

# Enrolled House Bill 3007

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Law Commission Probate Modernization Work Group)

CHAPTER .....

AN ACT

Relating to estates; creating new provisions; and amending ORS 58.387, 112.238, 113.238, 114.215, 114.505, 114.515, 114.517, 114.520, 114.525, 114.535, 114.537, 114.540, 114.545, 114.550, 114.552, 114.555, 114.560, 116.223, 130.150, 238.390, 238.458, 446.616, 708A.655, 723.844 and 803.094.

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

**SECTION 1.** ORS 114.505 is amended to read:

114.505. As used in ORS 114.505 to 114.560:

(1) "Affiant" means the person or persons signing [*are*] a **small estate** affidavit [*filed under ORS 114.515*].

(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 Department of State Lands 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)(d)] (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) "*Estate*" means decedent's property subject to administration in Oregon.]

(3) "**Small estate affidavit**" means an affidavit or amended affidavit filed under ORS 114.515.

**SECTION 2.** Section 3 of this 2019 Act is added to and made a part of ORS 114.505 to 114.560.

**SECTION 3. Value limitations for small estate.** (1) A person who meets the requirements of ORS 114.515 may file a small estate affidavit only with regard to an estate in which:

(a) Not more than \$75,000 of the fair market value of the estate is attributable to personal property; and

(b) Not more than \$200,000 of the fair market value of the estate is attributable to real property.

(2) The fair market value of the estate shall be determined under this section:

(a) As of the date of death; or

(b) If the date of death is more than one year before the date of filing of the affidavit, as of a date within 45 days before the filing of the affidavit.

(3) In determining fair market value under this section, the fair market value of the entire interest in the property included in the estate shall be used without reduction for liens or other debts.

**SECTION 4.** ORS 114.515 is amended to read:

114.515. (1) If the estate of a decedent meets the requirements of [subsection (2) of this section] **section 3 of this 2019 Act**, any of the following persons may file [an] **a small estate** affidavit with the clerk of the probate court in any county where there is venue for a proceeding seeking the appointment of a personal representative for the estate:

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

(b) If the decedent died testate, any person named as personal representative in the decedent's will.

(c) The Director of Human Services, the Director of the Oregon Health Authority or an attorney approved under ORS 114.517, 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.

[*(2) An affidavit under this section may be filed only if:*]

[*(a) The fair market value of the estate is \$275,000 or less;*]

[*(b) Not more than \$75,000 of the fair market value of the estate is attributable to personal property; and*]

[*(c) Not more than \$200,000 of the fair market value of the estate is attributable to real property.*]

**(2) A person may not file a small 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) [An] **A small estate** affidavit [under this section] may not be filed until 30 days after the death of the decedent.

(4) [An] **A small estate** affidavit [filed under the provisions of this section] must contain the information required in ORS 114.525 and shall be made a part of the probate records. If the affiant is an attorney approved by the Director of Human Services or the Director of the Oregon Health Authority, a copy of the document approving the attorney must be attached to the affidavit.

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

[*(6) (5) The clerk of the probate court shall charge and collect the fee established under ORS 21.145 for the filing of [any] a small estate affidavit [under this section].*]

**(6)(a) Except as provided in subsection (7) of this section, the affiant shall file an amended small 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 estate under section 3 of this 2019 Act, an affiant may not file an amended small estate affidavit under subsection (6) of this section and the affiant's authority with regard to the estate is terminated, except that the affiant shall deliver assets of the estate in the affiant's possession upon request by a personal representative appointed under ORS 113.085. The affiant shall promptly 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 each person who received a copy of the previous affidavit.**

**(8) The clerk of the probate court may acknowledge a small estate affidavit upon presentation of the identification of the affiant and the affiant's statement under penalty of perjury.**

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

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

**SECTION 5.** 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 [an] **a small estate** affidavit [under ORS 114.515] 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 [an] **a small estate** affidavit [under ORS 114.515].

**SECTION 6.** ORS 114.520 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 [an] **a small estate** affidavit [under ORS 114.515] unless the creditor has received written authorization from [an estate administrator of] the Department of State Lands [appointed under ORS 113.235]. Except as provided by rule adopted by the Director of the Department of State Lands, [an estate administrator] **the department** shall consent to the filing of [an] **a small estate** affidavit [under ORS 114.515] 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 [an estate administrator of] the Department of State Lands informing the [estate administrator] **department** that the creditor intends to file [an] **a small estate** affidavit [under ORS 114.515]. Upon receiving the notice permitted by this subsection, the [estate administrator] **department** shall investigate the assets and liabilities of the estate. Within 30 days after receiving the notice required by this subsection, the [estate administrator] **department** shall either:

(a) Give written authorization to the creditor for the filing of [an] **a small estate** affidavit by the creditor [under ORS 114.515]; or

(b) Inform the creditor that the Department of State Lands will file [an] **a small estate** affidavit as claiming successor [under ORS 114.515].

