

**A-Engrossed**  
**House Bill 2362**

Ordered by the House March 13  
Including House Amendments dated March 13

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Bar Estate Planning Section)

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires that petitions, reports and accounts in proceedings before probate court must include declaration under penalty of perjury in lieu of notarized verification. **Requires that proof of delivery and publication to be filed in probate court be made in form required by Oregon Rules of Civil Procedure.**

Clarifies that short form final accounting may be used in estate proceedings even though administrative expenses requiring court approval have not been paid at time account is filed.

**A BILL FOR AN ACT**

1  
2 Relating to proceedings in probate courts; creating new provisions; and amending ORS 111.205,  
3 111.215, 113.045, 113.145, 113.155, 115.003, 116.083, 116.093, 116.253, 117.015 and 125.325.

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

5 **SECTION 1.** ORS 111.205 is amended to read:

6 111.205. No particular pleadings or forms thereof are required in the exercise of jurisdiction of  
7 probate courts. The mode of procedure in the exercise of jurisdiction is in the nature of an action  
8 not triable by right to a jury except as otherwise provided by statute. The proceedings shall be in  
9 writing and upon the petition of a party in interest or the order of the court. All petitions, reports  
10 and accounts [*shall be verified*] **in proceedings before a probate court must include a declara-**  
11 **tion under penalty of perjury in the form required by ORCP 1 E** made by at least one of the  
12 persons making [*them*] **the petitions, reports and accounts** or by the attorney for the person, or  
13 in case of a corporation by its agent. The court exercises its powers by means of:

14 (1) A petition of a party in interest.

15 (2) A notice to a party.

16 (3) A subpoena to a witness.

17 (4) Orders and judgments.

18 (5) An execution or warrant to enforce its orders and judgments.

19 **SECTION 2.** ORS 116.083 is amended to read:

20 116.083. (1) A personal representative shall make and file in the estate proceeding [*a verified*]  
21 **an** account of the personal representative's administration:

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

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

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

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

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

3 (2) Each account must include the following information:

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

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

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

9 (d) All disbursements made during the period covered by the account. Vouchers for disburse-  
10 ments must accompany the account, unless otherwise provided by order or rule of the court, or un-  
11 less the personal representative is a trust company that has complied with ORS 709.030, but that  
12 personal representative shall:

13 (A) Maintain the vouchers for a period of not less than one year following the date on which  
14 the order approving the final account is entered;

15 (B) Permit interested persons to inspect the vouchers and receive copies thereof at their own  
16 expense at the place of business of the personal representative during the personal representative's  
17 normal business hours at any time prior to the end of the one-year period following the date on  
18 which the order approving the final account is entered; and

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

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

23 (f) Such other information as the personal representative considers necessary to show the con-  
24 dition of the affairs of the estate or as the court may require.

25 **(g) A declaration under penalty of perjury in the form required by ORCP 1 E.**

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

27 (a) A statement that all Oregon income, inheritance and personal property taxes, if any, have  
28 been paid, or if not so paid, that payment of those taxes has been secured by bond, deposit or oth-  
29 erwise, and that all required tax returns have been filed.

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

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

36 (a) The period of time covered by the statement.

37 (b) A statement that all creditors have been paid in full **other than creditors owed adminis-**  
38 **trative expenses that require court approval.**

39 (c) The statement and petition referred to in subsection (3) of this section.

40 **(d) A declaration under penalty of perjury in the form required by ORCP 1 E.**

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

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

45 **SECTION 3.** ORS 116.253 is amended to read:

1 116.253. (1) Within 10 years after the death of a decedent whose estate escheated in whole or  
2 in part to the state, or within eight years after the entry of a judgment or order escheating property  
3 of an estate to the state, a claim may be made for the property escheated, or the proceeds thereof,  
4 by or on behalf of a person not having actual knowledge of the escheat or by or on behalf of a  
5 person who at the time of the escheat was unable to prove entitlement to the escheated property.

