

DRAFT

SUMMARY

Terminates authority of spouse as agent under certain estate planning documents upon annulment, separation or dissolution of marriage.

Extends liability protections for property held as tenants by the entirety when property is conveyed to certain trust.

Changes references to “small estate affidavit” to “simple estate affidavit.” Permits use of simple estate affidavit if decedent died testate and sole devisee is decedent’s trust.

Modifies procedure for disposition of wills by attorney.

A BILL FOR AN ACT

Relating to estate planning; creating new provisions; and amending ORS 107.093, 107.115, 112.805, 112.815, 112.820, 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, 127.002, 127.005, 127.015, 127.722, 130.150, 130.315, 238.390, 238.458, 708A.655 and 723.844.

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

TERMINATION OF AUTHORITY OF SPOUSE AS AGENT UPON DISSOLUTION OF MARRIAGE

SECTION 1. ORS 107.093 is amended to read:

107.093. (1) After a petition for marital annulment, separation or dissolution is filed and upon service of summons and petition upon the respondent as provided in ORCP 7, a restraining order is in effect against the petitioner and the respondent until a final judgment is issued, until the petition for

1 marital annulment, separation or dissolution is dismissed, or until further
2 order of the court.

3 (2) The restraining order issued under this section shall restrain the
4 petitioner and respondent from:

5 (a) Canceling, modifying, terminating or allowing to lapse for nonpayment
6 of premiums any policy of health insurance, homeowner or renter insurance
7 or automobile insurance that one party maintains to provide coverage for the
8 other party or a minor child of the parties, or any life insurance policy that
9 names either of the parties or a minor child of the parties as a beneficiary.

10 (b) Changing beneficiaries or covered parties under any policy of health
11 insurance, homeowner or renter insurance or automobile insurance that one
12 party maintains to provide coverage for the other party or a minor child of
13 the parties, or any life insurance policy.

14 (c) Transferring, encumbering, concealing or disposing of property in
15 which the other party has an interest, in any manner, without written con-
16 sent of the other party or an order of the court, except in the usual course
17 of business or for necessities of life. This paragraph does not apply to pay-
18 ment by either party of:

19 (A) Attorney fees in the existing action;

20 (B) Real estate and income taxes;

21 (C) Mental health therapy expenses for either party or a minor child of
22 the parties; or

23 (D) Expenses necessary to provide for the safety and welfare of a party
24 or a minor child of the parties.

25 (d) Making extraordinary expenditures without providing written notice
26 and an accounting of the extraordinary expenditures to the other party. This
27 paragraph does not apply to payment by either party of expenses necessary
28 to provide for the safety and welfare of a party or a minor child of the par-
29 ties.

30 (e) **Exercising authority as an agent for the other party under a**
31 **power of attorney described in ORS 127.005 to 127.045, a health care**

representative for the other party under a form appointing a health care representative described in ORS 127.505 to 127.660 or an attorney-in-fact for the other party under a declaration for mental health treatment described in ORS 127.700 to 127.737, unless the power of attorney, form appointing a health care representative or declaration for mental health treatment otherwise provides.

(3) Either party restrained under this section may apply to the court for further temporary orders, including modification or revocation of the restraining order issued under this section.

(4) The restraining order issued under this section shall also include a notice that either party may request a hearing on the restraining order by filing a request for hearing with the court.

(5) A copy of the restraining order issued under this section shall be attached to the summons.

(6) A party who violates a term of a restraining order issued under this section is subject to imposition of remedial sanctions under ORS 33.055 based on the violation, but is not subject to:

(a) Criminal prosecution based on the violation; or

(b) Imposition of punitive sanctions under ORS 33.065 based on the violation.

SECTION 2. ORS 107.115 is amended to read:

107.115. (1) A judgment of annulment or dissolution of a marriage restores the parties to the status of unmarried persons, unless a party is married to another person. The judgment gives the court jurisdiction to award, to be effective immediately, the relief provided by ORS 107.105. The judgment shall *revoke*:

(a) **Revoke** a will pursuant to ORS 112.315.

(b) **Revoke** a transfer on death deed pursuant to ORS 93.981.

