

# DRAFT

## SUMMARY

Modifies proof of parentage required for intestate succession.

Changes title of “small estate affidavit” to “simple estate affidavit.”  
Modifies eligibility for simple estate affidavit to include estate of decedent dying testate if value of specific bequests does not exceed specified amount and residual beneficiary is decedent’s inter vivos trust.

## A BILL FOR AN ACT

Relating to decedent’s estates; creating new provisions; and amending ORS 111.200, 112.105, 113.238, 114.505, 114.510, 114.515, 114.517, 114.520, 114.525, 114.535, 114.537, 114.540, 114.542, 114.545, 114.550, 114.552, 114.555, 114.650, 119.021, 119.026, 119.062, 130.150, 238.390, 238.458, 708A.655 and 723.844.

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

## PROOF OF PARENTAGE

**SECTION 1.** ORS 112.105 is amended to read:

112.105. (1) For all purposes of intestate succession, full effect shall be given to all relationships as described in ORS 109.060, except as otherwise provided by law in case of adoption.

(2) For all purposes of intestate succession and for those purposes only, before the relationship of parent and child and other relationships dependent upon the establishment of parentage shall be given effect under subsection (1) of this section:

(a) The parentage of the child shall have been established under ORS

1 109.065 during the lifetime of the child; *[and]* **or**

2 (b) The parent must have acknowledged being the parent of the child in  
3 writing, signed by the parent during the lifetime of the child.

4

5 **SIMPLE ESTATE AFFIDAVIT**

6

7 **SECTION 2.** ORS 114.510 is amended to read:

8 114.510. (1) A person who meets the requirements of ORS 114.515 may file  
9 a *[small]* **simple** estate affidavit only with regard to an estate in which:

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

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

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

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

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

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

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

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

26 *[(b)]* (B) If the date of death is more than one year before the date of  
27 filing of the affidavit, as of a date within 45 days before the filing of the  
28 affidavit.

29 *[(3)]* (b) In determining fair market value under this *[section]*  
30 **subsection**, the fair market value of the entire interest in the property in-  
31 cluded in the estate shall be used without reduction for liens or other debts.

1        **SECTION 3.** ORS 114.515, as amended by section 6, chapter 68, Oregon  
2 Laws 2022, is amended to read:

3        114.515. (1) If the estate of a decedent meets the requirements of ORS  
4 114.510, any of the following persons may file a [*small*] **simple** estate affi-  
5 davit with the clerk of the probate court in any county where there is venue  
6 for a proceeding seeking the appointment of a personal representative for the  
7 estate:

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

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

11        (c) The Director of Human Services, the Director of the Oregon Health  
12 Authority or an attorney approved under ORS 114.517, if the decedent re-  
13 ceived public assistance as defined in ORS 411.010, received medical assist-  
14 ance as defined in ORS 414.025 or received care at an institution as defined  
15 in ORS 179.010, and it appears that the assistance or the cost of care may  
16 be recovered from the estate of the decedent.

17        (2) A person may not file a [*small*] **simple** estate affidavit if:

18        (a) The person would be disqualified from acting as a personal represen-  
19 tative under ORS 113.095; or

20        (b) The person has been convicted of a felony in Oregon or in another  
21 jurisdiction.

22        (3) A [*small*] **simple** estate affidavit may not be filed until 30 days after  
23 the death of the decedent.

24        (4) A [*small*] **simple** estate affidavit must contain the information re-  
25 quired in ORS 114.525 and shall be made a part of the probate records. If the  
26 affiant is an attorney approved by the Director of Human Services or the  
27 Director of the Oregon Health Authority, a copy of the document approving  
28 the attorney must be attached to the affidavit.

29        (5) The clerk of the probate court shall charge and collect the fee estab-  
30 lished under ORS 21.145 for the filing of a [*small*] **simple** estate affidavit,  
31 except that a fee may not be charged or collected for the filing of an

1 amended affidavit.

2 (6)(a) Except as provided in subsection (7) of this section, the affiant shall  
3 file an amended [*small*] **simple** estate affidavit in the following circum-  
4 stances:

5 (A) To correct a material error or omission in a previous affidavit.

6 (B) To include property not described in a previous affidavit.

7 (b) The amended affidavit must include all information required under  
8 ORS 114.525 and state the value of the property as of the date used to pre-  
9 pare the original affidavit.

10 (7) If the fair market value of the property of the estate exceeds the value  
11 limitations for a [*small*] **simple** estate under ORS 114.510 (1)(a) or the  
12 **decedent's testamentary bequests do not meet the requirements of**  
13 **ORS 114.510 (1)(b)**, an affiant may not file an amended [*small*] **simple** estate  
14 affidavit under subsection (6) of this section and the affiant's authority with  
15 regard to the estate is terminated, except that the affiant shall deliver assets  
16 of the estate in the affiant's possession upon request by a personal repre-  
17 sentative appointed under ORS 113.085. The affiant shall promptly file notice  
18 with the court that the estate of the decedent is not subject to ORS 114.505  
19 to 114.560 and shall serve a copy of the notice on each person who received  
20 a copy of the previous affidavit.

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

24 **SECTION 4.** ORS 114.537 is amended to read:

25 114.537. (1) If a person who is eligible to file a [*small*] **simple** estate af-  
26 fidavit is aware that the decedent was the sole lessee or the last surviving  
27 lessee of a safe deposit box or was the owner of the contents of a safe deposit  
28 box at the time of the decedent's death, the claiming successor or other  
29 person may not file a [*small*] **simple** estate affidavit until the person re-  
30 quests an inventory of the box under ORS 708A.655, if the lessor of the box  
31 is an Oregon operating institution as defined in ORS 706.008, or under ORS

1 723.844, if the lessor of the box is a credit union as defined in ORS 723.008.  
2 Upon receiving the request, the lessor of the box shall cause an inventory  
3 of the contents of the box to be made. The lessor shall retain the original  
4 inventory in the box and shall provide a copy of the inventory to the person  
5 requesting the inventory. The person requesting the inventory shall take the  
6 contents of the box into consideration in determining whether the estate of  
7 the decedent is within the limits prescribed by ORS 114.510. If the person  
8 files a [*small*] **simple** estate affidavit, the affidavit must contain a statement  
9 of the value of the contents of the box.

