



April 7, 2019

Hon. Floyd Prozanski
Senate Judiciary Committee

Re: SB 843

Sen. Prozanski and Members of the Senate Judiciary Committee:

I am writing in opposition to SB 843, which would raise the estate value limit to \$650,000 for filing a Small Estate in Oregon. I am sorry I am not able to be with you to testify in person on the bill, but want to offer these comments in writing for your consideration.

I am chair of the Oregon Law Commission and, for the past several years, have chaired the Law Commission's own Probate Modernization work group, which has brought several bills to the legislature to update our probate laws. In this session, we have HB 3007, which is the Law Commission's proposal for amending the Small Estate statutes. HB 3007 will improve the Small Estate process in several respects.

The Law Commission's HB 3007 is the product of a multi-year effort involving a broadly representative group of experienced probate practitioners, state agency representatives and the courts. While there was some early conversation about adjusting the value limit for Small Estates, it was the consensus of the work group that such an adjustment was not warranted, and we did not pursue it. There was no compelling case made for increasing the value threshold at this time. Even if there had been such an inclination on the part of the work group, I can assure you it would not have been to raise the threshold to the level proposed by SB 843.

To the extent that there is a sense behind SB 843 that probate is too complicated and costs too much, I want to let the committee know that, besides the Commission's own small estates bill (HB 3007), the Commission is also advancing HB 3006 this session, which will do much to streamline the formal probate process in many cases. Among other things, HB 3006 will allow personal representatives to waive the requirement of filing an annual accounting in estates where the beneficiaries have consented (and creditors do not object). This will simplify and reduce the cost of many probate estates. In no-asset estates, HB 3006 will waive the requirements entirely for a personal representative's bond, publication of notice to interested persons, and the filing of an inventory and annual and final



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accountings.

I understand the courts have significant concern about SB 843. I am sympathetic to those concerns. As is stands now, a Small Estate proceeding is an informal proceeding with little to no court oversight. The great majority of Small Estate affiants are not represented by counsel. As such, I know the judges who handle probate matters are concerned that the opportunities for mistakes by inexperienced and unrepresented affiants and the mishandling (and misappropriation) of estate assets by affiants without court oversight - all to the detriment of beneficiaries and creditors - are substantial, and would be even more substantial if the value limit were raised.

As it stands, the existing Small Estate threshold represents a settled balance between the interest of providing a low-cost and simplified way of administering truly small estates, while limiting the exposure of beneficiaries and creditors to the risks of a process that lacks oversight and accountability to the courts.

In closing, I want to make clear that, while I chair the Oregon Law Commission and the Commission's Probate Modernization work group, this testimony is my own, and not the Commission's. The Oregon Law Commission does not, as a rule, take positions on legislation, and has not taken a formal position on SB 843.

Speaking for myself, I urge the committee not to advance SB 843.

Thank you for your consideration.

Yours very truly,

A handwritten signature in black ink, appearing to read "Lane P. Shetterly", followed by a horizontal line extending to the right.

LANE P. SHETTERLY

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