may certify a copy of the affidavit for the purposes described in this section.

(8) Notwithstanding ORS chapters 270, 273 and 274, an estate administrator of the State Treasurer appointed under ORS 113.235 or the Director of Human Services or Director of the Oregon Health Authority serving as an affiant may deal with property of the estate as an affiant under this section.

SECTION 14. ORS 114.542 is amended to read:

114.542. (1)(a) A creditor of an estate whose claim has been presented within the time permitted by ORS 114.540 (1) and disallowed by the affiant in whole or in part may within 30 days after the date of mailing or delivery of the notice of disallowance file with the probate court a petition for summary determination of the claim by the court.

(b) A creditor of the decedent whose claim is listed in the *[small]* **simple** estate affidavit as disputed may within four months after the filing of the affidavit or amended affidavit listing the disputed claim file with the probate court a petition for summary determination of the creditor's claim by the court.

(2) The court shall hear a petition for summary determination filed under this section without a jury, after notice to the creditor and affiant, and any interested person may be heard in the proceeding.

(3) The claim may be proved as provided in ORS 115.195.

(4) Upon a hearing under this section the court shall determine the claim in a summary manner and shall make an order allowing or disallowing the claim in whole or in part.

(5) An order of the court made upon summary determination under this section may not be appealed and may be enforced only by the filing of a petition for summary review under ORS 114.550.

SECTION 15. ORS 114.545 is amended to read:

114.545. (1) The affiant:

(a) Is a fiduciary who is under a general duty to administer, preserve, settle and distribute the estate in accordance with the terms of the will, the law of intestate succession and ORS 114.505 to 114.560 as expeditiously and with as little sacrifice of value as is reasonable under the circumstances.

(b) May not commingle property of the estate of which the affiant has taken possession with property of the affiant or any other person.

(c) Shall take control of the property of the estate coming into the possession of the affiant and collect the income from property of the estate in the possession of the affiant.

(d) Within 30 days after filing the *[small]* **simple** estate affidavit, shall mail or deliver each instrument that the affidavit states will be mailed or delivered.

(e) May open one or more deposit accounts in a financial institution as defined in ORS 706.008 with funds of the decedent, upon which the affiant may withdraw funds by means of checks, drafts or negotiable orders of withdrawal or otherwise for the payment of claims and expenses described in paragraph (f) of this subsection.

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

(A) Expenses described in ORS 115.125 (1)(b) and (c) and listed in the *[small]* **simple** estate affidavit;

(B) Claims listed in the *[small]* **simple** estate affidavit as undisputed;

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

(D) Claims that the probate court allowed upon summary determination under ORS 114.542.

(g) Shall pay claims and expenses under paragraph (f) of this subsection in the order of priority prescribed by ORS 115.125.

(h) May transfer and sell property that is part of the estate as provided in ORS 114.547.

(i) Shall retain records of the administration of the estate at least until the later of:

(A) The expiration of the two-year period established in ORS 114.550; or

(B) The conclusion of any summary review proceeding under ORS 114.550.

(2) Notwithstanding any other provision of this section or ORS 114.547, when an heir or devisee entitled to succeed to a conveyance fails or refuses to join in the conveyance as required by ORS 114.547, an affiant approved under ORS 114.517 may convey any real or personal property that is part of the estate at any time to a third party for a valuable consideration.

(3) Property conveyed by an affiant under ORS 114.547 or this section is subject to liens and encumbrances against the decedent or the estate of the decedent. Property conveyed by an affiant under ORS 114.547 is not subject to rights of creditors of the decedent or liens or encumbrances against the heirs or devisees of the decedent. The presentation and allowance of a claim in a proceeding under ORS 114.505 to 114.560 does not make the claimant a secured creditor.

(4) Any claiming successor to whom property of the estate is delivered or transferred under ORS 114.505 to 114.560 is personally answerable and accountable:

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

(b) To any personal representative of the estate of the decedent appointed after the payment, delivery or transfer is made.

(5) A financial institution as defined in ORS 706.008 that opens one or more deposit accounts for an affiant pursuant to subsection (1)(e) of this section is not liable to any other person for opening the account or accounts or for permitting the affiant to withdraw funds from the account or accounts by means of checks, drafts, negotiable orders of withdrawal or otherwise. The financial institution is not required to ensure that the funds of the decedent that are paid out by the affiant are properly applied.

