

Enrolled
House Bill 2362

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CHAPTER

AN ACT

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

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

SECTION 1. ORS 111.205 is amended to read:

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

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

SECTION 2. ORS 116.083 is amended to read:

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

- (a) Unless the court orders otherwise, annually within 60 days after the anniversary date of the personal representative's appointment.
- (b) Within 30 days after the date of the personal representative's removal or resignation or the revocation of the personal representative's letters.
 - (c) When the estate is ready for final settlement and distribution.
 - (d) At such other times as the court may order.
- (2) Each account must include the following information:
 - (a) The period of time covered by the account.
 - (b) The total value of the property with which the personal representative is chargeable according to the inventory, or, if there was a prior account, the amount of the balance of the prior account.
 - (c) All money and property received during the period covered by the account.

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

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

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

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

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

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

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

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

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

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

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

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

(b) A statement that all creditors have been paid in full **other than creditors owed administrative expenses that require court approval**.

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

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

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

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

SECTION 3. ORS 116.253 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. ORS 125.325 is amended to read:

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

IN THE _____ COURT _____ COUNTY,
STATE OF OREGON
DEPARTMENT OF PROBATE

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):

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

14. At the time of my last report, I held the following amount of money on behalf of the person: \$_____. Since my last report, I received the following amount of money on behalf of the person: \$_____. I spent the following amount of money on behalf of the person: \$_____. I now hold the following amount of money on behalf of the person: \$_____.

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

16. Since my last report:

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

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

(c) I have had a professional or occupational license revoked or suspended (yes or no): _____.

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

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

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

Dated this ____ day of _____, 2_____.

Guardian

[STATE OF OREGON)
) ss.
County of _____)

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

(Guardian's signature)

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2____.

NOTARY PUBLIC FOR OREGON
My commission expires: _____]

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

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

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

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

SECTION 8. ORS 111.215 is amended to read:

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

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

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

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

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

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

SECTION 9. ORS 113.045 is amended to read:

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

(2) If at any time after the appointment of a personal representative it appears that any heir or devisee of the decedent cannot be identified and found, the personal representative shall promptly deliver or mail to an estate administrator of the Department of State Lands appointed under ORS

113.235 a notice indicating that an heir or devisee cannot be identified and found. The personal representative shall file [*an affidavit in the probate proceeding proving*] **proof of** the delivery or mailing **with the court**.

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

SECTION 10. ORS 113.145 is amended to read:

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

(a) The title of the court in which the estate proceeding is pending and the clerk's file number;
(b) The name of the decedent and the place and date of the death of the decedent;
(c) Whether or not a will of the decedent has been admitted to probate;
(d) The name and address of the personal representative and the attorney of the personal representative;

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

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

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

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

(2) If the personal representative is a devisee, heir or other interested person named in the petition the personal representative is not required to deliver or mail the information under this section to the personal representative.

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

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

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

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

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

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

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

SECTION 11. ORS 113.155 is amended to read:

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

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

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

(2) The notice shall include:

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

(b) The name of the decedent;

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

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

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

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

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

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

SECTION 12. ORS 115.003 is amended to read:

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

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

(3) The notice shall include:

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

(b) The name of the decedent;

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

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

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

(4) Not later than 60 days after expiration of the period, including any extensions, described in subsection (1) of this section, the personal representative shall cause to be filed in the estate proceeding proof [*by an affidavit*] of compliance with subsections (1) and (2) of this section. The [*affidavit*] **proof** shall include a copy of the form of any notice delivered or mailed, the date on which

each notice was delivered or mailed and the name and address of the person to whom each notice was delivered or mailed.

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

SECTION 13. ORS 116.093 is amended to read:

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

- (a) Each heir at the last-known address of the heir, if the decedent died intestate.
- (b) Each devisee at the last-known address of the devisee, if the decedent died testate.
- (c) Each creditor who has not received payment in full and whose claim has not otherwise been barred.

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

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

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

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

SECTION 14. ORS 117.015 is amended to read:

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

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

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

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

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

Passed by House March 19, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate May 15, 2007

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President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State