10 (2) If an affiant becomes aware after the filing of a [*small*] **simple** estate  
11 affidavit that the decedent was the sole lessee or the last surviving lessee  
12 of a safe deposit box or was the owner of the contents of a safe deposit box  
13 at the time of the decedent's death, the affiant shall promptly request an  
14 inventory of the box under ORS 708A.655, if the lessor of the box is an  
15 Oregon operating institution as defined in ORS 706.008, or under ORS  
16 723.844, if the lessor of the box is a credit union as defined in ORS 723.008.  
17 Upon receiving the request, the lessor of the box shall cause an inventory  
18 of the contents of the box to be made. The lessor shall retain the original  
19 inventory in the box and shall provide a copy of the inventory to the affiant.  
20 If the estate of the decedent remains within the limits prescribed by ORS  
21 114.510 after consideration of the value of the contents of the box, the affiant  
22 shall file an amended [*small*] **simple** estate affidavit under ORS 114.515 (6).  
23 Upon receiving a certified copy of the amended affidavit, the lessor shall  
24 allow the affiant to take possession of the contents of the box. If the estate  
25 of the decedent exceeds the limits prescribed by ORS 114.510 after consider-  
26 ation of the value of the contents of the box, the affiant may not file an  
27 amended [*small*] **simple** estate affidavit and shall file notice with the court  
28 that the estate of the decedent is not subject to ORS 114.505 to 114.560 and  
29 shall serve a copy of the notice on the lessor of the box. The lessor of the  
30 box shall deliver the contents of the box to the personal representative for  
31 the decedent, or to such other person as may be provided for under the terms

1 of the lease of the box.

2 **SECTION 5.** ORS 114.540 is amended to read:

3 114.540. (1)(a) A claim against an estate with respect to which a [*small*]  
4 **simple** estate affidavit is filed may be presented to the affiant within four  
5 months after the affidavit was filed. If an amended [*small*] **simple** estate  
6 affidavit is filed under ORS 114.515 (6), claims against the estate may be  
7 presented within four months after the filing of the amended affidavit.

8 (b) Except as provided in ORS 114.550 **or 130.350**, a claim presented after  
9 the limitations described in paragraph (a) of this subsection is barred.

10 (c) Filing a claim with the court does not constitute presentation to the  
11 affiant.

12 (d)(A) Except as provided in subparagraph (B) of this paragraph, a claim  
13 is presented to the affiant when the claim is mailed or personally delivered  
14 to the affiant at the mailing address for presentment of claims included in  
15 the [*small*] **simple** estate affidavit under ORS 114.525.

16 (B) If the affiant authorized creditors to present claims by electronic mail  
17 or facsimile communication in the [*small*] **simple** estate affidavit as provided  
18 in ORS 114.525, a claim is presented to the affiant when it is sent to the  
19 electronic mail address or the facsimile number designated by the affiant for  
20 presentment of claims, unless the sender receives a notice that the electronic  
21 mail was not delivered or the facsimile communication was not successful.  
22 If the affiant denies receiving the electronic mail or facsimile communi-  
23 cation, the burden of proof is on the creditor to demonstrate that the elec-  
24 tronic mail was properly addressed and sent or that the facsimile  
25 communication was properly addressed and successfully delivered or trans-  
26 mitted.

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

29 (2)(a) A claim presented to the affiant that was not listed in the [*small*]  
30 **simple** estate affidavit shall be considered allowed as presented unless  
31 within 60 days after the date of presentment of the claim the affiant mails

1 or delivers a notice of disallowance of the claim in whole or in part to the  
2 claimant and any attorney for the claimant. A notice of disallowance of a  
3 claim must state the reason for the disallowance and inform the claimant  
4 that the claim has been disallowed in whole or in part and, to the extent  
5 disallowed, will be barred unless:

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

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

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

13 **SECTION 6.** ORS 238.390 is amended to read:

14 238.390. (1) If a member of the system dies before retiring, the amount of  
15 money, if any, credited at the time of death to the member account of the  
16 member in the fund shall be paid to the beneficiaries designated by the  
17 member. For this purpose a member may designate as a beneficiary any per-  
18 son or the executor or administrator of the estate of the member or a trustee  
19 named by the member to execute an express trust in regard to such amount.  
20 The termination of a person's membership in the system pursuant to ORS  
21 238.095 (1) or (2) invalidates any designation of beneficiary made by the  
22 person before the termination of membership.

23 (2) If a member dies before retiring and has not designated a beneficiary  
24 under subsection (1) of this section, the Public Employees Retirement Board  
25 shall pay the amount of money, if any, credited at the time of death to the  
26 member account of the deceased member to a personal representative ap-  
27 pointed for the estate of the deceased member. *[If a small estate affidavit has*  
28 *been filed under ORS 114.505 to 114.560, and the amount of money credited to*  
29 *the account does not exceed the maximum amount of personal property for*  
30 *which a small estate affidavit may be filed under ORS 114.505 to 114.560, the*  
31 *board shall pay the amount to the person who filed the affidavit.]* **If a simple**

1 **estate affidavit has been filed under ORS 114.515, the board shall pay**  
2 **the amount to the person who filed the affidavit if:**

3 **(a) The estate of the decedent remains within the limits prescribed**  
4 **by ORS 114.510 (1)(a) after consideration of the amount of money**  
5 **credited at the time of death to the member account; or**

6 **(b) The estate of the decedent meets the requirements of ORS**  
7 **114.510 (1)(b).**

8 (3) The beneficiary designated under subsection (1) of this section may  
9 elect to receive the amount payable in actuarially determined monthly pay-  
10 ments for the life of such beneficiary as long as such monthly payments are  
11 at least \$200.