SECTION 16. ORS 114.550 is amended to read:

114.550. (1)(a) The affiant or any claiming successor of the estate who has not been paid the full amount owed the claiming successor may, within two years after the filing of a [small] **simple** estate affidavit, file with the probate court a petition for summary review of administration of the estate.

(b) Notwithstanding paragraph (a) of this subsection, a person may file a petition for summary review under this section for the purpose of compelling the affiant to distribute property of the estate within 60 days after the completion of the two-year period described in paragraph (a) of this subsection.

(c) A creditor may not file a petition under this section if the creditor received a copy of a [small] **simple** estate affidavit delivered or mailed to the creditor within 30 days after the date the affidavit was filed, the creditor was shown as a disputed creditor in the affidavit and the creditor has not filed a petition for summary determination under ORS 114.542.

(d) A creditor may not file a petition under this section if the creditor presented a claim to the affiant, the claim was disallowed and the creditor did not file a petition for summary determination under ORS 114.542.

(2) Within 30 days after the filing of a petition under subsection (1) of this section by a person other than the affiant, the affiant shall file with the court an answer to the petition for summary review.

(3) The court shall hear the matter without a jury, after notice to the claiming successor and the affiant, and any interested person may be heard in the proceeding.

(4) Upon the hearing:

(a) The court shall review administration of the estate in a summary manner and may order the affiant to sell property of the estate and pay creditors, to pay creditors of the estate from property of the estate or of the affiant, or to distribute property of the estate to the claiming successors, or may order any person who has received property of the estate to pay amounts owed to claiming successors of the estate in whole or in part.

(b) If the court allows a claim of a creditor in whole or in part, the court shall order the affiant, to the extent of property of the estate allocable to the payment of the claim pursuant to ORS 115.125, and any claiming successor to whom property of the

estate has been delivered or transferred under ORS 114.505 to 114.560, to the extent of the value of the property received, to pay to the creditor the amount allowed.

(c) The court may remove the affiant if the affiant failed to comply with ORS 114.505 to 114.560, surcharge the affiant for any loss caused by failure to comply with ORS 114.505 to 114.560 and authorize the substitution of a new affiant.

SECTION 17. ORS 114.552 is amended to read:

114.552. (1) A person filing a petition for summary determination under ORS 114.542 or a petition for summary review of administration of estate under ORS 114.550, or any other appearance in a proceeding under ORS 114.505 to 114.560, must pay the filing fee established under ORS 21.135.

(2) If at any time after the filing of a [small] **simple** estate affidavit a petition for appointment of a personal representative is filed for the same estate, the person filing the petition must pay the fees established under ORS 21.170.

SECTION 18. ORS 114.555 is amended to read:

114.555. (1)(a) If a petition to appoint a personal representative is not filed within four months after the filing of a [small] **simple** estate affidavit, then after the completion of the four-month period described in ORS 114.540, after all unsecured creditors of the estate have been paid to the extent of the property of the estate and before the completion of the two-year period established in ORS 114.550, the affiant shall transfer the interest of the decedent in remaining property or proceeds of property described in the affidavit to the person or persons shown by the affidavit to be entitled to the property, and any other claims against the property are barred, except:

(A) As otherwise provided in this section and ORS 114.540, 114.542, 114.545 and 114.550; and

(B) For the purposes of a surviving spouse's claim for an elective share in the manner provided by ORS 114.600 to 114.725.

(b) Notwithstanding paragraph (a) of this subsection, if a petition for summary review has been filed under ORS 114.550, the affiant may not transfer the interest of the decedent in the property described in the affidavit until after all claims allowed in the summary review proceeding are paid to the extent of the property of the estate.

(2) Property conveyed by an affiant under this section is subject to liens and encumbrances against the decedent or the estate of the decedent. Property conveyed by an affiant under this section is subject to the rights of creditors of the decedent or the estate of the decedent until the expiration of the two-year period established in ORS 114.550.

(3) When the affiant transfers an interest in real property under this section, the affiant shall cause to be recorded in the deed records of the county in which the real property is situated a bargain and sale deed conveying the property to the person entitled to the property, executed in the manner required by ORS chapter 93.