6 (2) The claim shall be made by a petition filed with the Director of the Department of State  
7 Lands. The claim is considered a contested case as provided in ORS 183.310 and there is the right  
8 of judicial review as provided in ORS 183.480. The petition [*shall be verified in the same manner as*  
9 *a petition in probate*] **must include a declaration under penalty of perjury in the form required**  
10 **by ORCP 1 E** and shall state:

11 (a) The age and place of residence of the claimant by whom or on whose behalf the petition is  
12 filed;

13 (b) That the claimant lawfully is entitled to the property or proceeds, briefly describing the  
14 property or proceeds;

15 (c) That at the time the property escheated to the state the claimant had no knowledge or notice  
16 thereof or was unable to prove entitlement to the escheated property and has subsequently acquired  
17 new evidence of that entitlement;

18 (d) That the claimant claims the property or proceeds as an heir or devisee or as the personal  
19 representative of the estate of an heir or devisee, setting forth the relationship, if any, of the  
20 claimant to the decedent who at the time of death was the owner;

21 (e) That 10 years have not elapsed since the death of the decedent, or that eight years have not  
22 elapsed since the entry of the judgment or order escheating the property to the state; and

23 (f) If the petition is not filed by the claimant, the status of the petitioner.

24 (3) If it is determined that the claimant is entitled to the property or the proceeds thereof, the  
25 Director of the Department of State Lands shall deliver the property to the petitioner, subject to  
26 and charged with any tax on the property and the costs and expenses of the state in connection  
27 therewith.

28 (4) If the person whose property escheated or reverted to the state was at any time an inmate  
29 of a state institution in Oregon for the mentally ill or mentally deficient, the reasonable unpaid cost,  
30 as determined by the Department of Human Services, of the care and maintenance of the person  
31 while a ward of the institution, regardless of when the cost was incurred, may be deducted from,  
32 or, if necessary, be offset in full against, the amount of the escheated property.

33 (5) For the purposes of this section, the death of the decedent is presumed to have occurred on  
34 the date shown in the decedent's death certificate or in any other similar document issued by the  
35 jurisdiction in which the death occurred or issued by an agency of the federal government.

36 **SECTION 4.** ORS 125.325 is amended to read:

37 125.325. Within 30 days after each anniversary of appointment, a guardian for an adult protected  
38 person shall file with the court a [*verified*] written report. **The report must include a declaration**  
39 **under penalty of perjury in the form required by ORCP 1 E.** Copies of the guardian's report  
40 must be given to those persons specified in ORS 125.060 (3). The report shall be in substantially the  
41 following form:

42 \_\_\_\_\_  
43 \_\_\_\_\_  
44 IN THE \_\_\_\_\_ COURT \_\_\_\_\_ COUNTY,  
45 STATE OF OREGON

DEPARTMENT OF PROBATE

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In the Matter of the ) No. \_\_\_\_\_  
Guardianship of )  
\_\_\_\_\_, )  
(Name of protected )  
person) )  
A Protected )  
Person. )

GUARDIAN'S REPORT

I am the guardian for the person named above, and I make the following report to the court as required by law:

- 1. My name is \_\_\_\_\_.
- 2. My address and telephone number are:  
\_\_\_\_\_  
\_\_\_\_\_
- Phone \_\_\_\_\_
- 3. The name, if applicable, and address of the place where the person now resides are:  
\_\_\_\_\_  
\_\_\_\_\_
- 4. The person is currently residing at the following type of facility or residence:  
\_\_\_\_\_
- 5. The person is currently engaged in the following programs and activities and receiving the following services (brief description):  
\_\_\_\_\_
- 6. I was paid for providing the following items of lodging, food or other services to the person:  
\_\_\_\_\_  
\_\_\_\_\_
- 7. The name of the person primarily responsible for the care of the person at the person's place of residence is:  
\_\_\_\_\_
- 8. The name and address of any hospital or other institution where the person is now admitted on a temporary or permanent basis are:  
\_\_\_\_\_  
\_\_\_\_\_
- 9. The person's physical condition is as follows (brief description):  
\_\_\_\_\_  
\_\_\_\_\_
- 10. The person's mental condition is as follows (brief description):  
\_\_\_\_\_  
\_\_\_\_\_
- 11. I made the following contacts with the person during the past year (brief description):  
\_\_\_\_\_
- 12. I made the following major decisions on behalf of the person during the past year (brief description):  
\_\_\_\_\_

1 13. I believe the guardianship should or should not continue because:

2 \_\_\_\_\_

3 14. At the time of my last report, I held the following amount of money on behalf of the person:

4 \$\_\_\_\_\_. Since my last report, I received the following amount of money on behalf of the person:

5 \$\_\_\_\_\_. I spent the following amount of money on behalf of the person: \$\_\_\_\_\_. I now hold

6 the following amount of money on behalf of the person: \$\_\_\_\_\_.