(c) **Terminate the authority of an agent under a power of attorney pursuant to ORS 127.015, a health care representative pursuant to ORS 127.545 (5)(c)(B) or an attorney-in-fact pursuant to ORS 127.722.**

(2) The marriage relationship is terminated when the court signs the judgment of dissolution of marriage.

(3)(a) The Court of Appeals or Supreme Court shall continue to have jurisdiction of an appeal pending at the time of the death of either party. The appeal may be continued by the personal representative of the deceased party. The attorney of record on the appeal, for the deceased party, may be allowed a reasonable attorney fee, to be paid from the decedent's estate. However, costs on appeal may not be awarded to either party.

(b) The Court of Appeals or Supreme Court shall have the power to determine finally all matters presented on such appeal. Before making final disposition, the Court of Appeals or Supreme Court may refer the proceeding back to the trial court for such additional findings of fact as are required.

SECTION 3. ORS 127.005 is amended to read:

127.005. (1) When a principal designates another person as an agent by a power of attorney in writing, and the power of attorney does not contain words that otherwise delay or limit the period of time of its effectiveness:

(a) The power of attorney becomes effective when executed and remains in effect until the power is revoked by the principal **or by the terms of the power of attorney, or until the authority of all agents under the power of attorney is terminated as provided in ORS 127.015;**

(b) The powers of the agent are unaffected by the passage of time; and

(c) The powers of the agent are exercisable by the agent on behalf of the principal even though the principal becomes financially incapable.

(2) The terms of a power of attorney may provide that the power of attorney will become effective at a specified future time, or will become effective upon the occurrence of a specified future event or contingency such as the principal becoming financially incapable. If a power of attorney becomes effective upon the occurrence of a specified future event or contingency, the power of attorney may designate a person or persons to determine whether the specified event or contingency has occurred, and the manner in which the determination must be made. A person designated by a power of attorney

1 to determine whether the principal is financially incapable is the principal's
2 personal representative for the purposes of ORS 192.553 to 192.581 and the
3 federal Health Insurance Portability and Accountability Act privacy regu-
4 lations, 45 C.F.R. parts 160 and 164.

5 (3) If a power of attorney becomes effective upon the principal becoming
6 financially incapable and either the power of attorney does not designate a
7 person or persons to make the determination as to whether the principal is
8 financially incapable or none of the designated persons is willing or able to
9 make the determination, a determination that the principal is financially
10 incapable may be made by any physician. The physician's determination must
11 be made in writing.

12 (4) All acts done by an agent under a power of attorney during a period
13 in which the principal is financially incapable have the same effect, and
14 inure to the benefit of and bind the principal, as though the principal were
15 not financially incapable.

16 (5) If a conservator is appointed for a principal, the agent shall account
17 to the conservator, rather than to the principal, for so long as the conser-
18 vatorship lasts. The conservator has the same power that the principal would
19 have to revoke, suspend or terminate all or any part of the power of attor-
20 ney.

21 (6) This section does not apply to ORS 127.505 to 127.660.

22 **SECTION 4.** ORS 127.015 is amended to read:

23 127.015. (1) **The authority of an agent under a power of attorney**
24 **terminates upon the occurrence of any of the following:**

25 (a) **The principal dies.**

26 (b) **The principal or the court revokes the power of attorney.**

27 (c) **The agent dies, becomes financially incapable or incapacitated**
28 **or resigns.**

29 (d) **The power of attorney by its terms provides that the power of**
30 **attorney terminates.**

31 (e) **An action is filed for the dissolution or annulment of the**

principal's marriage or registered domestic partnership to the agent, or for the separation of the principal and agent, unless otherwise provided by terms of the power of attorney, agreement of the parties or order of the court.

(2) A court may order that a power of attorney is revoked upon appointment by the court of a conservator for the principal.

[(1)] **(3)** The death of a principal who has executed a power of attorney in writing, or the occurrence of any other event that would otherwise terminate the authority of the agent, does not revoke or terminate the authority of an agent who, without actual knowledge of the death of the principal or other event, acts in good faith under the power of attorney. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and heirs, devisees and personal representatives of the principal.

[(2)] **(4)** An affidavit executed by an agent that states that the agent did not have, at the time of doing an act under the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death or other event, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument that is recordable, the affidavit may also be recorded.