(3) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming successor and who files [an] **a small estate** affidavit [under ORS 114.515] 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 [an estate administrator of] the Department of State Lands. The written authorization may be a copy of a memorandum of an interagency agreement between the Department of State Lands and another state agency.

**SECTION 7.** ORS 114.525 is amended to read:

114.525. (1) [An] **A small estate** affidavit [filed under ORS 114.515] 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 estate affidavit:**

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**NOTICE OF DUTY TO PAY DEBT OR TURN OVER PROPERTY**

**To: Any person to whom a copy of this small 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.

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(b) State the name and post-office address of the affiant.

(c) State the authority under which the affiant is filing the small estate affidavit, as provided in ORS 114.515.

(d) State that the small estate affidavit is made under ORS 114.505 to 114.560.

[(1)] (e) State the name, age, domicile[,] and post-office address and last four digits of the Social Security number of the decedent[;].

[(2)] (f) State the date and place of the decedent's death. [A certified copy of the death record must be attached to the affidavit;]

[(3)] (g) Describe and state the fair market value of all property in the estate, valued as provided in section 3 of this 2019 Act, including a legal description of any real property[;].

[(4)] State that no application or petition for the appointment of a personal representative has been granted in Oregon;]

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

[(5)] (i) State whether the decedent died testate or intestate[, and if the decedent died testate, the will must be attached to the affidavit;].

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

[(7)] (k) If the decedent died testate, list the devisees of the decedent and the last address of each devisee as known to the affiant and state that a copy of the will and a copy of the affidavit showing the date of filing will be delivered to each devisee or mailed to the devisee at the last-known address[;].

[(8)] (l) State the interest in the property described in the affidavit to which each heir or devisee is entitled and the interest, if any, that will escheat[;].

[(9)] (m) State that reasonable efforts have been made to ascertain creditors of the estate[;].

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

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

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

(B) If the affiant wishes to authorize creditors to present claims by electronic mail or facsimile communication, state the electronic mail address or facsimile number for presentment of claims.

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

(r) State that the affiant is not disqualified from acting as an affiant under ORS 114.515 (2).

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

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

(u) **State that undisputed claims against the estate will be paid as provided in ORS 114.545.**

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

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

[(b)] (B) [A *personal representative of the estate is appointed*] **A petition for appointment of a personal representative of the estate is filed** within the time allowed under ORS 114.555[; and].

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

[(a)] (A) A petition for summary determination is filed within four months of the filing of the affidavit; or

[(b)] (B) [A *personal representative of the estate is appointed*] **A petition for appointment of a personal representative of the estate 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 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 8.** ORS 114.535 is amended to read:

114.535. (1) [Not sooner than 10 days after the filing of an affidavit under ORS 114.515, the affiant may deliver a certified copy of the affidavit to any person who was indebted to the decedent or] **The affiant may deliver a certified copy of a small 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 [an] **a small 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 [an] **a small 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 [*or paid*] to a personal representative of the estate of the decedent.

(5) **The affiant may deliver a certified copy of a small 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 [*person entitled thereto on presentation of a certified copy of the affidavit filed under ORS 114.515*] **affiant or the person named in the affidavit entitled to it, as directed by the affiant.**

[*(6) If a person to whom an affidavit is delivered refuses to pay, deliver, transfer, provide access to or allow possession of any personal property as required by this section, the property may be recovered or payment, delivery, transfer of or access to the property may be compelled upon proof of the transferee's entitlement in a proceeding brought for the purpose by or on behalf of the transferee.*]

**(6)(a) If a person to whom a certified copy of a small 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 refused to pay the debt or deliver, transfer, provide access to or allow possession of any personal property without an objectively reasonable basis.**

(7) If [*the*] a **small 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.

**SECTION 9.** ORS 114.537 is amended to read:

114.537. (1) If a [*claiming successor or other*] person who is eligible to file [*an*] a **small estate** affidavit [*under ORS 114.515*] is aware that the decedent was the sole lessee or the last surviving lessee of a safe deposit box **or was the owner of the contents of a safe deposit box** at the time of the decedent's death, the claiming successor or other person may not file [*an*] a **small estate** affidavit [*under ORS 114.515*] until the person requests an 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 person requesting the inventory. The person requesting the inventory shall take the contents of the box into consideration in determining whether the estate of the decedent is within the limits prescribed by [*ORS 114.515 (2)*] **section 3 of this 2019 Act.** If [*an*] **the person files a small estate** affidavit [*under ORS 114.515 is filed by the person*], the **affidavit must contain a statement of the value of the contents of the box** [*shall be stated in the affidavit*].

