

D R A F T

SUMMARY

Modifies procedures for probate of estate with no known assets.

Allows personal representative to file statement in lieu of certain required accountings if distributees of estate consent in writing.

A BILL FOR AN ACT

Relating to probate; creating new provisions; and amending ORS 113.035, 113.105, 113.155, 113.165, 113.175, 115.003, 115.135, 116.083 and 116.113.

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

SECTION 1. ORS 113.035 is amended to read:

113.035. Any interested person or the person nominated as personal representative named in the will may petition for the appointment of a personal representative and for the probate of a will. The petition must include the following information, so far as known:

(1) The name, age, domicile, post-office address and date and place of death of the decedent.

(2) Whether the decedent died testate or intestate.

(3) The facts relied upon to establish venue.

(4) The name and post-office address of the person nominated as personal representative and the facts that show the person is qualified to act.

(5) The names, relationship to the decedent and post-office addresses of persons who are or would be the heirs of the decedent upon the death of the decedent intestate, and the ages of any who are minors.

(6) A statement that reasonable efforts have been made to identify and locate all heirs of the decedent. If the petitioner knows of any actual or

1 possible omissions from the list of heirs, the petition must include a state-
2 ment indicating that there are omissions from the information relating to
3 heirs.

4 (7) If the decedent died testate, the names and post-office addresses of the
5 devisees, and the ages of any who are minors. If the will devises property to
6 a person who did not survive the decedent or who is otherwise not entitled
7 to receive the devise, the petition must include a statement explaining why
8 the devise failed. If the petitioner knows of any actual or possible omissions
9 from the list of devisees, the petition must include a statement indicating
10 that there are omissions from the information relating to devisees.

11 (8) The name and post-office address of any person asserting an interest
12 in the estate, or on whose behalf an interest has been asserted, based on a
13 contention that:

14 (a) The will alleged in the petition to be the will of the decedent is inef-
15 fective in whole or part;

16 (b) There exists a will that has not been alleged in the petition to be the
17 will of the decedent; or

18 (c) The decedent agreed, promised or represented that the decedent would
19 make or revoke a will or devise, or not revoke a will or devise, or die
20 intestate.

21 (9) The name and post-office address of any person asserting an interest
22 in the estate, or on whose behalf an interest has been asserted, based on a
23 contention that a parent of the decedent willfully deserted the decedent or
24 neglected without just and sufficient cause to provide proper care and
25 maintenance for the decedent, as provided by ORS 112.047.

26 (10) Whether the original of the last will of the decedent is in the pos-
27 session of the court or accompanies the petition. If the original will is not
28 in the possession of the court or accompanying the petition and an
29 authenticated copy of the will probated in another jurisdiction does not ac-
30 company the petition, the petition shall also state the contents of the will
31 and indicate that it is lost, destroyed or otherwise unavailable and that it

1 was not revoked.

2 (11) A statement of the extent and nature of assets of the estate, **if any**,
3 to enable the court to set the amount of bond of the personal representative.

4 **(12) If the petition states that no assets of the estate are known to**
5 **the petitioner under subsection (11) of this section, a statement of the**
6 **purpose for filing the petition.**

7 **SECTION 2.** ORS 113.105 is amended to read:

8 113.105. (1)(a) Except as provided in subsections (2) to ~~[(4)]~~ (5) of this
9 section, the personal representative may not act, and letters may not be is-
10 sued to the personal representative, until the personal representative pro-
11 vides a bond to the clerk of the court **in an amount set by the court.** The
12 bond must be for the security and benefit of all interested persons and must
13 be conditioned upon the personal representative faithfully performing the
14 duties of the position. The bond must be executed by a surety qualified under
15 ORCP 82 D to G.

16 (b) The amount of the bond set by the court under this subsection must
17 be adequate to protect interested persons. In setting the amount of the bond,
18 the court shall consider:

19 (A) The nature, liquidity and apparent value of the assets of the estate.

20 (B) The anticipated income during administration.

21 (C) The probable indebtedness and taxes.

22 (2) Subsection (1) of this section does not apply if:

23 (a) The will provides that no bond is required, but the court may, for good
24 cause, require a bond notwithstanding any provision in a will that no bond
25 is required;

26 (b) The personal representative is the sole heir or devisee, but the court
27 may, for good cause, require a bond notwithstanding the fact that the per-
28 sonal representative is the sole heir or devisee; *[or]*

29 (c) The personal representative is the Department of State Lands, the
30 Department of Veterans' Affairs, the Director of Human Services, the Di-
31 rector of the Oregon Health Authority or an attorney approved under ORS

1 113.086[.]; or

2 (d) The petition for appointment of the personal representative
3 states that no assets of the estate are known to the petitioner.