[(3)] **(5)** This section does not alter or affect any provision for revocation or termination contained in the power of attorney.

SECTION 5. ORS 127.722 is amended to read:

127.722. (1) A declaration may be revoked in whole or in part at any time by the principal if the principal is not incapable. A revocation is effective when a capable principal communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the principal's medical record.

(2) The authority of the principal's spouse as attorney-in-fact is revoked if a petition for dissolution or annulment of marriage is filed, the principal is not incapable and the principal or the court does not

1 **reaffirm the appointment after the filing of the petition.**

2 **SECTION 6.** ORS 127.002 is amended to read:

3 127.002. For the purposes of ORS 127.005 to 127.045:

4 (1) "Agent" includes an attorney-in-fact; and

5 (2) "Financially incapable" has the meaning given that term in ORS
6 125.005.

7 (3) "Incapacitated" has the meaning given that term in ORS 125.005.

8
9 **CONVEYANCE OF PROPERTY HELD AS TENANTS**
10 **BY THE ENTIRETY**
11

12 **SECTION 7.** (1) Real property of spouses married to each other that
13 was held as tenants by the entirety and subsequently conveyed to the
14 trustee or trustees of the joint revocable trust of the spouses or of the
15 separate revocable trust of each spouse shall have the same immunity
16 from the claims of a spouse's creditors as would exist if the spouses
17 had continued to hold the property as tenants by the entirety, if:

18 (a) The spouses remain married to each other;

19 (b) The real property continues to be held in trust by the trustee
20 or trustees or the successor trustee or trustees; and

21 (c) Both spouses are beneficiaries of the trust or trusts, including
22 where both spouses are current beneficiaries of one trust that holds
23 the entire property or each spouse is a current beneficiary of a sepa-
24 rate trust and the two separate trusts together hold the entire prop-
25 erty, whether or not other persons are also current or future
26 beneficiaries of the trust or trusts.

27 (2) The protection from the claims of separate creditors under this
28 section may be waived as to any specific creditor, including any sepa-
29 rate creditor of either spouse, or any specifically described property,
30 including any former tenancy by the entirety property conveyed into
31 trust, by the trustee acting under the express provision of a trust in-

1 **strument or with the written consent of both spouses.**

2 **SECTION 8.** ORS 130.315 is amended to read:

3 130.315. (1) Whether or not the terms of a trust contain a spendthrift
4 provision, **except as provided in section 7 of this 2021 Act:**

5 (a) During the lifetime of the settlor, the property of a revocable trust is
6 subject to claims of the settlor's creditors.

7 (b) A creditor or assignee of the settlor of an irrevocable trust may reach
8 the maximum amount that can be distributed to or for the settlor's benefit.
9 If an irrevocable trust has more than one settlor, the amount the creditor
10 or assignee of a particular settlor may reach may not exceed the settlor's
11 interest in the portion of the trust attributable to that settlor's contribution.

12 (c) If a trust was revocable at the settlor's death, the property of the trust
13 becomes subject to creditors' claims as provided in ORS 130.350 to 130.450
14 when the settlor dies. The payment of claims is subject to the settlor's right
15 to direct the priority of the sources from which liabilities of the settlor are
16 to be paid.

17 (d) Notwithstanding the provisions of paragraph (b) of this subsection, the
18 assets of an irrevocable trust may not be subject to the claims of an existing
19 or subsequent creditor or assignee of the settlor, in whole or in part, solely
20 because of the existence of a discretionary power granted to the trustee by
21 the terms of the trust or any other provision of law to pay the amount of tax
22 owed directly to the taxing authorities or to reimburse the settlor for any
23 tax on trust income or principal that is payable or has been paid by the
24 settlor under the law imposing the tax.

25 (2) For the purpose of creditors' claims, the holder of a power of with-
26 drawal is treated in the same manner as the settlor of a revocable trust to
27 the extent property of the trust is subject to the power. The provisions of
28 this subsection apply to the holder of a power of withdrawal only during the
29 period that the power may be exercised.