(2) If [*a person who has filed an affidavit under ORS 114.515*] **an affiant** becomes aware after the filing of [*the*] a **small estate** affidavit that the decedent was the sole lessee or the last surviving lessee of a safe deposit box **or was the owner of the contents of a safe deposit box** at the time

of the decedent's death, the [person] **affiant** shall promptly request an 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 [person requesting the inventory] **affiant**. If the estate of the decedent remains within the limits prescribed by [ORS 114.515 (2)] **section 3 of this 2019 Act** after consideration of the value of the contents of the box, the [person] **affiant** shall file an amended **small estate** affidavit under ORS 114.515 (6). Upon [providing the lessor of the box with] **receiving** a certified copy of the amended affidavit, the lessor shall allow the [person] **affiant** to take possession of the contents of the box. If the estate of the decedent exceeds the limits prescribed by [ORS 114.515 (2)] **section 3 of this 2019 Act** after consideration of the value of the contents of the box, the [person] **affiant** may not file an amended **small estate** affidavit [under ORS 114.515] 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 [thereafter] 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 10.** ORS 114.540 is amended to read:

114.540. (1)(a) A claim against an estate with respect to which [an] **a small estate** affidavit is filed [under ORS 114.515] may be presented to the affiant within four months after the affidavit was filed. If an amended **small estate** affidavit is filed under ORS 114.515 [(7)] **(6)**, claims against the estate [must be filed] **may be presented** within four months after the filing of the amended affidavit. [If a supplemental affidavit is filed under ORS 114.515 (8), claims against the estate must be filed within four months after the filing of the supplemental affidavit.]

(b) **Except as provided in ORS 114.550, 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 is presented to the affiant when the claim is mailed or personally delivered to the affiant at the mailing address for presentation of claims included in the small estate affidavit under ORS 114.525.**

(B) **If the affiant authorized creditors to present claims by electronic mail or facsimile communication in the small estate affidavit as provided in ORS 114.525, a claim is presented to the affiant when it is sent to the electronic mail address or the facsimile number designated by the affiant for presentment of claims, unless the sender receives a notice that the electronic mail was not delivered or the facsimile communication was not successful. If the affiant denies receiving the electronic mail or facsimile communication, the burden of proof is on the creditor to demonstrate that the electronic mail was properly addressed and sent or that the facsimile communication was properly addressed and successfully delivered or transmitted.**

(e) Each claim presented to the affiant must include the information required by ORS 115.025.

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

[(a)] (A) The claimant [proceeds] **files a petition for summary determination** as provided in [subsection (3) of this section] **section 12 of this 2019 Act**; or

[(b)] (B) A [personal representative is appointed] **petition for appointment of a personal representative of the estate is filed** within the time allowed under ORS 114.555.

(b) **Statement of a reason for disallowance under this subsection is not an admission by the affiant and does not preclude the assertion of other defenses to the claim.**

*[(3) A creditor of the estate whose claim has been presented within the time permitted by subsection (1) of this section and disallowed by the affiant 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. A creditor of the decedent whose claim is listed in the affidavit as disputed may within four months after the filing of the affidavit file with the probate court a petition for summary determination of the creditor's claim by the court. The court shall hear the matter without a jury, after notice to the creditor and affiant, and any interested person may be heard in the proceeding. The claim may be proved as provided in ORS 115.195 (2). Upon the hearing 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. If the court allows the claim in whole or in part, the order shall direct the affiant, to the extent of property of the estate allocable to the payment of the claim pursuant to ORS 115.125, or any claiming successor to whom payment, delivery or transfer has been made under ORS 114.505 to 114.560 as a person entitled thereto as disclosed in the affidavit, to the extent of the value of the property received, to pay to the creditor the amount so allowed. No appeal may be taken from the order of the court made upon the summary determination.]*

**SECTION 11.** Section 12 of this 2019 Act is added to and made a part of ORS 114.505 to 114.560.

**SECTION 12. Summary determination.** (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 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 section may not be appealed and may be enforced only by the filing of a petition for summary review under ORS 114.550.

**SECTION 13.** ORS 114.545 is amended to read:

114.545. (1) The affiant:

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

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

[(a)] (c) Shall take control of the property of the estate coming into the possession of the affiant and collect the income from property of the estate in the possession of the affiant.

[(b)] (d) Within 30 days after filing the **small estate** affidavit shall mail[,] or deliver [or cause to be recorded] each instrument [which] **that** the affidavit states will be mailed[,] or delivered [or recorded].

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



[(d)] (f) From and to the extent of the property of the estate, shall pay or reimburse any person who has paid:

- (A) Expenses described in ORS 115.125 (1)(b) and (c) and listed in the **small estate** affidavit;
- (B) Claims listed in the **small estate** affidavit as undisputed;
- (C) Allowed claims presented to the affiant within the time permitted by ORS 114.540; and
- (D) Claims *[which]* **that** the probate court *[directs the affiant to pay]* **allowed upon summary determination under section 12 of this 2019 Act.**

[(e)] (g) Shall pay claims and expenses under paragraph [(d)] (f) of this subsection in the order of priority prescribed by ORS 115.125.