7 15. A true copy of this report will be given to the person, any conservator for the person and  
8 any other person who has requested notice.

9 16. Since my last report:

10 (a) I have been convicted of the following crimes (not including traffic violations):

11 \_\_\_\_\_

12 (b) I have filed for or received protection from creditors under the Federal Bankruptcy Code  
13 (yes or no): \_\_\_\_\_.

14 (c) I have had a professional or occupational license revoked or suspended (yes or no):  
15 \_\_\_\_\_.

16 (d) I have had my driver license revoked or suspended (yes or no): \_\_\_\_\_.

17 17. Since my last report, I have delegated the following powers over the protected person for  
18 the following periods of time (provide name of person powers delegated to):

19 \_\_\_\_\_

20 **I hereby declare that the above statement is true to the best of my knowledge and belief,  
21 and that I understand it is made for use as evidence in court and is subject to penalty for  
22 perjury.**

23 Dated this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

24 \_\_\_\_\_  
25 Guardian

26 [STATE OF OREGON )

27 ) ss.

28 County of \_\_\_\_\_ )

29 I, \_\_\_\_\_ (guardian's name), being first duly sworn, say that the above statements are  
30 true.

31 \_\_\_\_\_  
32 (Guardian's signature)

33 SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

34 \_\_\_\_\_

35  
36 NOTARY PUBLIC FOR OREGON  
37 My commission expires: \_\_\_\_\_]  
38 \_\_\_\_\_

39

40 **SECTION 5. The amendments to ORS 111.205, 116.083, 116.253 and 125.325 by sections 1  
41 to 4 of this 2007 Act apply only to petitions, reports and accounts filed in proceedings before  
42 a probate court on or after the effective date of this 2007 Act.**

43 **SECTION 6. Section 7 of this 2007 Act is added to and made a part of ORS chapter 111.**

44 **SECTION 7. (1) When proof of mailing, or other delivery of notice or other documents,  
45 is required to be filed in probate court, proof shall be made in the form required by ORCP 9**

1 C.

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

4 **SECTION 8.** ORS 111.215 is amended to read:

5 111.215. (1) Except as otherwise specifically provided in ORS chapters 111, 112, 113, 114, 115,  
6 116 and 117, whenever notice is required to be given of a hearing on any petition or other matter  
7 upon which an order is sought, the petitioner or other person filing the matter shall cause notice  
8 of the date, time and place of the hearing to be given to each person interested in the subject of the  
9 hearing or to the attorney of the person, if the person has appeared by attorney or requested that  
10 notice be sent to the attorney of the person, in any one or more of the following ways and within  
11 the following times:

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

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

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

20 (2) Upon good cause shown the court may change the requirements as to the method or time  
21 of giving notice for any hearing.

22 (3) Proof of the giving of notice must be made at or before the hearing and filed in the pro-  
23 ceeding. [*Proof shall be by an admission of service, a return receipt from the postal authorities or an*  
24 *affidavit or certificate of the person giving notice or the publisher, or one of the employees of the pub-*  
25 *lisher, of the newspaper publishing the notice.*]

26 **SECTION 9.** ORS 113.045 is amended to read:

27 113.045. (1) Upon appointment, a personal representative shall deliver or mail to an estate ad-  
28 ministratoer of the Department of State Lands appointed under ORS 113.235 a copy of the petition  
29 filed under ORS 113.035, and a copy of any last will of the decedent, if the personal representative  
30 has not identified and found all heirs and devisees of the decedent. The personal representative shall  
31 file [*an affidavit in the probate proceeding proving*] **proof of** the delivery or mailing **with the**  
32 **court.**