30 (3) Upon the lapse, release or waiver of a power of withdrawal, the
31 property of the trust that is the subject of the lapse, release or waiver be-

comes subject to claims of creditors of the holder of the power only to the extent the value of the property exceeds the greatest of:

(a) The amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code, as in effect on December 31, 2012;

(b) The amount specified in section 2503(b) of the Internal Revenue Code, as in effect on December 31, 2012; or

(c) Twice the amount specified in section 2503(b) of the Internal Revenue Code, as in effect on December 31, 2012, if the donor was married at the time of the transfer to which the power of withdrawal applies.

(4) The assets of an irrevocable trust that are attributable to a contribution to an inter vivos marital deduction trust described in section 2523(e) or (f) of the Internal Revenue Code, as in effect on December 31, 2012, after the death of the spouse of the settlor of the inter vivos marital deduction trust shall be deemed to have been contributed by the settlor's spouse and not by the settlor.

(5) The assets of an irrevocable trust for the benefit of a person, including the settlor, are not subject to claims of creditors of the settlor to the extent that the property of the trust is subject to a presently exercisable general power of appointment held by a person other than the settlor.

(6) Subsections (2) and (3) of this section do not apply to a person other than a settlor who is a beneficiary of a revocable or irrevocable trust and who is also a trustee of the trust, if the power to withdraw for the person's own benefit is limited by an ascertainable standard.

SIMPLE ESTATE AFFIDAVIT

SECTION 9. 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

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

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

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

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

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

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

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

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

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

21 **SECTION 10.** ORS 114.515 is amended to read:

22 114.515. (1) If the estate of a decedent meets the requirements of ORS
23 114.510, any of the following persons may file a [*small*] **simple** estate affi-
24 davit with the clerk of the probate court in any county where there is venue
25 for a proceeding seeking the appointment of a personal representative for the
26 estate:

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

28 (b) If the decedent died testate, any person named as personal represen-
29 tative in the decedent's will.

30 (c) The Director of Human Services, the Director of the Oregon Health
31 Authority or an attorney approved under ORS 114.517, if the decedent re-

ceived 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.

(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) and the estate of the decedent does 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

1 estate is terminated, except that the affiant shall deliver assets of the estate
2 in the affiant's possession upon request by a personal representative ap-
3 pointed under ORS 113.085. The affiant shall promptly file notice with the
4 court that the estate of the decedent is not subject to ORS 114.505 to 114.560
5 and shall serve a copy of the notice on each person who received a copy of
6 the previous affidavit.

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

10 **SECTION 11.** ORS 114.537 is amended to read:

11 114.537. (1) If a person who is eligible to file a [small] **simple** estate af-
12 fidavit is aware that the decedent was the sole lessee or the last surviving
13 lessee of a safe deposit box or was the owner of the contents of a safe deposit
14 box at the time of the decedent's death, the claiming successor or other
15 person may not file a [small] **simple** estate affidavit until the person re-
16 quests an inventory of the box under ORS 708A.655, if the lessor of the box
17 is an Oregon operating institution as defined in ORS 706.008, or under ORS
18 723.844, if the lessor of the box is a credit union as defined in ORS 723.008.
19 Upon receiving the request, the lessor of the box shall cause an inventory
20 of the contents of the box to be made. The lessor shall retain the original
21 inventory in the box and shall provide a copy of the inventory to the person
22 requesting the inventory. The person requesting the inventory shall take the
23 contents of the box into consideration in determining whether the estate of
24 the decedent is within the limits prescribed by ORS 114.510. If the person
25 files a [small] **simple** estate affidavit, the affidavit must contain a statement
26 of the value of the contents of the box.

27 (2) If an affiant becomes aware after the filing of a [small] **simple** estate
28 affidavit that the decedent was the sole lessee or the last surviving lessee
29 of a safe deposit box or was the owner of the contents of a safe deposit box
30 at the time of the decedent's death, the affiant shall promptly request an
31 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 meets the requirements of ORS 114.510

(1)(b) or if the estate of the decedent remains within the limits prescribed by ORS 114.510 **(1)(a)** 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 does not meet the requirements of ORS

114.510 (1)(b) and the estate of the decedent exceeds the limits prescribed by ORS 114.510 **(1)(a)** 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 12. 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

1 is presented to the affiant when the claim is mailed or personally delivered
2 to the affiant at the mailing address for presentment of claims included in
3 the [small] **simple** estate affidavit under ORS 114.525.