[(f) *May transfer or sell any vehicle that is part of the estate before the completion of the period established under ORS 114.555 if the affiant complies with the requirements established by the Department of Transportation for such purposes under ORS 803.094.*]

[(g) *May convey any real or personal property that is part of the estate before the completion of the period established under ORS 114.555, provided that each heir or devisee succeeding to the interest conveyed joins in the conveyance and that any proceeds of sale, net of the reasonable expenses of sale and any debt secured as of the date of the decedent's death by a duly perfected lien on the property, shall become a part of the estate subject to ORS 114.505 to 114.560. If the property is a manufactured structure as defined in ORS 446.561, the affiant must assign interest in the structure as provided in ORS 446.616. Any conveyance to a purchaser in good faith and for a valuable consideration made by the affiant and the heir or devisee succeeding to the interest conveyed, or made by the heir or devisee succeeding to the interest conveyed after completion of the period established under ORS 114.555, conveys the interest stated in the conveyance free of any interest of the claiming successors, and the purchaser has no duty with respect to application of the consideration paid for the conveyance.*]

**(h) May transfer and sell property that is part of the estate as provided in section 15 of this 2019 Act.**

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

- (A) The expiration of the two-year period established in ORS 114.550; or**
- (B) The conclusion of any summary review proceeding under ORS 114.550.**

(2) Notwithstanding any other provision of this section **or section 15 of this 2019 Act**, when an heir or devisee entitled to succeed to a conveyance fails or refuses to join in the conveyance as required by *[subsection (1)(g) of this section]* **section 15 of this 2019 Act**, an affiant approved under ORS 114.517 may convey any real or personal property that is part of the estate at any time to a third party for a valuable consideration.

(3) Property conveyed by an affiant under **section 15 of this 2019 Act** this section is subject to liens and encumbrances against the decedent or the estate of the decedent *[but]*. **Property conveyed by an affiant under section 15 of this 2019 Act** is not subject to rights of creditors of the decedent or liens or encumbrances against the heirs or devisees of the decedent. The *[filing]* **presentation** and allowance of a claim in a proceeding under ORS 114.505 to 114.560 does not make the claimant a secured creditor.

(4) Any claiming successor to whom *[payment, delivery or transfer is made under ORS 114.505 to 114.560 as a person entitled thereto as disclosed in the affidavit]* **property of the estate is delivered or transferred under ORS 114.505 to 114.560** is personally answerable and accountable:

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

(b) To any personal representative of the estate of the decedent *[thereafter]* appointed **after the payment, delivery or transfer is made.**

[(5) *After the expiration of the period established in subsection (1)(b) of this section, the affiant shall cause to be recorded in the deed records of any county in which real property belonging to the decedent is situated an affiant or claiming successor's deed conveying the property to persons entitled to the property, executed in the manner required by ORS chapter 93.*]

[(6) *For a manufactured structure as defined in ORS 446.561 belonging to a decedent and assessed as personal property, 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.]*

[(7)] (5) A financial institution as defined in ORS 706.008 that opens one or more deposit accounts for an affiant pursuant to subsection [(1)(c)] (1)(e) of this section is not liable to any other person for opening the account or accounts 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 14.** Sections 15 and 16 of this 2019 Act are added to and made a part of ORS 114.505 to 114.560.

**SECTION 15. Sales and transfers to third parties.** (1) Before the completion of the two-year period established in ORS 114.550, and in exchange for adequate consideration:

(a) The affiant may transfer or sell any real property if each heir or devisee who would succeed to the interest conveyed joins in the conveyance.

(b) The affiant may transfer or sell any personal property that is specifically devised to an individual devisee with the consent of the individual devisee.

(c) The affiant may transfer or sell any personal property that is not specifically devised to an individual devisee without the consent of any other person.

(2) Notwithstanding subsection (1) of this section, the affiant need not obtain participation or consent of any person if a transfer is required for purposes of abatement under ORS 116.133.

(3) The proceeds of a sale under this section, net of the reasonable expenses of sale and any debt secured as of the date of the decedent's death by a duly perfected lien on the property, become a part of the estate.

(4) If the affiant transfers or sells any vehicle that is part of the estate under this section, the affiant shall comply with the requirements established by the Department of Transportation for such purposes under ORS 803.094.

(5) If the affiant transfers or sells a manufactured structure as defined in ORS 446.561 under this section, the affiant shall assign the interest in the structure as provided in ORS 446.616.

(6) Any transfer or conveyance under this section to a purchaser in good faith and for a valuable consideration transfers or conveys the interest stated in the transfer or conveyance free of any interest of the claiming successors, and the purchaser has no duty with respect to application of the consideration paid for the transfer or conveyance.

**SECTION 16. Liability of affiant.** An affiant may be liable for and is chargeable in the accounts of the affiant with:

(1) All of the estate of the decedent that comes into the possession of the affiant at any time, including income from the estate.