4 (3) If no bond was required under subsection (2)(d) of this section
5 and assets of the estate later come into the possession or knowledge
6 of the personal representative, the personal representative shall,
7 within 30 days after filing the inventory or supplemental inventory
8 first showing assets of the estate, file a motion to set or waive the
9 bond as provided in this section.

10 [(3)] (4) Upon a request by the personal representative, the court may
11 waive the requirement of a bond if:

12 (a) The request states the reasons why the waiver is requested; and

13 (b) The request describes the known creditors of the estate.

14 [(4)] (5) The court may waive or reduce the requirement of a bond to the
15 extent that:

16 (a) The personal representative provides written confirmation from a fi-
17 nancial institution that property of the estate is held by the financial insti-
18 tution subject to withdrawal only on order of the court; or

19 (b) The court restricts the sale, encumbrance or other disposition of
20 property of the estate without prior court approval.

21 [(5)] (6) Nothing in this section affects the provisions of ORS 709.240, re-
22 lating to a trust company acting as personal representative.

23 **SECTION 3.** ORS 113.155 is amended to read:

24 113.155. (1) **Except as provided in subsection (5) of this section,** upon
25 appointment a personal representative shall cause a notice to interested
26 persons to be published once in each of three consecutive weeks in:

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

29 (b) If no newspaper is published in the county in which the estate pro-
30 ceeding is pending, a newspaper designated by the court.

31 (2) The notice shall include:

- 1 (a) The title of the court in which the estate proceeding is pending;
- 2 (b) The name of the decedent;
- 3 (c) The name of the personal representative and the address at which
4 claims are to be presented;
- 5 (d) A statement requiring all persons having claims against the estate to
6 present them, within four months after the date of the first publication of
7 the notice to the personal representative at the address designated in the
8 notice for the presentation of claims or they may be barred;
- 9 (e) The date of the first publication of the notice; and
- 10 (f) A statement advising all persons whose rights may be affected by the
11 proceeding that additional information may be obtained from the records of
12 the court, the personal representative or the attorney for the personal rep-
13 resentative.

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

18 (4) A personal representative shall file in the estate proceeding proof of
19 the publication of notice required by this section. The proof shall include a
20 copy of the published notice.

21 **(5)(a) This section does not apply if the petition for appointment**
22 **of the personal representative states that no assets of the estate are**
23 **known to the petitioner and no assets of the estate have come into the**
24 **possession or knowledge of the personal representative.**

25 **(b) If the petition for appointment of the personal representative**
26 **states that no assets of the estate are known to the petitioner and**
27 **assets of the estate later come into the possession or knowledge of the**
28 **personal representative, the personal representative shall, within 30**
29 **days after the filing of the inventory or supplemental inventory first**
30 **showing assets of the estate, commence publication of notice to in-**
31 **terested persons as provided in this section.**

1 **SECTION 4.** ORS 113.165 is amended to read:

2 113.165. Within 90 days after the date of appointment, unless a longer
3 time is granted by the court, a personal representative shall file in the estate
4 proceeding an inventory of all property of the estate that has come into the
5 possession or knowledge of the personal representative. The inventory shall
6 show the estimates by the personal representative of the respective fair
7 market values as of the date of the death of the decedent of the properties
8 described in the inventory. **If no property of the estate has come into the**
9 **possession or knowledge of the personal representative, the personal**
10 **representative shall file an inventory stating that no property of the**
11 **estate has come into the possession or knowledge of the personal rep-**
12 **resentative.**

13 **SECTION 5.** ORS 113.175 is amended to read:

14 113.175. (1) Whenever any property of the estate not included in the in-
15 ventory comes into the possession or knowledge of the personal represen-
16 tative, the personal representative shall either file in the estate proceeding
17 a supplemental inventory within 30 days after the date of receiving pos-
18 session or knowledge, or include the property in the next accounting.

19 **(2) If the inventory states that no assets of the estate are known**
20 **to the petitioner and assets of the estate later come into the pos-**
21 **session or knowledge of the personal representative, the personal rep-**
22 **resentative shall file in the estate proceeding a supplemental inventory**
23 **within 30 days after receiving possession or knowledge of the assets.**

24 **SECTION 6.** ORS 115.003 is amended to read:

25 115.003. (1) **Except as provided in subsection (6) of this section,** during
26 the three months following appointment, unless a longer time is allowed by
27 the court, the personal representative shall make reasonably diligent efforts
28 to investigate the financial records and affairs of the decedent and shall take
29 such further actions as may be reasonably necessary to ascertain the identity
30 and address of each person who has or asserts a claim against the estate.
31 The personal representative shall request and the court shall allow a longer

1 time for ascertaining claims if the personal representative cannot complete
2 reasonably diligent efforts to identify persons with claims during the time
3 required by this section or by a previous order of the court.