4 (B) If the affiant authorized creditors to present claims by electronic mail
5 or facsimile communication in the [small] **simple** estate affidavit as provided
6 in ORS 114.525, a claim is presented to the affiant when it is sent to the
7 electronic mail address or the facsimile number designated by the affiant for
8 presentment of claims, unless the sender receives a notice that the electronic
9 mail was not delivered or the facsimile communication was not successful.
10 If the affiant denies receiving the electronic mail or facsimile communi-
11 cation, the burden of proof is on the creditor to demonstrate that the elec-
12 tronic mail was properly addressed and sent or that the facsimile
13 communication was properly addressed and successfully delivered or trans-
14 mitted.

15 (e) Each claim presented to the affiant must include the information re-
16 quired by ORS 115.025.

17 (2)(a) A claim presented to the affiant that was not listed in the [small]
18 **simple** estate affidavit shall be considered allowed as presented unless
19 within 60 days after the date of presentment of the claim the affiant mails
20 or delivers a notice of disallowance of the claim in whole or in part to the
21 claimant and any attorney for the claimant. A notice of disallowance of a
22 claim must state the reason for the disallowance and inform the claimant
23 that the claim has been disallowed in whole or in part and, to the extent
24 disallowed, will be barred unless:

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

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

29 (b) Statement of a reason for disallowance under this subsection is not
30 an admission by the affiant and does not preclude the assertion of other de-
31 fenses to the claim.

SECTION 13. 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

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

11 (5) If a member dies before retiring and has designated a beneficiary un-
12 der subsection (1) of this section, but the beneficiary dies before the member,
13 or dies before distribution is made under this section, the Public Employees
14 Retirement Board shall pay the amount of money, if any, that would other-
15 wise have been paid to the beneficiary to a personal representative appointed
16 for the estate of the deceased beneficiary. *[If a small estate affidavit has been*
17 *filed under ORS 114.505 to 114.560, and the amount of money that would have*
18 *been paid to the beneficiary does not exceed the maximum amount of personal*
19 *property for which a small estate affidavit may be filed under ORS 114.505 to*
20 *114.560, the board shall pay the amount to the person who filed the small estate*
21 *affidavit on behalf of the estate of the beneficiary.]* **If a simple estate affi-**
22 **davit regarding the deceased beneficiary's estate has been filed under**
23 **ORS 114.515, the board shall pay the amount to the person who filed**
24 **the simple estate affidavit if:**

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

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

30 (6) Interest upon the member account of the member shall accrue until
31 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.

DISPOSITION OF WILLS

SECTION 14. ORS 112.805 is amended to read:

112.805. (1) Any person having custody of a will has a duty to maintain custody of the will and may not destroy or discard the will, disclose its contents to any person or deliver the will to any person except as authorized by the testator or as permitted by ORS 112.800 to 112.830.

(2) Nothing in ORS 112.800 to 112.830 bars a testator from destroying, revoking, delivering to any person or otherwise dealing with the will of the testator.

(3) A will destroyed in accordance with ORS 112.800 to 112.830 *[shall]* **is** not *[be]* revoked by virtue of such destruction and its contents may be proved by secondary evidence.

SECTION 15. ORS 112.815 is amended to read:

112.815. An attorney who has custody of a will may dispose of the will in accordance with ORS 112.820 if:

(1) The attorney is licensed to practice law in the State of Oregon;

[(2) At least 40 years has elapsed since execution of the will;]

[(3) The attorney does not know and after diligent inquiry cannot ascertain the address of the testator; and]

[(4)] **(2)** The will is not subject to a contract to make a will or devise or

not to revoke a will or devise[.]; **and**

(3)(a) If the attorney knows the testator is deceased, at least five years have elapsed since the testator's death and the attorney does not know and after diligent inquiry has been unable to ascertain the addresses for the personal representative and each successor personal representative named in the will or, if the attorney was able to locate the personal representative or one or more of the successor personal representatives named in the will, none will accept delivery of the will; or

(b) If the attorney does not know the testator is deceased, at least 20 years have elapsed since execution of the will and the attorney does not know and after diligent inquiry has been unable to ascertain the address of the testator.