(4) When the affiant transfers an interest in a manufactured structure as defined in ORS 446.561 belonging to a decedent and assessed as personal property under this section, the affiant shall file with the Department of Consumer and Business Services the necessary information for recording the successor's interest in the manufactured structure on an ownership document.

SECTION 19. ORS 114.650 is amended to read:

114.650. For purposes of ORS 114.600 to 114.725, a decedent's probate estate is the value of all estate property that is subject to probate and that is available for distribution after payment of claims and expenses of administration. A decedent's probate estate includes all property that could be administered under a [small] **simple** estate affidavit pursuant to ORS 114.505 to 114.560. A decedent's probate estate does not include any property that constitutes a probate transfer to the decedent's surviving spouse under ORS 114.685.

SECTION 20. ORS 119.021 is amended to read:

119.021. If a deceased user consented to, or a court directs, disclosure of the [contents] **content** of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the personal representative gives the custodian:

- (1) A written request for disclosure in physical or electronic form;
- (2) A certified copy of the death certificate of the user;
- (3) A certified copy of the letter of appointment of the personal representative or a [small] **simple** estate affidavit or court order;
- (4) Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney or other record evidencing the user's consent to disclosure of the content of electronic communications; and
- (5) If requested by the custodian:
 - (a) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - (b) Evidence linking the account to the user; or
 - (c) A finding by the court that:
 - (A) The user had a specific account with the custodian, identifiable by the information specified in paragraph (a) of this subsection;
 - (B) Disclosure of the content of electronic communications of the user would not violate 18 U.S.C. 2701 et seq., 47 U.S.C. 222 or other applicable law;
- (C) Unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or
- (D) Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

SECTION 21. ORS 119.026 is amended to read:

119.026. Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalog of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user if the personal representative gives the custodian:

- (1) A written request for disclosure in physical or electronic form;
- (2) A certified copy of the death certificate of the user;
- (3) A certified copy of the letter of appointment of the personal representative or a [small] **simple** estate affidavit or court order; and
- (4) If requested by the custodian:
 - (a) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - (b) Evidence linking the account to the user;
 - (c) An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or
 - (d) A finding by the court that:
 - (A) The user had a specific account with the custodian, identifiable by the information specified in paragraph (a) of this subsection; or
 - (B) Disclosure of the user's digital assets is reasonably necessary for administration of the estate.

SECTION 22. ORS 119.062 is amended to read:

- 119.062. (1) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:
- (a) The duty of care;
 - (b) The duty of loyalty; and
 - (c) The duty of confidentiality.
- (2) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:
- (a) Except as otherwise provided in ORS 119.016, is subject to the applicable terms of service;
 - (b) Is subject to other applicable law, including copyright law;
 - (c) In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and
 - (d) May not be used to impersonate the user.
- (3) A fiduciary with authority over the property of a decedent, protected person, principal or settlor has the right to access any digital asset in which the decedent, protected person, principal or settlor has a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.
- (4) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including this state's laws on unauthorized computer access.
- (5) A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal or settlor:
- (a) Has the right to access the property and any digital asset stored in the property; and

(b) Is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including this state's laws on unauthorized computer access.

(6) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(7) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:

(a) If the user is deceased, a certified copy of the death certificate of the user;

(b) A certified copy of the letter of appointment of the personal representative, a [small] **simple** estate affidavit or court order, a court order, a power of attorney or a trust giving the fiduciary authority over the account; and

(c) If requested by the custodian:

(A) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(B) Evidence linking the account to the user; or

(C) A finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A) of this paragraph.

SECTION 23. ORS 130.150 is amended to read:

130.150. (1) A trust may be created:

(a) By transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(b) By declaration by the owner of property that the owner holds identifiable property as trustee;

(c) By exercise of a power of appointment in favor of a trustee;

(d) By an agent or attorney-in-fact under a power of attorney that expressly grants authority to create the trust; or

(e) Pursuant to a statute or judgment that requires property to be administered in the manner of an express trust.

(2) The following apply to trusts for death benefits:

(a) A trustee may be named as beneficiary of any death benefits, and the death benefits shall be paid to the trustee and be held and disposed of by the trustee as provided in a trust created by the designator during the lifetime of the designator. A trust is valid even though the trust does not have a trust corpus other than the right of the trustee to receive death benefits as beneficiary.