4 (2) Not later than 30 days after expiration of the period, including any
5 extensions, described in subsection (1) **or (6)** of this section, the personal
6 representative shall cause to be delivered or mailed to each person known
7 by the personal representative during such period to have or assert a claim
8 against the estate a notice containing the information required in subsection
9 (3) of this section[, *except that it shall not be necessary to*]. **The personal**
10 **representative is not required to** give notice on account of a claim that
11 has already been presented, accepted or paid in full or on account of a claim
12 that is merely conjectural. The personal representative may also cause such
13 a notice to be delivered or mailed to any person discovered by the personal
14 representative after expiration of the period described in subsection (1) **or**
15 **(6)** of this section to have or assert a claim against the estate.

16 (3) The notice shall include:

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

18 (b) The name of the decedent;

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

21 (d) A statement that claims against the estate not presented to the per-
22 sonal representative within 45 days of the date of the notice may be barred;
23 and

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

26 (4) Not later than 60 days after expiration of the period, including any
27 extensions, described in subsection (1) **or (6)** of this section, the personal
28 representative shall cause to be filed in the estate proceeding proof of com-
29 pliance with subsections (1) and (2) of this section. The proof shall include
30 a copy of the form of any notice delivered or mailed, the date on which each
31 notice was delivered or mailed and the name and address of the person to

1 whom each notice was delivered or mailed.

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

7 **(6)(a) This section does not apply if the petition for appointment**
8 **of the personal representative states that no assets of the estate are**
9 **known to the petitioner and no assets of the estate have come into the**
10 **possession or knowledge of the personal representative.**

11 **(b) If the petition for appointment of the personal representative**
12 **states that no assets of the estate are known to the petitioner and**
13 **assets of the estate later come into the possession or knowledge of the**
14 **personal representative, the personal representative shall comply with**
15 **this section. The three-month period for compliance with subsection**
16 **(1) of this section begins on the date of filing of the inventory or sup-**
17 **plemental inventory first showing assets of the estate.**

18 **SECTION 7.** ORS 115.135 is amended to read:

19 115.135. (1) **Except as provided in subsection (5) of this section,** a
20 claim presented to the personal representative shall be considered allowed
21 as presented unless within 60 days after the date of presentation of the claim
22 as provided in ORS 115.005 the personal representative mails or delivers a
23 notice of disallowance of the claim in whole or in part to the claimant and,
24 if any, the attorney of the claimant. The personal representative shall file
25 in the estate proceeding the claim as presented and a copy of the notice of
26 disallowance.

27 (2) A notice of disallowance of a claim shall state the reason for the dis-
28 allowance and inform the claimant that the claim has been disallowed in
29 whole or in part and, to the extent disallowed, will be barred unless the
30 claimant proceeds as provided in ORS 115.145. Statement of a reason for
31 disallowance under this subsection is not an admission by the personal rep-

1 resentative and does not preclude the assertion of other defenses to the
2 claim.

3 (3) The personal representative may rescind the previous allowance of an
4 unpaid claim, if the claim was allowed because of error, misinformation or
5 excusable neglect. Not less than 30 days before the date of the filing of the
6 final account the personal representative shall give notice of rescission of
7 previous allowance of a claim to the claimant and, if any, the attorney of the
8 claimant in the same manner and containing the same information as a no-
9 tice of disallowance.

10 (4) If allowed, the claim shall be paid only to the extent of the assets of
11 the estate available for the payment of the claim pursuant to the priorities
12 established in ORS 115.115 and 115.125.