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

23 (5) If a member dies before retiring and has designated a beneficiary un-  
24 der subsection (1) of this section, but the beneficiary dies before the member,  
25 or dies before distribution is made under this section, the Public Employees  
26 Retirement Board shall pay the amount of money, if any, that would other-  
27 wise have been paid to the beneficiary to a personal representative appointed  
28 for the estate of the deceased beneficiary. *[If a small estate affidavit has been*  
29 *filed under ORS 114.505 to 114.560, and the amount of money that would have*  
30 *been paid to the beneficiary does not exceed the maximum amount of personal*  
31 *property for which a small estate affidavit may be filed under ORS 114.505 to*



1 *114.560, the board shall pay the amount to the person who filed the small estate*  
2 *affidavit on behalf of the estate of the beneficiary.] If a simple estate affi-*  
3 **davit regarding the deceased beneficiary’s estate has been filed under**  
4 **ORS 114.515, the board shall pay the amount to the person who filed**  
5 **the simple estate affidavit if:**

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

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

11 (6) Interest upon the member account of the member shall accrue until  
12 the date that the amount in the member account is distributed. Any balance  
13 in the variable account of the deceased member is considered to be trans-  
14 ferred to the regular account of the member as of the date of death. The  
15 board shall establish procedures for computing and crediting interest on the  
16 balance in the member account for the period between the date of death and  
17 date of distribution.

18 (7) Payment by the board of amounts in the manner provided by this  
19 section completely discharges the board and system on account of the death,  
20 and shall hold the board and system harmless from any claim for wrongful  
21 payment.

22

23

### CONFORMING AMENDMENTS

24

25 **SECTION 7.** ORS 111.200 is amended to read:

26 111.200. (1) As used in this section:

27 (a) “Probate proceeding” means a proceeding under ORS chapter 111, 112,  
28 113, 114, 115, 116 or 117 for the administration of a decedent’s estate.

29 (b) “Probate proceeding” does not include:

30 (A) A proceeding for summary determination of a claim under ORS  
31 115.145 (1)(b); or

1 (B) A declaratory judgment action under ORS chapter 28.

2 (2) Except as otherwise provided in ORS 111.205, 111.218, 112.588, 113.005,  
3 113.105, 114.720, 115.315, 116.083 or 116.253, the Oregon Rules of Civil Proce-  
4 dure and the Oregon Evidence Code do not apply to probate proceedings.

5 (3) Notwithstanding subsection (2) of this section:

6 (a) ORCP 12 applies to any probate proceeding.

7 (b) ORCP 9, 10 A, 16 B, 16 D, 17, 18, 19, 21, 22, 23, 25, 27, 29, 30, 31, 33,  
8 34 A to F, 36 to 43, 44 A, B, D and E, 46, 47, 53, 55, 62, 64 A and C to G, 65,  
9 67, 68, 71, 72 and 78 apply to a contested issue in a probate proceeding.

10 (c) The Oregon Evidence Code applies to a contested issue in a probate  
11 proceeding.

12 (4) For the purposes of applying the Oregon Rules of Civil Procedure to  
13 a contested issue in a probate proceeding:

14 (a) "Plaintiff" means any party asserting a claim for relief, whether by  
15 way of petition or motion; and

16 (b) "Defendant" means:

17 (A) Any party against whom the claim is asserted;

18 (B) Any party objecting to the petition or motion; or

19 (C) If the court issues a show cause order, the party subject to the order.

20 (5)(a) For the purposes of this section, an issue in a probate proceeding  
21 is contested if it is or arises from:

22 (A) A petition or motion for declaratory judgment, including a will con-  
23 test;

24 (B) A petition to remove a court-appointed fiduciary;

25 (C) A petition or motion for affirmative relief of any sort against a per-  
26 son;

27 (D) A petition or motion to apportion the proceeds of a wrongful death  
28 settlement;

29 (E) If filed by a person other than the personal representative:

30 (i) A motion to increase the amount of the bond of the personal repre-  
31 sentative, or to require a new bond;

- 1 (ii) A petition to restrict the powers of the personal representative;
- 2 (iii) A petition to determine heirship;
- 3 (iv) A petition for instructions; or
- 4 (v) A petition to appoint a fiduciary other than the fiduciary nominated
- 5 in the will admitted to probate;

6 (F) Any other petition or motion to which another person has filed an  
7 objection; or

8 (G) Any other petition, motion or show cause order determined by the  
9 court to be a contested issue in a probate proceeding.

10 (b) Notwithstanding paragraph (a) of this subsection, unless otherwise  
11 determined by the court, the following are not contested issues in probate  
12 proceedings:

13 (A) A petition for summary review of administration of a [*small*] **simple**  
14 estate under ORS 114.550;

15 (B) A petition or motion for summary determination of a claim as pro-  
16 vided in ORS 114.542 or 115.145 (1)(a); or

17 (C) An application for an order directing payment of a claim under ORS  
18 115.185.

19 (6) Nothing in this section is intended to affect the burden of proof or  
20 standard of proof that is applied in probate proceedings.

21 **SECTION 8.** ORS 113.238 is amended to read:

22 113.238. (1) A person who has knowledge that a decedent died wholly  
23 intestate, that the decedent owned property subject to probate in Oregon and  
24 that the decedent died without a known heir shall give notice of the death  
25 within 48 hours after acquiring that knowledge to the State Treasurer.