(2) All property not a part of the estate if:

(a) The affiant has commingled the property with the assets of the estate; or

(b) The property was received under a duty imposed on the affiant by law in the capacity of affiant.

(3) Any loss to the estate arising from:

(a) Neglect or unreasonable delay in collecting the assets of the estate.

(b) Neglect in paying over money or delivering property of the estate.

(c) Failure to pay taxes as required by law or to close the estate within a reasonable time.

(d) Embezzlement or commingling of the assets of the estate with other property.

(e) Unauthorized self-dealing.

(f) Any other negligent or willful act or nonfeasance in the administration of the estate by which loss to the estate arises.

**SECTION 17.** 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 [such] **the** claiming successor may, within two years after the filing of [an] **a small estate** affidavit [under ORS 114.515], 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 [an] **a small estate** affidavit [filed under ORS 114.515] delivered or mailed to [such] **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 114.540] **section 12 of this 2019 Act.**

(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 section 12 of this 2019 Act.**

(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 18.** ORS 114.552 is amended to read:

114.552. (1) A person filing a petition for summary determination under [ORS 114.540] **section 12 of this 2019 Act** 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 [an] **a small estate** affidavit [under ORS 114.515] 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 19.** ORS 114.555 is amended to read:

114.555. (1)(a) If a **petition to appoint** a personal representative is not [appointed] **filed** within four months after the filing of [the] **a small estate** affidavit [authorized by ORS 114.515], **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 [all of the property] **remaining property or proceeds of property** described in the affidavit [is transferred] to the person or persons shown by the affidavit to be entitled [thereto] **to the property**, and any other claims against the property are barred, except:

[(1)] (A) As **otherwise** provided in **this section and** ORS 114.540, 114.545 and 114.550 **and section 12 of this 2019 Act**; and

[(2)] (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 20.** ORS 114.560 is amended to read:

114.560. The exclusive remedy of a person injured by the failure of the affiant or any claiming successor to comply with the requirements of ORS 114.505 to 114.560 *[shall be]* **is a summary determination under [ORS 114.540] section 12 of this 2019 Act, a summary review of administration under ORS 114.550[,] or the filing of a petition for appointment of a personal representative for the estate within the time allowed by ORS 114.555.**

**SECTION 21.** ORS 114.215 is amended to read:

114.215. (1) Upon the death of a decedent, title to the property of the decedent vests:

(a) In the absence of testamentary disposition, in the heirs of the decedent, subject to support of spouse and children, rights of creditors, administration and sale by the personal representative **or affiant as defined in ORS 114.505**; or

(b) In the persons to whom it is devised by the will of the decedent, subject to support of spouse and children, rights of creditors, right of the surviving spouse to elect against the will, administration and sale by the personal representative **or affiant as defined in ORS 114.505**.

(2) The power of a person to leave property by will, and the rights of creditors, devisees and heirs to the property of the person, are subject to the restrictions and limitations expressed or implicit in ORS chapters 111, 112, 113, 114, 115, 116 and 117 to facilitate the prompt settlement of estates.

(3) Any animal of a value of less than \$2,500 that belonged to the decedent and that was kept by the decedent as a pet need not be listed on the inventory of the estate. Any family member of the decedent, friend of the decedent or animal shelter may take custody of the animal immediately upon the death of the decedent. A family member, friend or animal shelter that takes custody of an animal under this subsection is entitled to payment from the estate for the cost of caring for the animal. A family member, friend or animal shelter that takes custody of an animal under this subsection shall deliver the animal to the personal representative for the decedent, or to any heir or devisee entitled to possession of the animal, upon request of the personal representative, heir or devisee.

**SECTION 22.** 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 [an] 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 [an] 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.

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

(5) If a member dies before retiring and has designated a beneficiary under subsection (1) of this section, but the beneficiary dies before the member, or dies before distribution is made under this section, the Public Employees Retirement Board shall pay the amount of money, if any, that would otherwise have been paid to the beneficiary to a personal representative appointed for the estate of the deceased beneficiary. If [an] a **small estate** affidavit has been filed under ORS 114.505 to 114.560, and the amount of money that would have been paid to the beneficiary does not exceed the maximum amount of personal property for which [an] 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 **small estate** affidavit on behalf of the estate of the beneficiary.

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

**SECTION 23.** ORS 113.238 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 Department of State Lands.

(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 Department of State Lands. 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 [an] a **small 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 24.** 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 [an] a **small 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 25.** 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 of the system's plan year in which the benefit becomes due if the Public Employees Retirement Board is unable to locate the member or beneficiary. If the member, beneficiary or any other person thereafter establishes a right to the forfeited benefit, the board shall reinstate the benefit. If the benefit is a periodic payment, the board shall make a retroactive payment to the member, beneficiary or other person in a lump sum for all amounts that would have been paid before reinstatement of the benefit. No interest shall be paid on the benefit for the period commencing when the benefit became due and the date of the retroactive payment.