SECTION 16. ORS 112.820 is amended to read:

112.820. (1) An attorney **who intends to destroy a will** as authorized [to destroy a will] under ORS 112.815 [may proceed as follows] **must:**

(a) [The attorney shall first publish a notice in a newspaper of general circulation in the county of the last-known address of the testator, if any, otherwise in the county of the principal place of business of the attorney.] **Provide notice of the attorney's intent to destroy the will to the testator or, if the attorney knows the testator is deceased, to the personal representative and to each successor personal representative named in the will; and**

(b) Deliver the notice by mail, electronic mail, telephone and any other method reasonably calculated to convey the notice to the mailing addresses, electronic mail addresses and telephone numbers known to the attorney or reasonably ascertainable through public records or other searches.

(2) The notice [shall] under subsection (1) of this section must state the name of the testator, the date of the will and the intent of the attorney to destroy the will if, within 90 days after the date of the notice, the

testator does not contact the attorney **or, if the testator is deceased, the personal representative and each successor personal representative fail to accept delivery of the will** *[within 90 days after the date of the notice]*.

[(b)] **(3)** If the testator fails to contact the attorney within 90 days after the date of the notice **or, if the testator is deceased, the personal representative and any successor personal representative fail to accept delivery of the will within 90 days of the date of the notice**, the attorney may destroy the will.

[(c) Within 30 days after destruction of the will, the attorney shall file with the probate court in the county where the notice was published an affidavit stating the name of the testator, the name and relationship of each person named in the will whom the testator identified as related to the testator by blood, adoption or marriage, the date of the will, proof of the publication and the date of destruction.]

[(d) The clerk of the probate court shall charge and collect the fee established under ORS 21.145 for filing of the affidavit.]

[(2) If a will has not been admitted to probate within 40 years following the death of the testator, an attorney having custody of the will may destroy the will without notice to any person or court.]

(4)(a) At the time the attorney destroys a will under this section, the attorney shall sign an affidavit affirming:

(A) That despite diligent inquiry, the attorney was unable to locate the testator or, if the testator is deceased, that the attorney has knowledge of the testator's death and, despite diligent inquiry, the attorney was unable to locate the personal representative and successor personal representatives named in the testator's will or, if the attorney was able to locate the personal representative or any successor personal representative, that none would accept delivery of the will;

(B) That the attorney has created a complete digital copy of the testator's will, including any affidavit of attesting witnesses and codicils to the will; and

(C) That the attorney will retain a digital copy of the affidavit, the testator's will and any affidavit of attesting witnesses and codicils to the will for a period of no fewer than 15 years from the date of the affidavit.

(b) The affidavit must include documentation of the attorney's diligent efforts to provide notice to the testator or, if the attorney knows the testator is deceased, the personal representative and successor personal representatives, including but not limited to public records search results, the addresses, electronic mail addresses, telephone numbers or any other methods of contact the attorney used to provide notice of the attorney's intent to destroy the will, a copy of the notice and any other documentation of the attorney's attempts to provide notice to the testator or, if the testator is deceased, to the personal representative and successor personal representatives.

(c) No earlier than 15 years following the date of the affidavit, the attorney may destroy the electronic copies of the affidavit and the will and any affidavit of attesting witnesses or codicils to the will without notice of the destruction to any person or court.

CONFORMING AMENDMENTS

SECTION 17. ORS 113.238, as amended by section 37, chapter 678, Oregon Laws 2019, 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 18. ORS 114.505, as amended by section 40, chapter 678, Oregon Laws 2019, 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 19. 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 20. ORS 114.520, as amended by section 41a, chapter 678, Oregon Laws 2019, 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.

SECTION 21. 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.

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

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

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

10 (k) If the decedent died testate, list the devisees of the decedent and the
11 last address of each devisee as known to the affiant and state that a copy
12 of the will and a copy of the affidavit showing the date of filing will be de-
13 livered to each devisee or mailed to the devisee at the last-known address.