13 **(5)(a) If the petition for appointment of the personal representative**
14 **states that no assets of the estate are known to the petitioner and no**
15 **assets of the estate have come into the possession or knowledge of the**
16 **personal representative, the personal representative has no duty to**
17 **allow or disallow claims presented to the personal representative.**

18 **(b) If the petition for appointment of the personal representative**
19 **states that no assets or property of the estate are known to the**
20 **petitioner and assets of the estate later come into the possession or**
21 **knowledge of the personal representative, a claim presented to the**
22 **personal representative before the filing of the inventory or supple-**
23 **mental inventory first showing assets of the estate shall be considered**
24 **allowed as presented unless within 60 days after the date of filing of**
25 **the inventory or supplemental inventory the personal representative**
26 **mails or delivers a notice of disallowance of the claim in whole or in**
27 **part to the claimant and, if any, the attorney of the claimant. The**
28 **personal representative shall file in the estate proceeding the claim**
29 **as presented and a copy of the notice of disallowance.**

30 **SECTION 8. Section 9 of this 2019 Act is added to and made a part**
31 **of ORS chapter 116.**

1 **SECTION 9.** (1) If the petition for appointment of the personal
2 representative states that no assets of the estate are known to the
3 petitioner and no assets of the estate have come into the possession
4 or knowledge of the personal representative, the personal represen-
5 tative may move to close the estate no earlier than four months after
6 the latest date of delivery or mailing of the information described in
7 **ORS 113.145.**

8 (2) The motion must state that no assets of the estate have come
9 into the possession or knowledge of the personal representative and
10 that the purpose for filing the petition under ORS 113.035 has been
11 accomplished.

12 (3) The personal representative shall set a time for filing objections
13 to the motion to close the estate. Not less than 20 days before the time
14 set, the personal representative shall mail a copy of the motion to
15 close the estate to the persons who would be entitled to receive a copy
16 of the final account under ORS 116.093.

17 (4) If the court grants the motion, the court shall enter a general
18 judgment closing the estate and discharging the personal represen-
19 tative. The discharge so entered operates as a release of the personal
20 representative from further duties and as a bar to any action against
21 the personal representative. The court may, in its discretion and upon
22 such terms as may be just, within one year after entry of the judgment
23 of discharge, permit an action to be brought against the personal
24 representative if the judgment of discharge was taken through fraud
25 or misrepresentation of the personal representative or through the
26 mistake, inadvertence, surprise or excusable neglect of the claimant.

27 **SECTION 10.** ORS 116.083 is amended to read:

28 116.083. (1) A personal representative shall make and file in the estate
29 proceeding an account of the personal representative's administration:

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

1 **(b) Within 30 days after the date of the personal representative's**
2 **resignation.**

3 [(b)] **(c)** Within 30 days after the date of the personal representative's
4 removal [*or resignation*] or the revocation of the personal representative's
5 letters.

6 [(c)] **(d)** When the estate is ready for final settlement and distribution.

7 [(d)] **(e)** At such other times as the court may order.

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

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

10 (b) The total value of the property with which the personal representative
11 is chargeable according to the inventory, or, if there was a prior account,
12 the amount of the balance of the prior account.

13 (c) All money and property received during the period covered by the ac-
14 count.

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

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

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

28 (C) Include in each annual account and in the final account a statement
29 that the evidence of disbursement is not filed with the account but is main-
30 tained by the personal representative and may be inspected and copied as
31 provided in subparagraph (B) of this paragraph.

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

2 (f) Any other information that the personal representative considers nec-
3 essary to show the condition of the affairs of the estate or as the court may
4 require.

5 (g) A declaration under penalty of perjury in the form required by ORCP
6 1 E, or an unsworn declaration under ORS 194.800 to 194.835, if the declarant
7 is physically outside the boundaries of the United States.

8 **(3)(a) Unless otherwise provided by order of the court, the personal**
9 **representative may file a statement under this subsection in lieu of the**
10 **account required under subsection (1)(a) or (b) of this section if the**
11 **distributees consent in writing.**

12 **(b) A statement under this subsection must include:**

13 **(A) The period of time covered by the statement.**

14 **(B) A description and statement of the value of the money and**
15 **property on hand at the beginning and ending of the period of time**
16 **covered by the statement;**

17 **(C) A copy of the most recent statement received before the ac-**
18 **counting for each financial account owned by the estate;**

19 **(D) A list of the unpaid claims that are allowed or disputed, in-**
20 **cluding the name of the creditor, a description of the claim, the**
21 **amount of the claim, the priority of the claim under ORS 115.125 and**
22 **the reason the claim has not been paid;**

23 **(E) A statement describing why the estate is not ready for final**
24 **settlement and distribution; and**

25 **(F) A declaration under penalty of perjury in the form required by**
26 **ORCP 1 E, or an unsworn declaration under ORS 194.800 to 194.835, if**
27 **the declarant is physically outside the boundaries of the United States.**

28 **(c) Upon filing a statement under this subsection, the personal**
29 **representative shall mail a copy of the statement to each creditor of**
30 **the estate whose claim has not been paid in full and is allowed or**
31 **disputed. Within 30 days after the date of the mailing of the statement,**

1 **a creditor entitled to receive the statement under this paragraph may,**
2 **by written notice to the personal representative, require the personal**
3 **representative to make and file an account of the personal**
4 **representative's administration under subsection (1) of this section**
5 **within 30 days of the date of the creditor's notice.**

6 [(3)] (4) When the estate is ready for final settlement and distribution, the
7 account must also include:

8 (a) A statement that any required estate tax return has been filed.