26 (2) Except as provided by ORS 708A.430 and 723.466, a person may not  
27 dispose of or diminish any assets of the estate of a decedent who has died  
28 wholly intestate, who owned property subject to probate in Oregon and who  
29 died without a known heir unless the person has prior written approval of  
30 the State Treasurer. The prohibition of this subsection:

31 (a) Applies to a guardian or conservator for the decedent; and

1 (b) Does not apply to a personal representative appointed under ORS  
2 113.085 (4) or to an affiant authorized under ORS 114.520 to file a [*small*]  
3 **simple** estate affidavit under ORS 114.515.

4 (3) For purposes of this section, a known heir is an heir who has been  
5 identified and found.

6 **SECTION 9.** ORS 114.505 is amended to read:

7 114.505. As used in ORS 114.505 to 114.560:

8 (1) “Affiant” means the person or persons signing a [*small*] **simple** estate  
9 affidavit.

10 (2) “Claiming successors” means:

11 (a) If the decedent died intestate, the heir or heirs of the decedent, or if  
12 there is no heir, an estate administrator of the State Treasurer appointed  
13 under ORS 113.235;

14 (b) If the decedent died testate, the devisee or devisees of the decedent;  
15 and

16 (c) Any creditor of the estate entitled to payment or reimbursement from  
17 the estate under ORS 114.545 (1)(f) who has not been paid or reimbursed the  
18 full amount owed such creditor within 60 days after the date of the  
19 decedent’s death.

20 (3) “[*Small*] **Simple** estate affidavit” means an affidavit or amended affi-  
21 davit filed under ORS 114.515.

22 **SECTION 10.** ORS 114.517 is amended to read:

23 114.517. The Director of Human Services, or the director’s designated  
24 representative, or the Director of the Oregon Health Authority, or the  
25 director’s designated representative, may approve in writing attorneys who  
26 are eligible to file a [*small*] **simple** estate affidavit if the decedent received  
27 public assistance as defined in ORS 411.010, received medical assistance as  
28 defined in ORS 414.025 or received care at an institution as defined in ORS  
29 179.010, and it appears that the assistance or the cost of care may be recov-  
30 ered from the estate of the decedent. An attorney approved under this section  
31 does not represent the Director of Human Services or the Director of the

1 Oregon Health Authority when the attorney files a *[small]* **simple** estate  
2 affidavit.

3 **SECTION 11.** ORS 114.520 is amended to read:

4 114.520. (1) If a decedent dies intestate and without heirs, a creditor of  
5 an estate who is a claiming successor may not file a *[small]* **simple** estate  
6 affidavit unless the creditor has received written authorization from the  
7 State Treasurer. Except as provided by rule adopted by the State Treasurer,  
8 the State Treasurer shall consent to the filing of a *[small]* **simple** estate af-  
9 fidavit by a creditor only if it appears after investigation that the estate is  
10 insolvent.

11 (2) A creditor of an estate who is subject to subsection (1) of this section  
12 may give written notice to the State Treasurer informing the State Treasurer  
13 that the creditor intends to file a *[small]* **simple** estate affidavit. Upon re-  
14 ceiving the notice permitted by this subsection, the State Treasurer shall  
15 investigate the assets and liabilities of the estate. Within 30 days after re-  
16 ceiving the notice required by this subsection, the State Treasurer shall ei-  
17 ther:

18 (a) Give written authorization to the creditor for the filing of a *[small]*  
19 **simple** estate affidavit by the creditor; or

20 (b) Inform the creditor that the State Treasurer will file a *[small]* **simple**  
21 estate affidavit as claiming successor.

22 (3) If a decedent dies intestate and without heirs, a creditor of an estate  
23 who is a claiming successor and who files a *[small]* **simple** estate affidavit  
24 must notate at the top of the affidavit that the affidavit is being filed by a  
25 creditor of the estate. If the affidavit contains the notation required by this  
26 subsection, the clerk of the probate court may not accept the affidavit for  
27 filing unless there is attached to the affidavit written authorization for the  
28 filing of the affidavit by the creditor from the State Treasurer. The written  
29 authorization may be a copy of a memorandum of an interagency agreement  
30 between the State Treasurer and another state agency.

31 **SECTION 12.** ORS 114.525 is amended to read:

1 114.525. (1) A *[small]* **simple** estate affidavit must:

2 (a) Contain a notice in substantially the following form, printed in at  
3 least 14-point bold type immediately below the caption on the first page of  
4 the *[small]* **simple** estate affidavit:

5

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6 NOTICE OF DUTY TO PAY DEBT OR  
7 TURN OVER PROPERTY  
8

9 To: Any person to whom a copy of this *[small]* **simple** estate affidavit is  
10 mailed or delivered.

11 Under ORS 114.535, if you owe a debt to the decedent or have personal  
12 property of the decedent, you must pay the debt or turn over the property  
13 to the affiant. If you refuse, the affiant may ask the court to compel you to  
14 pay the debt or turn over the property and you could be responsible for the  
15 affiant's attorney fees.

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

18 (c) State the authority under which the affiant is filing the *[small]* **simple**  
19 estate affidavit, as provided in ORS 114.515.

20 (d) State that the *[small]* **simple** estate affidavit is made under ORS  
21 114.505 to 114.560.

22 (e) State the name, age, domicile and post-office address and last four  
23 digits of the Social Security number of the decedent.

24 (f) State the date and place of the decedent's death.

25 (g) Describe and state the fair market value of all property in the estate,  
26 valued as provided in ORS 114.510, including a legal description of any real  
27 property.