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

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

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

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

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

31 (B) If the affiant wishes to authorize creditors to present claims by elec-

1 tronic mail or facsimile communication, state the electronic mail address or
2 facsimile number for presentment of claims.

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

4 (r) State that the affiant is not disqualified from acting as an affiant un-
5 der ORS 114.515 (2).

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

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

17 (u) State that undisputed claims against the estate will be paid as pro-
18 vided in ORS 114.545.

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

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

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

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

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

30 (B) A petition for appointment of a personal representative of the estate
31 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.

SECTION 22. ORS 114.535, as amended by section 42, chapter 678, Oregon Laws 2019, 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 personal 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 re-

fused 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 23. 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

1 section may not be appealed and may be enforced only by the filing of a pe-
2 tition for summary review under ORS 114.550.

3 **SECTION 24.** ORS 114.545 is amended to read:

4 114.545. (1) The affiant:

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

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

11 (c) Shall take control of the property of the estate coming into the pos-
12 session of the affiant and collect the income from property of the estate in
13 the possession of the affiant.

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

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

22 (f) From and to the extent of the property of the estate, shall pay or re-
23 imburse any person who has paid:

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

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

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

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

31 (g) Shall pay claims and expenses under paragraph (f) of this subsection

1 in the order of priority prescribed by ORS 115.125.

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

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

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

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

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

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

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

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

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

28 (5) A financial institution as defined in ORS 706.008 that opens one or
29 more deposit accounts for an affiant pursuant to subsection (1)(e) of this
30 section is not liable to any other person for opening the account or accounts
31 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 25. 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 26. 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 27. 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 28. 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 ad-

1 ministered under a [*small*] **simple** estate affidavit pursuant to ORS 114.505
2 to 114.560. A decedent's probate estate does not include any property that
3 constitutes a probate transfer to the decedent's surviving spouse under ORS
4 114.685.

5 **SECTION 29.** ORS 119.021 is amended to read:

6 119.021. If a deceased user consented to, or a court directs, disclosure of
7 the contents of electronic communications of the user, the custodian shall
8 disclose to the personal representative of the estate of the user the content
9 of an electronic communication sent or received by the user if the personal
10 representative gives the custodian:

11 (1) A written request for disclosure in physical or electronic form;

12 (2) A certified copy of the death certificate of the user;

13 (3) A certified copy of the letter of appointment of the personal repre-
14 sentative or a [*small*] **simple** estate affidavit or court order;

15 (4) Unless the user provided direction using an online tool, a copy of the
16 user's will, trust, power of attorney or other record evidencing the user's
17 consent to disclosure of the content of electronic communications; and

18 (5) If requested by the custodian:

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

21 (b) Evidence linking the account to the user; or

22 (c) A finding by the court that:

23 (A) The user had a specific account with the custodian, identifiable by the
24 information specified in paragraph (a) of this subsection;

25 (B) Disclosure of the content of electronic communications of the user
26 would not violate 18 U.S.C. 2701 et seq., 47 U.S.C. 222 or other applicable
27 law;

28 (C) Unless the user provided direction using an online tool, the user
29 consented to disclosure of the content of electronic communications; or

30 (D) Disclosure of the content of electronic communications of the user is
31 reasonably necessary for administration of the estate.

SECTION 30. 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 31. 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 appli-

1 cable terms of service;

2 (b) Is subject to other applicable law, including copyright law;

3 (c) In the case of a fiduciary, is limited by the scope of the fiduciary's
4 duties; and

5 (d) May not be used to impersonate the user.

6 (3) A fiduciary with authority over the property of a decedent, protected
7 person, principal or settlor has the right to access any digital asset in which
8 the decedent, protected person, principal or settlor has a right or interest
9 and that is not held by a custodian or subject to a terms-of-service agree-
10 ment.

11 (4) A fiduciary acting within the scope of the fiduciary's duties is an au-
12 thorized user of the property of the decedent, protected person, principal or
13 settlor for the purpose of applicable computer fraud and unauthorized com-
14 puter access laws, including this state's laws on unauthorized computer ac-
15 cess.