33 (2) If at any time after the appointment of a personal representative it appears that any heir  
34 or devisee of the decedent cannot be identified and found, the personal representative shall promptly  
35 deliver or mail to an estate administrator of the Department of State Lands appointed under ORS  
36 113.235 a notice indicating that an heir or devisee cannot be identified and found. The personal  
37 representative shall file [*an affidavit in the probate proceeding proving*] **proof of** the delivery or  
38 mailing **with the court.**

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

40 **SECTION 10.** ORS 113.145 is amended to read:

41 113.145. (1) Upon appointment a personal representative shall deliver or mail to the devisees,  
42 heirs and the persons described in ORS 113.035 (8) and (9) who were required to be named in the  
43 petition for appointment of a personal representative, at the addresses therein shown, information  
44 that shall include:

45 (a) The title of the court in which the estate proceeding is pending and the clerk's file number;

1 (b) The name of the decedent and the place and date of the death of the decedent;

2 (c) Whether or not a will of the decedent has been admitted to probate;

3 (d) The name and address of the personal representative and the attorney of the personal rep-  
4 resentative;

5 (e) The date of the appointment of the personal representative;

6 (f) A statement advising the devisee, heir or other interested person that the rights of the  
7 devisee, heir or other interested person may be affected by the proceeding and that additional in-  
8 formation may be obtained from the records of the court, the personal representative or the attorney  
9 for the personal representative;

10 (g) If information under this section is required to be delivered or mailed to a person described  
11 in ORS 113.035 (8), a statement that the rights of the person in the estate may be barred unless the  
12 person proceeds as provided in ORS 113.075 within four months of the delivery or mailing of the  
13 information; and

14 (h) If information under this section is required to be delivered or mailed to a person described  
15 in ORS 113.035 (9), a statement that the rights of the person in the estate may be barred unless the  
16 person proceeds as provided in ORS 112.049 within four months of the delivery or mailing of the  
17 information.

18 (2) If the personal representative is a devisee, heir or other interested person named in the pe-  
19 tition the personal representative is not required to deliver or mail the information under this sec-  
20 tion to the personal representative.

21 (3) The failure of the personal representative to give information under this section is a breach  
22 of duty to the persons concerned, but does not affect the validity of appointment, duties or powers  
23 or the exercise of duties or powers.

24 (4) Within 30 days after the date of appointment a personal representative shall cause to be filed  
25 in the estate proceeding proof [*by an affidavit*] of the delivery or mailing required by this section  
26 or a waiver of notice as provided under ORS 111.225. The [*affidavit*] **proof** shall include a copy of  
27 the information delivered or mailed and the names of the persons to whom it was delivered or  
28 mailed.

29 (5) If before the filing of the final account the personal representative has actual knowledge that  
30 the petition did not include the name and address of any person described in ORS 113.035 (4), (5),  
31 (7), (8) or (9), the personal representative shall:

32 (a) Make reasonable efforts under the circumstances to ascertain each of those names and ad-  
33 dresses;

34 (b) Promptly deliver or mail information as described in subsection (1) of this section to each  
35 of those persons located after the filing of the petition and before the filing of the final account; and

36 (c) File in the estate proceeding, on or before filing the final account under ORS 116.083, proof  
37 [*by affidavit*] of compliance with this subsection or a waiver of notice as provided under ORS  
38 111.225.

39 (6) Within 30 days after the appointment of a personal representative, the personal represen-  
40 tative must mail or deliver the information specified in subsection (1) of this section and a copy of  
41 the death certificate of the decedent to the Department of Human Services.

42 **SECTION 11.** ORS 113.155 is amended to read:

43 113.155. (1) Upon appointment a personal representative shall cause a notice to interested per-  
44 sons to be published once in each of three consecutive weeks in:

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

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

3 (2) The notice shall include:

4 (a) The title of the court in which the estate proceeding is pending;

5 (b) The name of the decedent;

6 (c) The name of the personal representative and the address at which claims are to be presented;

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

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

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

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

17 (4) A personal representative shall file in the estate proceeding proof [*by an affidavit*] of the  
18 publication of notice required by this section. The [*affidavit*] **proof** shall include a copy of the pub-  
19 lished notice.