9 (b) A statement that all Oregon income taxes, estate taxes and personal
10 property taxes that are due, if any, have been paid, or if not paid, that pay-
11 ment of those taxes has been secured by bond, deposit or otherwise, and that
12 all tax returns currently due have been filed.

13 (c) Any request to retain a reserve for the determination and payment of
14 any additional taxes, interest and penalties, and of all related reasonable
15 expenses.

16 (d) A statement describing the determination of the compensation of the
17 personal representative under the will or under ORS 113.038 or 116.173 (3)
18 and (4).

19 (e) A petition for a judgment authorizing the personal representative to
20 distribute the estate to the persons and in the portions specified in the
21 judgment.

22 [(4)(a)] (5)(a) The personal representative may file a statement under this
23 subsection in lieu of the final account otherwise required by **subsection (4)**
24 **of this section** if:

25 (A) The distributees, other than distributees whose only distribution is a
26 cash or specific bequest that will be paid or satisfied in full, consent in
27 writing; and

28 (B) All creditors of the estate, other than creditors owed administrative
29 expenses that require court approval, have been paid in full.

30 (b) A statement under this subsection must include:

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

1 (B) A statement that all creditors of the estate, other than creditors owed
2 administrative expenses that require court approval, have been paid in full.

3 (C) The statement and petition and any request for a reserve under sub-
4 section [(3)] (4) of this section.

5 (D) A declaration under penalty of perjury in the form required by ORCP
6 1 E, or an unsworn declaration under ORS 194.800 to 194.835, if the declarant
7 is physically outside the boundaries of the United States.

8 [(5)] (6) Notice of time for filing objections to the statement described in
9 subsection [(4)] (5) of this section is not required.

10 [(6)] (7) The Chief Justice of the Supreme Court may by rule specify the
11 form and contents of accounts that must be filed by a personal represen-
12 tative.

13 **SECTION 11.** ORS 116.113 is amended to read:

14 116.113. (1) If no objections to the final account and petition for distrib-
15 ution are filed, or if objections are filed, upon the hearing or upon the filing
16 of a statement in lieu of the final account under ORS 116.083 [(4)] (5), the
17 court shall enter a general judgment of final distribution. In the judgment
18 the court shall designate the persons in whom title to the estate available
19 for distribution is vested and the portion of the estate or property to which
20 each is entitled under the will, by agreement approved by the court or pur-
21 suant to intestate succession. The judgment shall also contain any findings
22 of the court in respect to:

- 23 (a) Advancements.
- 24 (b) Election against will by the surviving spouse.
- 25 (c) Renunciation.
- 26 (d) Lapse.
- 27 (e) Adjudicated controversies.
- 28 (f) Partial distribution, which shall be confirmed or modified.
- 29 (g) Retainer.
- 30 (h) Claims for which a special fund is set aside, and the amount set aside.
- 31 (i) Contingent claims that have been allowed and are still unpaid.

1 (j) Any reserve requested under ORS 116.083.

2 (k) Attorney fees.

3 (L) Approval of the final account or the statement filed in lieu of the final
4 account under ORS 116.083 [(4)] (5) in whole or in part.

5 (2) If, by agreement approved by the court, property is distributed to
6 persons in whom title is vested by the judgment of final distribution other-
7 wise than as provided by the will or pursuant to intestate succession, the
8 judgment operates as a transfer of the property between those persons.

9 (3) The judgment of final distribution is a conclusive determination of the
10 persons who are the successors in interest to the estate and of the extent
11 and character of their interest, subject only to the right of appeal and the
12 power of the court to vacate the judgment.

13 **SECTION 12. (1) Section 9 of this 2019 Act and the amendments to**
14 **ORS 113.035, 113.105, 113.155, 113.165, 113.175, 115.003, 115.135 and 116.113**
15 **by sections 1 to 7 and 11 of this 2019 Act apply to estates in which a**
16 **petition to appoint a personal representative is filed on or after the**
17 **effective date of this 2019 Act.**

18 (2) The amendments to ORS 116.083 by section 10 of this 2019 Act
19 apply to accounts required to be filed on or after the effective date of
20 this 2019 Act.

21