(2) Death benefits and other amounts payable by reason of the death of a member do not escheat to the state when the member dies without heirs, devisees or beneficiaries designated under ORS

238.390. If a beneficiary has not been designated under ORS 238.390, and a personal representative or a person filing [an] a **small estate** affidavit under ORS 114.505 to 114.560 fails to make claim for the benefits within one year after the member dies, the benefits shall be forfeited to the Public Employees Retirement Fund in the manner provided by subsection (1) of this section and are subject to reinstatement only upon subsequent appointment of a personal representative or the filing of [an] a **small estate** affidavit in the manner provided by ORS 114.505 to 114.560. If benefits are paid to a personal representative or a person filing [an] a **small estate** affidavit under ORS 114.505 to 114.560, the personal representative or person filing the affidavit shall return to the board the amount that would otherwise escheat to the state after payment of administrative expenses and claims against the estate. Any amounts returned to the board under this subsection shall be forfeited to the fund.

**SECTION 26.** ORS 708A.655 is amended to read:

708A.655. (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 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 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 of attorney;

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

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

(4) If the box is opened for the purpose of conducting a will search, the Oregon operating institution shall remove any document that appears to be a will, make a true and correct copy of it and deliver the original will to a person designated in the will to serve as the decedent's personal representative, or if no such person is designated or the Oregon operating institution cannot, despite reasonable efforts, determine the whereabouts of such person, the Oregon operating institution shall retain the will or deliver it to a court having jurisdiction of the estate of the decedent. A copy of the will shall be retained in the box. At the request of the interested person, a copy of the will, together with copies of any documents 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 Oregon operating institution 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 Oregon operating institution cannot, despite reasonable efforts, determine the whereabouts of such person, the Oregon operating institution 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 Oregon operating institution 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 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 27.** ORS 723.844 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 of the box or remove property of the estate of the decedent pursuant to a small 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 credit union 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 of attorney;

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

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

(4) If the box is opened for the purpose of conducting a will search, the credit union shall remove any document that appears to be a will, make a true and correct copy of it and deliver the original will to a person designated in the will to serve as the decedent's personal representative, or 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 will or deliver it to a court having jurisdiction of the estate of the decedent. A copy of the will shall be retained in the box. At the request of the interested person, a copy of the will, together with copies of any documents 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 upon request.

(8) If the interested person is an affiant of a small estate affidavit filed under ORS 114.515 and delivers a certified copy of the affidavit in the manner provided by ORS 114.535, the credit union shall provide to the affiant access to the decedent's property. The credit union 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 credit union shall allow the affiant to take possession of the personal property in the box.

(9) The credit union may presume the truth of any statement contained in the affidavit required to be furnished under this section and ORS 114.535, and when acting in reliance upon such an affidavit, the credit union is discharged as if it had dealt with the personal representative of the decedent. The credit union 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 credit union or its employees, directors, officers or agents. If the credit union is not satisfied that the requirements of this section have been satisfied, the credit union 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 credit union must incur expense in gaining entry to the box, the credit union 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 credit union.

**SECTION 28.** ORS 446.616 is amended to read:

446.616. (1) Except as otherwise provided in subsection (2) or (3) of this section, upon the transfer of any interest in a manufactured structure shown on an ownership document, each person whose interest is released, terminated, assigned or transferred shall acknowledge the release, termination, assignment or transfer of that interest in a manner specified by the Department of Consumer and Business Services by rule. The department shall design the rules adopted for purposes of this subsection to protect the interests of all parties to the transfer of interest.

(2) Notwithstanding subsection (1) of this section:

(a) In the case of a transfer of an interest by operation of law, the personal representative, receiver, trustee, sheriff, landlord or other representative or successor in interest of the person whose interest is transferred shall file the acknowledgment described in subsection (1) of this section. The representative or successor shall also provide the transferee with information satisfactory to the department concerning all facts entitling the representative or successor to transfer the interest. If there is no person to transfer the interest, the person to whom interest is awarded or otherwise transferred is responsible for providing the information concerning the person's entitlement to the interest.

(b) In the case of a transfer at death of the interest of the owner or security interest holder of the manufactured structure, if the estate is not being probated and ownership is not being transferred under the provisions of [ORS 114.545] **section 15 of this 2019 Act**, an interest in the manufactured structure may be assigned through the use of an affidavit. The affidavit must be on a form prescribed by the department and signed by all of the known heirs of the person whose interest is being transferred, and shall state the name of the person to whom the ownership interest has been passed. If any heir has not arrived at the age of majority or is otherwise incapacitated, the parent or guardian of the heir shall sign the affidavit.

(c) In the case of a transfer at death of the interest of the owner or security interest holder where transfer occurs under [ORS 114.545] **section 15 of this 2019 Act**, the affiant, as defined in ORS 114.505, is the person required to assign interest.