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

- 1 (i) State whether the decedent died testate or intestate.
- 2 (j) List the heirs of the decedent and the last address of each heir as  
3 known to the affiant, and state that a copy of the affidavit showing the date  
4 of filing and a copy of the will, if the decedent died testate, will be delivered  
5 to each heir or mailed to the heir at the last-known address.
- 6 (k) If the decedent died testate, list the devisees of the decedent and the  
7 last address of each devisee as known to the affiant and state that a copy  
8 of the will and a copy of the affidavit showing the date of filing will be de-  
9 livered to each devisee or mailed to the devisee at the last-known address.
- 10 (L) State the interest in the property described in the affidavit to which  
11 each heir or devisee is entitled and the interest, if any, that will escheat.
- 12 (m) State that reasonable efforts have been made to ascertain creditors  
13 of the estate.
- 14 (n) List the claims against the estate that are undisputed by the affiant  
15 and that remain unpaid or on account of which the affiant or any other  
16 person is entitled to reimbursement from the estate, including the known or  
17 estimated amounts of the claims and the names and addresses of the creditors  
18 as known to the affiant, and state that a copy of the affidavit showing the  
19 date of filing will be delivered to each creditor who has not been paid in full  
20 or mailed to the creditor at the last-known address.
- 21 (o) Separately list the name and address of each person known to the  
22 affiant to assert a claim against the estate that the affiant disputes and the  
23 known or estimated amount of the claims disputed by the affiant and state  
24 that a copy of the affidavit showing the date of filing will be delivered to  
25 each such person or mailed to the person at the last-known address.
- 26 (p)(A) State the mailing address for presentment of claims; and
- 27 (B) If the affiant wishes to authorize creditors to present claims by elec-  
28 tronic mail or facsimile communication, state the electronic mail address or  
29 facsimile number for presentment of claims.
- 30 (q) List anticipated administrative expenses and attorney fees, if any.
- 31 (r) State that the affiant is not disqualified from acting as an affiant un-

1 der ORS 114.515 (2).

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

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

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

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

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

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

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

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

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

28 (2) The affiant shall file a certified copy of the death record of the  
29 decedent as a confidential document.

30 (3) If the decedent died testate, the affiant shall file simultaneously with  
31 the [*small*] **simple** estate affidavit:



1 (a)(A) The original will; or

2 (B) If the original will is filed in an estate proceeding in another juris-  
3 diction, a certified copy of the original will; and

4 (b) Proof of the will meeting the requirements of ORS 113.055.

5 **SECTION 13.** ORS 114.535 is amended to read:

6 114.535. (1) The affiant may deliver a certified copy of a [*small*] **simple**  
7 estate affidavit to any person who has possession of personal property be-  
8 longing to the estate or who was indebted to the decedent. Except as pro-  
9 vided in this section, upon receipt of the certified copy, the person shall pay  
10 the debt or transfer, deliver, provide access to and allow possession of the  
11 personal property to the affiant.

12 (2) Subject to ORS 114.537, if a certified copy of a [*small*] **simple** estate  
13 affidavit is delivered under subsection (1) of this section to a person that  
14 controls access to personal property belonging to the estate of the decedent,  
15 including personal property held in a safe deposit box for which the decedent  
16 was the sole lessee or the last surviving lessee, the person shall:

17 (a) Provide the affiant with access to the decedent's personal property;  
18 and

19 (b) Allow the affiant to take possession of the personal property.

20 (3) Subject to ORS 114.537, if a certified copy of a [*small*] **simple** estate  
21 affidavit is delivered under subsection (1) of this section to a person who  
22 owes a debt to the decedent or has received property of the decedent under  
23 ORS 446.616, 708A.430, 723.466 or 803.094, or a similar statute providing for  
24 the transfer of property of an estate that is not being probated, the person  
25 shall pay the debt or transfer, deliver, provide access to or allow possession  
26 of the property to the affiant if the person would be required to pay the debt  
27 or transfer, deliver, provide access to or allow possession of the property to  
28 a personal representative of the estate.

29 (4) Any person that pays a debt owing to the decedent or transfers, de-  
30 livers, provides access to or allows possession of property of a decedent in  
31 the manner provided by this section is discharged and released from any li-

1 ability or responsibility for the debt or property in the same manner and  
2 with the same effect as if the debt had been paid or the property had been  
3 transferred or delivered to a personal representative of the estate of the  
4 decedent.

5 (5) The affiant may deliver a certified copy of a [*small*] **simple** estate af-  
6 fidavit to a transfer agent of any corporate security registered in the name  
7 of the decedent. The transfer agent shall change the registered ownership  
8 on the books of the corporation to the affiant or the person named in the  
9 affidavit entitled to it, as directed by the affiant.

10 (6)(a) If a person to whom a certified copy of a [*small*] **simple** estate af-  
11 fidavit is delivered under this section refuses to pay a debt or deliver,  
12 transfer, provide access to or allow possession of personal property as re-  
13 quired by this section, the affiant may serve a written demand by certified  
14 mail on the person to pay the debt or deliver, transfer, provide access to or  
15 allow possession of the personal property. The demand must state that, if the  
16 person fails to pay the debt or deliver, transfer, provide access to or allow  
17 possession of the personal property, the affiant may file a motion to compel  
18 payment of the debt or delivery of, transfer of or access to the personal  
19 property.

20 (b) If the person fails to pay the debt or deliver, transfer, provide access  
21 to or allow possession of the personal property within 30 days after service  
22 of a demand under paragraph (a) of this subsection, the affiant may file a  
23 motion to compel payment of the debt or delivery of, transfer of or access  
24 to the personal property. The court may enter a judgment awarding reason-  
25 able attorney fees to the prevailing party if the court finds that the affiant  
26 filed the motion without an objectively reasonable basis or the person re-  
27 fused to pay the debt or deliver, transfer, provide access to or allow pos-  
28 session of any personal property without an objectively reasonable basis.