16 (5) A fiduciary with authority over the tangible, personal property of a
17 decedent, protected person, principal or settlor:

18 (a) Has the right to access the property and any digital asset stored in
19 the property; and

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

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

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

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

31 (b) A certified copy of the letter of appointment of the personal repre-

sentative, 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 32. 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 33. 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

1 of the system's plan year in which the benefit becomes due if the Public
2 Employees Retirement Board is unable to locate the member or beneficiary.
3 If the member, beneficiary or any other person thereafter establishes a right
4 to the forfeited benefit, the board shall reinstate the benefit. If the benefit
5 is a periodic payment, the board shall make a retroactive payment to the
6 member, beneficiary or other person in a lump sum for all amounts that
7 would have been paid before reinstatement of the benefit. No interest shall
8 be paid on the benefit for the period commencing when the benefit became
9 due and the date of the retroactive payment.

10 (2) Death benefits and other amounts payable by reason of the death of
11 a member do not escheat to the state when the member dies without heirs,
12 devisees or beneficiaries designated under ORS 238.390. If a beneficiary has
13 not been designated under ORS 238.390, and a personal representative or a
14 person filing a [small] **simple** estate affidavit under ORS 114.505 to 114.560
15 fails to make claim for the benefits within one year after the member dies,
16 the benefits shall be forfeited to the Public Employees Retirement Fund in
17 the manner provided by subsection (1) of this section and are subject to
18 reinstatement only upon subsequent appointment of a personal representative
19 or the filing of a [small] **simple** estate affidavit in the manner provided by
20 ORS 114.505 to 114.560. If benefits are paid to a personal representative or
21 a person filing a [small] **simple** estate affidavit under ORS 114.505 to 114.560,
22 the personal representative or person filing the affidavit shall return to the
23 board the amount that would otherwise escheat to the state after payment
24 of administrative expenses and claims against the estate. Any amounts re-
25 turned to the board under this subsection shall be forfeited to the fund.

26 **SECTION 34.** ORS 708A.655, as amended by section 70, chapter 678,
27 Oregon Laws 2019, is amended to read:

28 708A.655. (1) This section applies to the safe deposit box of any person
29 who is the sole lessee or last surviving lessee of the box and who has died.

30 (2) Subject to ORS 114.537, upon being furnished with a certified copy of
31 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

1 of attorney;

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

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

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

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

29 (6) If the box is opened for the purpose of obtaining documents pertaining
30 to the disposition of the decedent's remains, the Oregon operating institution
31 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 Oregon 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 35. ORS 723.844, as amended by section 78, chapter 678, Oregon Laws 2019, 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 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 or inventory the contents

1 of the box or remove property of the estate of the decedent pursuant to a
2 [small] **simple** estate affidavit filed under ORS 114.515.

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

5 (a) A person named as personal representative of the decedent in a pur-
6 ported will of the decedent;

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

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

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

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

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

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

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

23 (4) If the box is opened for the purpose of conducting a will search, the
24 credit union shall remove any document that appears to be a will, make a
25 true and correct copy of it and deliver the original will to a person desig-
26 nated in the will to serve as the decedent’s personal representative, or if no
27 such person is designated or the credit union cannot, despite reasonable ef-
28 forts, determine the whereabouts of such person, the credit union shall retain
29 the will or deliver it to a court having jurisdiction of the estate of the
30 decedent. A copy of the will shall be retained in the box. At the request of
31 the interested person, a copy of the will, together with copies of any docu-

ments 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 whereabouts 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

1 upon request.

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

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

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

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

26 27 **APPLICABILITY**

28
29 **SECTION 36. (1) Section 7 of this 2021 Act and the amendments to**
30 **ORS 130.315 by section 8 of this 2021 Act apply to tenancy by the en-**
31 **tirety property conveyed to a trustee or trustees of a trust or trusts**

1 on or after the effective date of this 2021 Act.

2 (2) The amendments to statutes by sections 9 to 13 and 17 to 35 of
3 this 2021 Act apply to estates of decedents dying before, on or after the
4 effective date of this 2021 Act.

5
6 **CAPTIONS**
7

8 **SECTION 37.** The unit captions used in this 2021 Act are provided
9 only for the convenience of the reader and do not become part of the
10 statutory law of this state or express any legislative intent in the
11 enactment of this 2021 Act.

12 _____