(b) A trustee named by will may be designated as beneficiary of death benefits if the designation is made in accordance with the provisions of the policy, contract, plan, trust or other governing instrument. Upon probate of the will, or upon the filing of a [small] **simple** estate affidavit under ORS 114.515, the death benefits are payable to the trustee to be held and disposed of under the terms of the

designator's will in the same manner as other testamentary trusts are administered. Unless otherwise provided by the designator, an obligor may make payment of death benefits to the personal representative of the designator, or to the persons who are otherwise entitled to the death benefits, if a qualified trustee does not claim the death benefits within one year after the death of the designator, or if satisfactory evidence is furnished within the one-year period showing that there is no trustee who can qualify to receive the death benefits. The obligor is discharged from any liability for the death benefits upon making the payment.

(c) Death benefits received by the trustee are not subject to the debts of the designator or to inheritance or estate taxes to any greater extent than if the death benefits were payable to the beneficiaries named in the trust and not to the estate of the designator.

(d) Death benefits held in trust may be commingled with any other assets that may properly become a part of the trust.

(3) As used in this section:

(a) "Death benefits" means death benefits of any kind, including proceeds of life insurance policies, payments under annuity or endowment contracts, and funds payable in connection with pension, retirement, stock bonus or profit-sharing plans, or any trust administered in connection with these arrangements.

(b) "Designator" means the person entitled to designate the beneficiary of death benefits upon the death of the person.

(c) "Obligor" means the insurer or other person obligated to pay death benefits.

SECTION 24. ORS 238.458 is amended to read:

238.458. (1) A benefit that is owed to a member or beneficiary of a member under the Public Employees Retirement System shall be forfeited at the end of the system's plan year in which the benefit becomes due if the Public Employees Retirement Board is unable to locate the member or beneficiary. If the member, beneficiary or any other person thereafter establishes a right to the forfeited benefit, the board shall reinstate the benefit. If the benefit is a periodic payment, the board shall make a retroactive payment to the member, beneficiary or other person in a lump sum for all amounts that would have been paid before reinstatement of the benefit. No interest shall be paid on the benefit for the period commencing when the benefit became due and the date of the retroactive payment.

(2) Death benefits and other amounts payable by reason of the death of a member do not escheat to the state when the member dies without heirs, devisees or beneficiaries designated under ORS 238.390. If a beneficiary has not been designated under ORS 238.390, and a personal representative or a person filing a [small] **simple** estate affidavit under ORS 114.505 to 114.560 fails to make claim for the benefits within one year after the member dies, the benefits shall be forfeited to the Public Employees

Retirement Fund in the manner provided by subsection (1) of this section and are subject to reinstatement only upon subsequent appointment of a personal representative or the filing of a [small] **simple** estate affidavit in the manner provided by ORS 114.505 to 114.560. If benefits are paid to a personal representative or a person filing a [small] **simple** estate affidavit under ORS 114.505 to 114.560, the personal representative or person filing the affidavit shall return to the board the amount that would otherwise escheat to the state after payment of administrative expenses and claims against the estate. Any amounts returned to the board under this subsection shall be forfeited to the fund.

SECTION 25. ORS 708A.655 is amended to read:

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

(2) Subject to ORS 114.537, upon being furnished with a certified copy of the decedent's death record or other evidence of death satisfactory to the Oregon operating institution, the Oregon operating institution within which the box is located shall cause or permit the box to be opened, and the contents of the box examined, at the request of an individual who furnishes an affidavit stating:

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

(b) That the individual is an interested person and wishes to open the box to conduct a will search or trust instrument search, obtain documents relating to the disposition of the decedent's remains, inventory the contents of the box or remove property of the estate of the decedent pursuant to a [small] **simple** estate affidavit filed under ORS 114.515.

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

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

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

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

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

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

(f) A person who immediately prior to the death of the decedent had the right of access to the box

as an agent of the decedent under a durable power of attorney;

(g) If there are no heirs of the decedent, an estate administrator of the State Treasurer appointed under ORS 113.235; or

(h) A person who is authorized to file a [small] **simple** estate affidavit under ORS 114.515.