29 (7) If a [*small*] **simple** estate affidavit was signed by the Director of Hu-  
30 man Services, the Director of the Oregon Health Authority or an attorney  
31 approved under ORS 114.517, the Director of Human Services, the Director

1 of the Oregon Health Authority or the attorney may certify a copy of the  
2 affidavit for the purposes described in this section.

3 (8) Notwithstanding ORS chapters 270, 273 and 274, an estate adminis-  
4 trator of the State Treasurer appointed under ORS 113.235 or the Director  
5 of Human Services or Director of the Oregon Health Authority serving as  
6 an affiant may deal with property of the estate as an affiant under this sec-  
7 tion.

8 **SECTION 14.** ORS 114.542 is amended to read:

9 114.542. (1)(a) A creditor of an estate whose claim has been presented  
10 within the time permitted by ORS 114.540 (1) and disallowed by the affiant  
11 in whole or in part may within 30 days after the date of mailing or delivery  
12 of the notice of disallowance file with the probate court a petition for sum-  
13 mary determination of the claim by the court.

14 (b) A creditor of the decedent whose claim is listed in the [*small*] **simple**  
15 estate affidavit as disputed may within four months after the filing of the  
16 affidavit or amended affidavit listing the disputed claim file with the probate  
17 court a petition for summary determination of the creditor's claim by the  
18 court.

19 (2) The court shall hear a petition for summary determination filed under  
20 this section without a jury, after notice to the creditor and affiant, and any  
21 interested person may be heard in the proceeding.

22 (3) The claim may be proved as provided in ORS 115.195.

23 (4) Upon a hearing under this section the court shall determine the claim  
24 in a summary manner and shall make an order allowing or disallowing the  
25 claim in whole or in part.

26 (5) An order of the court made upon summary determination under this  
27 section may not be appealed and may be enforced only by the filing of a pe-  
28 tition for summary review under ORS 114.550.

29 **SECTION 15.** ORS 114.545 is amended to read:

30 114.545. (1) The affiant:

31 (a) Is a fiduciary who is under a general duty to administer, preserve,

1 settle and distribute the estate in accordance with the terms of the will, the  
2 law of intestate succession and ORS 114.505 to 114.560 as expeditiously and  
3 with as little sacrifice of value as is reasonable under the circumstances.

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

6 (c) Shall take control of the property of the estate coming into the pos-  
7 session of the affiant and collect the income from property of the estate in  
8 the possession of the affiant.

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

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

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

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

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

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

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

26 (g) Shall pay claims and expenses under paragraph (f) of this subsection  
27 in the order of priority prescribed by ORS 115.125.

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

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

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

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

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

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

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

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

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

23 (5) A financial institution as defined in ORS 706.008 that opens one or  
24 more deposit accounts for an affiant pursuant to subsection (1)(e) of this  
25 section is not liable to any other person for opening the account or accounts  
26 or for permitting the affiant to withdraw funds from the account or accounts  
27 by means of checks, drafts, negotiable orders of withdrawal or otherwise. The  
28 financial institution is not required to ensure that the funds of the decedent  
29 that are paid out by the affiant are properly applied.

30 **SECTION 16.** ORS 114.550 is amended to read:

31 114.550. (1)(a) The affiant or any claiming successor of the estate who has

1 not been paid the full amount owed the claiming successor may, within two  
2 years after the filing of a [*small*] **simple** estate affidavit, file with the pro-  
3 bate court a petition for summary review of administration of the estate.

4 (b) Notwithstanding paragraph (a) of this subsection, a person may file  
5 a petition for summary review under this section for the purpose of compel-  
6 ling the affiant to distribute property of the estate within 60 days after the  
7 completion of the two-year period described in paragraph (a) of this sub-  
8 section.

9 (c) A creditor may not file a petition under this section if the creditor  
10 received a copy of a [*small*] **simple** estate affidavit delivered or mailed to the  
11 creditor within 30 days after the date the affidavit was filed, the creditor  
12 was shown as a disputed creditor in the affidavit and the creditor has not  
13 filed a petition for summary determination under ORS 114.542.

14 (d) A creditor may not file a petition under this section if the creditor  
15 presented a claim to the affiant, the claim was disallowed and the creditor  
16 did not file a petition for summary determination under ORS 114.542.

17 (2) Within 30 days after the filing of a petition under subsection (1) of this  
18 section by a person other than the affiant, the affiant shall file with the  
19 court an answer to the petition for summary review.

20 (3) The court shall hear the matter without a jury, after notice to the  
21 claiming successor and the affiant, and any interested person may be heard  
22 in the proceeding.

23 (4) Upon the hearing:

24 (a) The court shall review administration of the estate in a summary  
25 manner and may order the affiant to sell property of the estate and pay  
26 creditors, to pay creditors of the estate from property of the estate or of the  
27 affiant, or to distribute property of the estate to the claiming successors, or  
28 may order any person who has received property of the estate to pay amounts  
29 owed to claiming successors of the estate in whole or in part.

30 (b) If the court allows a claim of a creditor in whole or in part, the court  
31 shall order the affiant, to the extent of property of the estate allocable to

1 the payment of the claim pursuant to ORS 115.125, and any claiming suc-  
2 cessor to whom property of the estate has been delivered or transferred under  
3 ORS 114.505 to 114.560, to the extent of the value of the property received,  
4 to pay to the creditor the amount allowed.

5 (c) The court may remove the affiant if the affiant failed to comply with  
6 ORS 114.505 to 114.560, surcharge the affiant for any loss caused by failure  
7 to comply with ORS 114.505 to 114.560 and authorize the substitution of a  
8 new affiant.

9 **SECTION 17.** ORS 114.552 is amended to read:

10 114.552. (1) A person filing a petition for summary determination under  
11 ORS 114.542 or a petition for summary review of administration of estate  
12 under ORS 114.550, or any other appearance in a proceeding under ORS  
13 114.505 to 114.560, must pay the filing fee established under ORS 21.135.

