

# Enrolled Senate Bill 151

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CHAPTER .....

AN ACT

Relating to administration of estates; creating new provisions; and amending ORS 113.085, 113.105, 114.515 and 114.535.

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

**SECTION 1.** Section 2 of this 2009 Act is added to and made a part of ORS chapter 113.

**SECTION 2.** The Director of Human Services, or the director's designated representative, may approve in writing attorneys who are eligible to be appointed as personal representatives under ORS 113.085 if the decedent received public assistance pursuant to ORS chapter 411 or 414 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 when appointed as a personal representative.

**SECTION 3.** ORS 113.085 is amended to read:

113.085. (1) Except as provided in subsection (2) of this section, upon the filing of the petition, if there is no will or there is a will and it has been proved, the court shall appoint a qualified person it finds suitable as personal representative, giving preference in the following order:

- (a) [To] The executor named in the will.
- (b) [To] The surviving spouse of the decedent or the nominee of the surviving spouse of the decedent.
- (c) [To] The nearest of kin of the decedent or the nominee of the nearest of kin of the decedent.
- (d) [To] The Director of Human Services, or [a designee] **an attorney approved by the director under section 2 of this 2009 Act**, if [it appears] the decedent received public assistance pursuant to ORS chapter 411 or 414 **or received care at an institution as defined in ORS 179.010, and it appears that [such] the assistance [is a claim against] or the cost of care may be recovered from the estate of the decedent.**
- (e) [To] The Department of Veterans' Affairs, if the decedent was a protected person under ORS 406.050 (7), and the department has joined in the petition for such appointment.
- (f) [To] Any other person.

(2) Except as provided in subsection (3) of this section, the court shall appoint the Department of State Lands as personal representative if it appears that the decedent died wholly intestate and without known heirs. The Attorney General shall represent the Department of State Lands in the administration of the estate. Any funds received by the Department of State Lands in the capacity

of personal representative may be deposited in accounts, separate and distinct from the General Fund, established with the State Treasurer. Interest earned by such account shall be credited to that account.

(3) The court may appoint a person other than the Department of State Lands to administer the estate of a decedent who died wholly intestate and without known heirs if the person filing a petition under ORS 113.035 attaches written authorization from an estate administrator of the Department of State Lands appointed under ORS 113.235 approving the filing of the petition by the person. Except as provided by rule adopted by the Director of the Department of State Lands, an estate administrator may consent to the appointment of another person to act as personal representative only if it appears after investigation that the estate is insolvent.

**SECTION 4.** ORS 113.105 is amended to read:

113.105. (1) Unless a testator provides in a will that no bond shall be required of the executor of the estate, or unless the personal representative is the sole heir or devisee or is the Department of State Lands, or is the Director of Human Services or [*a designee*] **an attorney approved by the director under section 2 of this 2009 Act**, or is the Department of Veterans' Affairs, the personal representative may not act nor shall letters be issued to the personal representative until the personal representative files with the clerk of the court a bond. The bond shall be executed by a surety company authorized to transact surety business in this state, or by one or more sufficient personal sureties approved by the court. A personal surety must be a resident of this state. The court may, in its discretion, require a bond notwithstanding any provision in a will that no bond is required. The bond shall be for the security and benefit of all interested persons and shall be conditioned upon the personal representative faithfully performing the duties of the trust.

(2) The amount of the bond set by the court shall be adequate to protect interested persons, but in no event shall it be less than \$1,000. In setting the amount of the bond the court shall consider:

- (a) The nature, liquidity and apparent value of the assets of the estate.
- (b) The anticipated income during administration.
- (c) The probable indebtedness and taxes.

(3) Nothing in this section affects the provisions of ORS 709.240, relating to a trust company acting as personal representative.

(4) Notwithstanding any other provisions of this section, a court may, in its discretion, waive the requirement of a bond if all devisees and heirs known to the court agree in writing that the requirement be waived and the signed agreement is filed with the court at the time of filing of the petition for the appointment of a personal representative.

**SECTION 5.** Section 6 of this 2009 Act is added to and made a part of ORS 114.505 to 114.560.

**SECTION 6.** The Director of Human Services, or the director's designated representative, may approve in writing attorneys who are eligible to file an affidavit under ORS 114.515 if the decedent received public assistance pursuant to ORS chapter 411 or 414 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 when the attorney files an affidavit under ORS 114.515.

**SECTION 7.** ORS 114.515 is amended to read:

114.515. (1) If the estate of a decedent meets the requirements of subsection (2) of this section, any of the following persons may file an 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, or an attorney approved by the director under section 6 of this 2009 Act, if the decedent received public assistance pursuant to ORS chapter**

**411 or 414 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) An affidavit under this section may be filed only if:

(a) The fair market value of the estate is \$200,000 or less;

(b) Not more than \$50,000 of the fair market value of the estate is attributable to personal property; and

(c) Not more than \$150,000 of the fair market value of the estate is attributable to real property.

(3) An affidavit under this section may not be filed until 30 days after the death of the decedent.

(4) An affidavit filed under the provisions of this section 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, a copy of the document approving the attorney must be attached to the affidavit.**

(5) In determining fair market value under this section, 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.

(6) The clerk of the probate court shall charge and collect a fee of \$23 for the filing of any affidavit under this section.

(7) Any error or omission in an affidavit filed under this section may be corrected by filing an amended affidavit within four months after the filing of the affidavit.

(8) One or more supplemental affidavits may be filed at any time after the filing of an affidavit under this section for the purpose of including property not described in the original affidavit. Copies of all previously filed affidavits must be attached to the supplemental affidavit and all information required in ORS 114.525 must be reflected in the supplemental affidavit. A supplemental affidavit may not be filed if by reason of the additional property described in the supplemental affidavit any limitation imposed by subsection (2) of this section is exceeded.

**SECTION 8.** ORS 114.535 is amended to read:

114.535. (1) Any person indebted to the decedent or having possession of personal property belonging to the estate, to whom a certified copy of the affidavit filed under ORS 114.515 is delivered by the affiant on or after the 10th day following the filing of the affidavit, shall pay, transfer or deliver the personal property to the affiant. Any person who has received property of the decedent under ORS 446.616, 722.262 or 803.094, or any similar statute providing for the transfer of property of an estate which is not being probated shall pay, transfer or deliver the property to the affiant if the person would be required to pay, transfer or deliver the property to a personal representative of the estate. The transferor is discharged and released from any liability or responsibility for the transfer in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the decedent.

(2) A transfer agent of any corporate security registered in the name of the decedent shall change the registered ownership on the books of the corporation to the person entitled thereto on presentation of a certified copy of the affidavit filed under ORS 114.515.

(3) If a person to whom an affidavit is delivered refuses to pay, deliver or transfer any personal property to the affiant or the person entitled to the property as disclosed in the affidavit filed under ORS 114.515, the property may be recovered or its payment, delivery or transfer compelled upon proof of the transferee's entitlement in a proceeding brought for the purpose by or on behalf of the transferee.

(4) If the affidavit was signed by the Director of Human Services or [*a designee of the director*] **an attorney approved by the director under section 6 of this 2009 Act**, the director or the [*designee*] **attorney** may certify a copy of the affidavit for the purposes described in subsection (1) or (2) of this section.

**Passed by Senate February 16, 2009**

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Secretary of Senate

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President of Senate

**Passed by House May 26, 2009**

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Speaker of House

**Received by Governor:**

.....M,....., 2009

**Approved:**

.....M,....., 2009

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2009

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Secretary of State