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

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

(6) If the box is opened for the purpose of obtaining documents pertaining to the disposition of the decedent's remains, the Oregon operating institution shall comply with subsection (4) or (5) of this section with respect to any will or trust instrument of the decedent found in the box, and may in its discretion either:

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

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

(7) If the box is opened for the purpose of making an inventory of its contents, the Oregon operating institution shall comply with subsection (4) or (5) of this section with respect to any will or trust instrument of the decedent that is found in the box, and shall cause the inventory to be made. The inventory must be attested to by a representative of the Ore-

gon operating institution and may be attested to by the interested person, if the interested person is present when the inventory is made. The Oregon operating institution shall retain the original inventory in the box, and shall furnish a copy of the inventory to the interested person upon request.

(8) If the interested person is an affiant of a [small] **simple** estate affidavit filed under ORS 114.515 and delivers a certified copy of the affidavit in the manner provided by ORS 114.535, the Oregon operating institution shall provide to the affiant access to the decedent's property. The Oregon operating institution shall comply with subsection (4) or (5) of this section if a will or trust instrument of the decedent is found in the box. Subject to ORS 114.537, the Oregon operating institution shall allow the affiant to take possession of the personal property in the box.

(9) The Oregon operating institution may presume the truth of any statement contained in the affidavit required to be furnished under this section or ORS 114.535, and when acting in reliance upon such an affidavit, the Oregon operating institution is discharged as if it had dealt with the personal representative of the decedent. The Oregon operating institution is not responsible for the adequacy of the description of any property included in an inventory of the contents of a box, or for the conversion of the property in connection with actions performed under this section, except for conversion by intentional acts of the Oregon operating institution or its employees, directors, officers or agents. If the Oregon operating institution is not satisfied that the requirements of this section have been satisfied, the Oregon operating institution may decline to open the box.

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

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

SECTION 26. ORS 723.844 is amended to read:

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

(2) Subject to ORS 114.537, upon being furnished with a certified copy of the decedent's death record or other evidence of death satisfactory to the credit union, the credit union within which the box is located shall cause or permit the box to be opened, and the contents of the box examined, at the request of an individual who furnishes an affidavit stating:

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

mains of the decedent, documents pertaining to property of the estate of the decedent or property of the estate of the decedent; and

(b) That the individual is an interested person and wishes to open the box to conduct a will search or trust instrument search, obtain documents relating to the disposition of the decedent's remains or inventory the contents of the box or remove property of the estate of the decedent pursuant to a [small] **simple** estate affidavit filed under ORS 114.515.

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

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

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

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

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

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

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

(g) If there are no heirs of the decedent, an estate administrator of the State Treasurer appointed under ORS 113.235; or

(h) A person who is authorized to file a [small] **simple** estate affidavit under ORS 114.515.

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

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

abouts of such person, the credit union shall retain the trust instrument. A copy of the trust instrument shall be retained in the box. At the request of any interested person, a copy of the trust instrument may be given to the interested person.

(6) If the box is opened for the purpose of obtaining documents pertaining to the disposition of the decedent's remains, the credit union shall comply with subsection (4) or (5) of this section with respect to any will or trust instrument of the decedent found in the box, and may in its discretion either:

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

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

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

(8) If the interested person is an affiant of a [small] **simple** estate affidavit filed under ORS 114.515 and delivers a certified copy of the affidavit in the manner provided by ORS 114.535, the credit union shall provide to the affiant access to the decedent's property. The credit union shall comply with subsection (4) or (5) of this section if a will or trust instrument of the decedent is found in the box. Subject to ORS 114.537, the credit union shall allow the affiant to take possession of the personal property in the box.

(9) The credit union may presume the truth of any statement contained in the affidavit required to be furnished under this section and ORS 114.535, and when acting in reliance upon such an affidavit, the credit union is discharged as if it had dealt with the personal representative of the decedent. The credit union is not responsible for the adequacy of the description of any property included in an inventory of the contents of a box, or for the conversion of the property in connection with actions performed under this section, except for conversion by intentional acts of the credit union or its employees, directors, officers or agents. If the credit union is not satisfied that the requirements of this section have been satisfied, the credit union may decline to open the box.

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

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

APPLICABILITY

SECTION 27. The amendments to statutes by sections 2 to 26 of this 2023 Act apply to simple estate affidavits filed on or after the effective date of this 2023 Act.

CAPTIONS

SECTION 28. The unit captions used in this 2023 Act are provided 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 2023 Act.

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