14 (2) If at any time after the filing of a [*small*] **simple** estate affidavit a  
15 petition for appointment of a personal representative is filed for the same  
16 estate, the person filing the petition must pay the fees established under ORS  
17 21.170.

18 **SECTION 18.** ORS 114.555 is amended to read:

19 114.555. (1)(a) If a petition to appoint a personal representative is not filed  
20 within four months after the filing of a [*small*] **simple** estate affidavit, then  
21 after the completion of the four-month period described in ORS 114.540, after  
22 all unsecured creditors of the estate have been paid to the extent of the  
23 property of the estate and before the completion of the two-year period es-  
24 tablished in ORS 114.550, the affiant shall transfer the interest of the  
25 decedent in remaining property or proceeds of property described in the af-  
26 fidavit to the person or persons shown by the affidavit to be entitled to the  
27 property, and any other claims against the property are barred, except:

28 (A) As otherwise provided in this section and ORS 114.540, 114.542, 114.545  
29 and 114.550; and

30 (B) For the purposes of a surviving spouse's claim for an elective share  
31 in the manner provided by ORS 114.600 to 114.725.

1 (b) Notwithstanding paragraph (a) of this subsection, if a petition for  
2 summary review has been filed under ORS 114.550, the affiant may not  
3 transfer the interest of the decedent in the property described in the affidavit  
4 until after all claims allowed in the summary review proceeding are paid to  
5 the extent of the property of the estate.

6 (2) Property conveyed by an affiant under this section is subject to liens  
7 and encumbrances against the decedent or the estate of the decedent. Prop-  
8 erty conveyed by an affiant under this section is subject to the rights of  
9 creditors of the decedent or the estate of the decedent until the expiration  
10 of the two-year period established in ORS 114.550.

11 (3) When the affiant transfers an interest in real property under this  
12 section, the affiant shall cause to be recorded in the deed records of the  
13 county in which the real property is situated a bargain and sale deed con-  
14 veying the property to the person entitled to the property, executed in the  
15 manner required by ORS chapter 93.

16 (4) When the affiant transfers an interest in a manufactured structure as  
17 defined in ORS 446.561 belonging to a decedent and assessed as personal  
18 property under this section, the affiant shall file with the Department of  
19 Consumer and Business Services the necessary information for recording the  
20 successor's interest in the manufactured structure on an ownership docu-  
21 ment.

22 **SECTION 19.** ORS 114.650 is amended to read:

23 114.650. For purposes of ORS 114.600 to 114.725, a decedent's probate es-  
24 tate is the value of all estate property that is subject to probate and that is  
25 available for distribution after payment of claims and expenses of adminis-  
26 tration. A decedent's probate estate includes all property that could be ad-  
27 ministered under a [*small*] **simple** estate affidavit pursuant to ORS 114.505  
28 to 114.560. A decedent's probate estate does not include any property that  
29 constitutes a probate transfer to the decedent's surviving spouse under ORS  
30 114.685.

31 **SECTION 20.** ORS 119.021 is amended to read:



1 119.021. If a deceased user consented to, or a court directs, disclosure of  
2 the [*contents*] **content** of electronic communications of the user, the custo-  
3 dian shall disclose to the personal representative of the estate of the user  
4 the content of an electronic communication sent or received by the user if  
5 the personal representative gives the custodian:

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

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

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

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

13 (5) If requested by the custodian:

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

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

17 (c) A finding by the court that:

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

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

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

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

27 **SECTION 21.** ORS 119.026 is amended to read:

28 119.026. Unless the user prohibited disclosure of digital assets or the court  
29 directs otherwise, a custodian shall disclose to the personal representative  
30 of the estate of a deceased user a catalog of electronic communications sent  
31 or received by the user and digital assets, other than the content of elec-

1 tronic communications, of the user if the personal representative gives the  
2 custodian:

- 3 (1) A written request for disclosure in physical or electronic form;
- 4 (2) A certified copy of the death certificate of the user;
- 5 (3) A certified copy of the letter of appointment of the personal repre-  
6 sentative or a [*small*] **simple** estate affidavit or court order; and
- 7 (4) If requested by the custodian:
  - 8 (a) A number, user name, address or other unique subscriber or account  
9 identifier assigned by the custodian to identify the user's account;
  - 10 (b) Evidence linking the account to the user;
  - 11 (c) An affidavit stating that disclosure of the user's digital assets is rea-  
12 sonably necessary for administration of the estate; or
  - 13 (d) A finding by the court that:
    - 14 (A) The user had a specific account with the custodian, identifiable by the  
15 information specified in paragraph (a) of this subsection; or
    - 16 (B) Disclosure of the user's digital assets is reasonably necessary for ad-  
17 ministration of the estate.

18 **SECTION 22.** ORS 119.062 is amended to read:

- 19 119.062. (1) The legal duties imposed on a fiduciary charged with manag-  
20 ing tangible property apply to the management of digital assets, including:
- 21 (a) The duty of care;
  - 22 (b) The duty of loyalty; and
  - 23 (c) The duty of confidentiality.
- 24 (2) A fiduciary's or designated recipient's authority with respect to a  
25 digital asset of a user:
- 26 (a) Except as otherwise provided in ORS 119.016, is subject to the appli-  
27 cable terms of service;
  - 28 (b) Is subject to other applicable law, including copyright law;
  - 29 (c) In the case of a fiduciary, is limited by the scope of the fiduciary's  
30 duties; and
  - 31 (d) May not be used to impersonate the user.