20 **SECTION 12.** ORS 115.003 is amended to read:

21 115.003. (1) During the three months following appointment, unless a longer time is allowed by  
22 the court, the personal representative shall make reasonably diligent efforts to investigate the fi-  
23 nancial records and affairs of the decedent and shall take such further actions as may be reasonably  
24 necessary to ascertain the identity and address of each person who has or asserts a claim against  
25 the estate. The personal representative shall request and the court shall allow a longer time for  
26 ascertaining claims if the personal representative cannot complete reasonably diligent efforts to  
27 identify persons with claims during the time required by this section or by a previous order of the  
28 court.

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

38 (3) The notice shall include:

39 (a) The title of the court in which the estate proceeding is pending;

40 (b) The name of the decedent;

41 (c) The name of the personal representative and the address at which claims are to be presented;

42 (d) A statement that claims against the estate not presented to the personal representative  
43 within 30 days of the date of the notice may be barred; and

44 (e) The date of the notice, which shall be the date on which it is delivered or mailed.

45 (4) Not later than 60 days after expiration of the period, including any extensions, described in



1 subsection (1) of this section, the personal representative shall cause to be filed in the estate pro-  
2 ceeding proof [*by an affidavit*] of compliance with subsections (1) and (2) of this section. The [*affi-*  
3 *davit*] **proof** shall include a copy of the form of any notice delivered or mailed, the date on which  
4 each notice was delivered or mailed and the name and address of the person to whom each notice  
5 was delivered or mailed.

6 (5) The failure of the personal representative to make reasonably diligent efforts to ascertain  
7 claims as required by subsection (1) of this section or to cause a notice to be delivered or mailed  
8 as required by subsection (2) of this section is a breach of duty to the persons concerned, but does  
9 not affect the validity of appointment, duties or powers or the exercise of duties or powers.

10 **SECTION 13.** ORS 116.093 is amended to read:

11 116.093. (1) Upon filing the final account and petition for a judgment of distribution, the personal  
12 representative shall fix a time for filing objections thereto in a notice thereof. Not less than 20 days  
13 before the time fixed in the notice, the personal representative shall cause a copy of the notice to  
14 be mailed to:

15 (a) Each heir at the last-known address of the heir, if the decedent died intestate.

16 (b) Each devisee at the last-known address of the devisee, if the decedent died testate.

17 (c) Each creditor who has not received payment in full and whose claim has not otherwise been  
18 barred.

19 (d) Any other person known to the personal representative to have or to claim an interest in  
20 the estate being distributed.

21 (2) The notice need not be mailed to the personal representative.

22 (3) Proof of the mailing to those persons entitled to notice shall be [*made by affidavit and*] filed  
23 in the estate proceeding at or before approval of the final account.

24 (4) If the Department of Human Services has presented a claim under ORS chapter 411 or 414  
25 or ORS 416.310 to 416.340, 416.510 to 416.990 or 417.010 to 417.080, or the Department of Corrections  
26 or the authorized agent of the Department of Corrections has presented a claim under ORS 179.620  
27 (3), and the claim has not been settled or paid in full, the personal representative shall mail to the  
28 appropriate department a copy of the final account at the same time, and shall make proof of the  
29 mailing in the same manner, as the notice provided for in this section.

30 **SECTION 14.** ORS 117.015 is amended to read:

31 117.015. (1) Upon the filing of a petition under ORS 117.005, the clerk of the court shall set a  
32 date for hearing not less than 30 days after the date of filing the petition, unless the court sets an  
33 earlier date. A copy of the notice of the hearing shall be sent:

34 (a) To the absentee at the last-known address of the absentee by registered mail or by certified  
35 mail with return receipt.

36 (b) By ordinary mail to the devisees and heirs named in the petition.

37 (2) The court may order that additional notice of the hearing be given by publication or by other  
38 means. Proof of mailing [*may*] **or other notice shall** be made by the petitioner [*by affidavit*] **and**  
39 **filed in the proceeding.**

40 **SECTION 15.** Section 7 of this 2007 Act and the amendments to ORS 111.215, 113.045,  
41 113.145, 113.155, 115.003, 116.093 and 117.015 by sections 8 to 14 of this 2007 Act apply only to  
42 **proofs filed in probate court on or after the effective date of this 2007 Act.**

43