(d) A security interest holder, without the consent of the owner, may assign interest of the holder in a manufactured structure to a person other than the owner without affecting the interest of the owner or the validity or priority of the interest. A person who is not given notice of the assignment is protected in dealing with the security interest holder as the holder of the interest

until the assignee files notice of the interest with the department as provided in ORS 446.571. This paragraph does not exempt an assignment of interest from the acknowledgment requirement under subsection (1) of this section.

(e) If an interest in a manufactured structure is transferred pursuant to an application under ORS 446.591 (5), the recital by the escrow company that no written objections were received constitutes both a release, termination, assignment or transfer of interest and an acknowledgment by the person whose interest is released, terminated, assigned or transferred.

(3) Subsection (1) of this section does not apply to a transfer of a security interest where the security interest holder is a financial institution, a financial holding company or a bank holding company, as those terms are defined in ORS 706.008, a licensee under ORS chapter 725, or any subsidiary or affiliate of any of the foregoing and the transfer of the interest of the security interest holder:

(a) Results from the merger, conversion, reorganization, consolidation or acquisition of the security interest holder; or

(b) Is to an entity that is a member of the same affiliated group as the security holder.

**SECTION 29.** ORS 803.094 is amended to read:

803.094. (1) Except as otherwise provided in this section, upon the transfer of any interest shown on an Oregon title any person whose interest is released, terminated, assigned or transferred, shall release or assign that interest in a manner specified by the Department of Transportation by rule. Rules adopted for purposes of this subsection shall be designed, as much as possible, to protect the interests of all parties to the transfer. If required under ORS 803.102, the person shall also complete an odometer disclosure statement.

(2) Notwithstanding subsection (1) of this section:

(a) In the case of a transfer by operation of law of any interest shown on an Oregon title, the personal representative, receiver, trustee, sheriff or other representative or successor in interest of the person whose interest is transferred shall release or assign interest and if required by the department by rule, as provided under ORS 803.102, complete an odometer disclosure statement and shall provide the certificate, if any, and disclosure statement if required to the transferee. The representative or successor shall also provide the transferee with information satisfactory to the department concerning all facts entitling such representative or successor to transfer title. If there is no person to assign interest, the person to whom interest is awarded or otherwise transferred shall be responsible for the requirements of this paragraph.

(b) In the case of a transfer at death of the interest of the owner, lessor or security interest holder if the estate is not being probated and title is not being transferred under the provisions of [ORS 114.545] **section 15 of this 2019 Act**, interest may be assigned through the use of an affidavit. The affidavit shall be on a form prescribed by the department and signed by all of the known heirs of the person whose interest is being transferred stating the name of the person to whom the ownership interest has been passed. If any heir has not arrived at the age of majority or is otherwise incapacitated, the parent or guardian of the heir shall sign the affidavit. In the case of a transfer under this paragraph, one of the heirs or any other person designated by the department by rule shall complete any odometer disclosure statement required under ORS 803.102.

(c) In the case of a transfer at death of the interest of the owner, lessor or security interest holder where transfer occurs under the provisions of [ORS 114.545] **section 15 of this 2019 Act**, the [“affiant[”] as defined in ORS 114.505 is the person required to assign interest. The department may designate by rule the affiant or any other person to complete any odometer disclosure statement required under ORS 803.102.

(d) Upon the termination of a lease, in lieu of the lessee releasing interest, the lessor may provide information satisfactory to the department that the lease has been terminated. The lessor shall provide an odometer disclosure statement if required under ORS 803.102. If the lessor does not take possession of the vehicle upon termination of the lease, the information in the odometer disclosure given by the lessor may be taken from an odometer disclosure given by the lessee to the lessor un-

der ORS 803.102 unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle.

(e) A security interest holder or lessor, without the consent of the owner, may assign interest of the holder or lessor in a vehicle to a person other than the owner without affecting the interest of the owner or the validity or priority of the interest. A person not given notice of such assignment is protected in dealing with the security interest holder or lessor as the holder of the interest until the assignee files in accordance with ORS chapter 79. This paragraph does not exempt such assignments from title transfer requirements.

(3) Nothing in this section requires the release or assignment of title upon the creation or termination of a leasehold interest for a vehicle that is proportionally registered under ORS 826.009 or 826.011 if the department is furnished with satisfactory proof of the lease for such vehicle.

(4) The department by rule may allow odometer disclosure statements to be on a form other than the certificate of title.

(5) Persons subject to the provisions of this section shall provide to the transferee a title certificate, if one has been issued and is in their possession, the release or assignment of interest, and any required odometer disclosure statement. If an odometer disclosure statement is required, the transferee shall provide a signed disclosure to the transferor in a form determined by the department by rule.

**SECTION 30.** ORS 116.223 is amended to read:

116.223. The personal representative shall cause to be recorded in the deed records of any county in which real property belonging to the estate is situated, a deed from the personal representative executed in the manner required by ORS chapter 93. The execution of the **bargain and sale** deed does not place the personal representative in the chain of title to the property conveyed unless the personal representative is also an heir, devisee or claiming successor to the property conveyed.

