

House Bill 2362

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 **as introduced**.

Requires that petitions, reports and accounts in proceedings before probate court must include declaration under penalty of perjury in lieu of notarized verification.

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,
3 116.083, 116.253 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.

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

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

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

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

30 (b) The total value of the property with which the personal representative is chargeable ac-

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 cording to the inventory, or, if there was a prior account, the amount of the balance of the prior
2 account.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 116.253. (1) Within 10 years after the death of a decedent whose estate escheated in whole or
42 in part to the state, or within eight years after the entry of a judgment or order escheating property
43 of an estate to the state, a claim may be made for the property escheated, or the proceeds thereof,
44 by or on behalf of a person not having actual knowledge of the escheat or by or on behalf of a
45 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)

1 person))
2 A Protected)
3 Person.)

4 GUARDIAN'S REPORT

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

7 1. My name is _____.

8 2. My address and telephone number are:

9 _____

10 _____

11 Phone _____

12 3. The name, if applicable, and address of the place where the person now resides are:

13 _____

14 _____

15 4. The person is currently residing at the following type of facility or residence:

16 _____

17 5. The person is currently engaged in the following programs and activities and receiving the
18 following services (brief description):

19 _____

20 6. I was paid for providing the following items of lodging, food or other services to the person:

21 _____

22 _____

23 7. The name of the person primarily responsible for the care of the person at the person's place
24 of residence is:

25 _____

26 8. The name and address of any hospital or other institution where the person is now admitted
27 on a temporary or permanent basis are:

28 _____

29 _____

30 9. The person's physical condition is as follows (brief description):

31 _____

32 _____

33 10. The person's mental condition is as follows (brief description):

34 _____

35 _____

36 11. I made the following contacts with the person during the past year (brief description):

37 _____

38 12. I made the following major decisions on behalf of the person during the past year (brief de-
39 scription):

40 _____

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

42 _____

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

1 the following amount of money on behalf of the person: \$_____.

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

4 16. Since my last report:

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

6 _____

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

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

10 _____.

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

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

14 _____

15 Dated this ____ day of _____, 2_____.

16 _____
17 Guardian

18 [STATE OF OREGON)

19) ss.

20 County of _____)

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

23 _____
24 (Guardian's signature)

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

26 _____

27
28 NOTARY PUBLIC FOR OREGON

29 My commission expires: _____]

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

33 _____

34
35 **SECTION 5.** The amendments to ORS 111.205, 116.083, 116.253 and 125.325 by sections 1
36 to 4 of this 2007 Act apply only to petitions, reports and accounts filed in proceedings before
37 a probate court on or after the effective date of this 2007 Act.