**SECTION 31.** ORS 58.387 is amended to read:

58.387. (1) A professional corporation organized for the purpose of practicing medicine and its shareholders may provide for the disposition of a deceased shareholder's shares in the articles of incorporation, in the bylaws, by agreement between the corporation and its shareholders or by agreement among the shareholders. If there is no such provision, the shares shall first be offered for sale to the remaining shareholders of the corporation by the personal representative of the deceased shareholder's estate **or the affiant as defined in ORS 114.505**. If the shares are not disposed of within six months after the date of the death of the deceased shareholder, a special meeting of the shareholders shall be called, at which meeting it shall be decided by vote of the remaining shareholders whether the corporation shall redeem the shares or whether the corporation shall be voluntarily dissolved. The meeting shall be held within seven months after the date of the death of the deceased shareholder. The action determined to be taken by the shareholders shall be completed within nine months after the date of death of the deceased shareholder. At the special meeting, the shares of the deceased shareholder may not be voted or counted in the determination of whether the shares shall be redeemed or whether the corporation shall be voluntarily dissolved.

(2) If a deceased shareholder of a professional corporation organized for the purpose of practicing medicine was the only shareholder of the corporation at the time of death, the corporation shall cease to practice medicine as of the date of death of the deceased shareholder unless the corporation has retained the services of another physician licensed in this state to practice medicine. Within six months after the date of death of the deceased shareholder:

(a) The shares of the deceased shareholder shall be sold to a physician or physicians who are licensed in this state to practice medicine;

(b) The name of the corporation shall be changed and restated articles adopted, which shall be filed with the Secretary of State in accordance with ORS chapter 60; or

(c) The corporation shall be dissolved.

**SECTION 32.** ORS 112.238 is amended to read:

112.238. (1) Although a writing was not executed in compliance with ORS 112.235, the writing may be treated as if it had been executed in compliance with ORS 112.235 if the proponent of the writing establishes by clear and convincing evidence that the decedent intended the writing to constitute:

- (a) The decedent's will;
- (b) A partial or complete revocation of the decedent's will; or
- (c) An addition to or an alteration of the decedent's will.

(2) A writing described in subsection (1) of this section may be filed with the court for administration as the decedent's will pursuant to ORS 113.035. The proponent of the writing shall give notice of the filing of the petition **under ORS 113.035** to those persons identified in ORS 113.035 (5), (7), (8) and (9). Persons receiving notice under this subsection shall have 20 days after the notice was given to file written objections to the petition. The court may make a determination regarding the decedent's intent after a hearing or on the basis of affidavits.

(3) The proponent of a writing described in subsection (1) of this section may file a petition with the court to establish the decedent's intent that the writing was to be **the decedent's will**, a partial or complete revocation of the decedent's will, or an addition to or an alteration of the decedent's will. The proponent shall give notice of the filing to any personal representative appointed by the court, the devisees named in any will admitted to probate and those persons identified in ORS 113.035 (5). Persons receiving notice under this subsection shall have 20 days after the notice was given to file written objections to the petition. The court may make a determination regarding the decedent's intent after a hearing or on the basis of affidavits.

(4)(a) If the court determines that clear and convincing evidence exists showing that a writing described in subsection (1) of this section was intended by the decedent to accomplish one of the purposes set forth in subsection (1) of this section, the court shall:

(A) Prepare written findings of fact in support of the determination; and

(B) Enter a limited judgment that admits the writing for probate as the decedent's will or otherwise acknowledges the validity and intent of the writing.

(b) A determination under this subsection does not preclude the filing of a will contest under ORS 113.075, except that the will may not be contested on the grounds that the will was not executed in compliance with ORS 112.235.

(5) The fee imposed and collected by the court for the filing of a petition under this section shall be in accordance with ORS 21.135.

**SECTION 33.** (1) **Sections 3, 12, 15 and 16 of this 2019 Act and the amendments to ORS 113.238, 114.215, 114.505, 114.515, 114.517, 114.520, 114.525, 114.535, 114.537, 114.540, 114.545, 114.550, 114.552, 114.555, 114.560, 130.150, 238.390, 238.458, 464.616, 708A.655, 723.844 and 803.094 by sections 1, 4 to 10, 13 and 17 to 29 of this 2019 Act apply to decedents who die on or after the effective date of this 2019 Act.**

(2) **The amendments to ORS 116.223 by section 30 of this 2019 Act apply to deeds executed on or after the effective date of this 2019 Act.**

**SECTION 34.** **The section captions used in this 2019 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2019 Act.**

**Passed by House April 18, 2019**

.....  
Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate May 16, 2019**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2019

**Approved:**

.....M,....., 2019

.....  
Kate Brown, Governor

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

.....M,....., 2019

.....  
Bev Clarno, Secretary of State