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

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

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

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

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

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

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

24 (a) If the user is deceased, a certified copy of the death certificate of the  
25 user;

26 (b) A certified copy of the letter of appointment of the personal repre-  
27 sentative, a *[small]* **simple** estate affidavit or court order, a court order, a  
28 power of attorney or a trust giving the fiduciary authority over the account;  
29 and

30 (c) If requested by the custodian:

31 (A) A number, user name, address or other unique subscriber or account

1 identifier assigned by the custodian to identify the user's account;

2 (B) Evidence linking the account to the user; or

3 (C) A finding by the court that the user had a specific account with the  
4 custodian, identifiable by the information specified in subparagraph (A) of  
5 this paragraph.

6 **SECTION 23.** ORS 130.150 is amended to read:

7 130.150. (1) A trust may be created:

8 (a) By transfer of property to another person as trustee during the  
9 settlor's lifetime or by will or other disposition taking effect upon the  
10 settlor's death;

11 (b) By declaration by the owner of property that the owner holds iden-  
12 tifiable property as trustee;

13 (c) By exercise of a power of appointment in favor of a trustee;

14 (d) By an agent or attorney-in-fact under a power of attorney that ex-  
15 pressly grants authority to create the trust; or

16 (e) Pursuant to a statute or judgment that requires property to be ad-  
17 ministered in the manner of an express trust.

18 (2) The following apply to trusts for death benefits:

19 (a) A trustee may be named as beneficiary of any death benefits, and the  
20 death benefits shall be paid to the trustee and be held and disposed of by the  
21 trustee as provided in a trust created by the designator during the lifetime  
22 of the designator. A trust is valid even though the trust does not have a trust  
23 corpus other than the right of the trustee to receive death benefits as bene-  
24 ficiary.

25 (b) A trustee named by will may be designated as beneficiary of death  
26 benefits if the designation is made in accordance with the provisions of the  
27 policy, contract, plan, trust or other governing instrument. Upon probate of  
28 the will, or upon the filing of a [small] **simple** estate affidavit under ORS  
29 114.515, the death benefits are payable to the trustee to be held and disposed  
30 of under the terms of the designator's will in the same manner as other  
31 testamentary trusts are administered. Unless otherwise provided by the des-

1 ignator, an obligor may make payment of death benefits to the personal  
2 representative of the designator, or to the persons who are otherwise entitled  
3 to the death benefits, if a qualified trustee does not claim the death benefits  
4 within one year after the death of the designator, or if satisfactory evidence  
5 is furnished within the one-year period showing that there is no trustee who  
6 can qualify to receive the death benefits. The obligor is discharged from any  
7 liability for the death benefits upon making the payment.

8 (c) Death benefits received by the trustee are not subject to the debts of  
9 the designator or to inheritance or estate taxes to any greater extent than  
10 if the death benefits were payable to the beneficiaries named in the trust and  
11 not to the estate of the designator.

12 (d) Death benefits held in trust may be commingled with any other assets  
13 that may properly become a part of the trust.

14 (3) As used in this section:

15 (a) "Death benefits" means death benefits of any kind, including proceeds  
16 of life insurance policies, payments under annuity or endowment contracts,  
17 and funds payable in connection with pension, retirement, stock bonus or  
18 profit-sharing plans, or any trust administered in connection with these ar-  
19 rangements.

20 (b) "Designator" means the person entitled to designate the beneficiary  
21 of death benefits upon the death of the person.

22 (c) "Obligor" means the insurer or other person obligated to pay death  
23 benefits.

24 **SECTION 24.** ORS 238.458 is amended to read:

25 238.458. (1) A benefit that is owed to a member or beneficiary of a member  
26 under the Public Employees Retirement System shall be forfeited at the end  
27 of the system's plan year in which the benefit becomes due if the Public  
28 Employees Retirement Board is unable to locate the member or beneficiary.  
29 If the member, beneficiary or any other person thereafter establishes a right  
30 to the forfeited benefit, the board shall reinstate the benefit. If the benefit  
31 is a periodic payment, the board shall make a retroactive payment to the

1 member, beneficiary or other person in a lump sum for all amounts that  
2 would have been paid before reinstatement of the benefit. No interest shall  
3 be paid on the benefit for the period commencing when the benefit became  
4 due and the date of the retroactive payment.

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

21 **SECTION 25.** ORS 708A.655 is amended to read:

22 708A.655. (1) This section applies to the safe deposit box of any person  
23 who is the sole lessee or last surviving lessee of the box and who has died.

24 (2) Subject to ORS 114.537, upon being furnished with a certified copy of  
25 the decedent's death record or other evidence of death satisfactory to the  
26 Oregon operating institution, the Oregon operating institution within which  
27 the box is located shall cause or permit the box to be opened, and the con-  
28 tents of the box examined, at the request of an individual who furnishes an  
29 affidavit stating:

30 (a) That the individual believes the box may contain the will of the  
31 decedent, a trust instrument creating a trust of which the decedent was a

1 trustor or a trustee at the time of the decedent's death, documents pertaining  
2 to the disposition of the remains of the decedent, documents pertaining to  
3 property of the estate of the decedent or property of the estate of the  
4 decedent; and

5 (b) That the individual is an interested person and wishes to open the box  
6 to conduct a will search or trust instrument search, obtain documents re-  
7 lating to the disposition of the decedent's remains, inventory the contents  
8 of the box or remove property of the estate of the decedent pursuant to a  
9 [small] **simple** estate affidavit filed under ORS 114.515.

10 (3) For the purpose of this section, "interested person" means any of the  
11 following:

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

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

15 (c) A person who was serving as the court-appointed guardian or  
16 conservator of the decedent or as trustee for the decedent immediately prior  
17 to the decedent's death;

18 (d) A person named as successor trustee in a purported trust instrument  
19 creating a trust of which the decedent was a trustor or a trustee at the time  
20 of the decedent's death;

21 (e) A person designated by the decedent in a writing that is acceptable  
22 to the Oregon operating institution and is filed with it prior to the  
23 decedent's death;

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

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

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

31 (4) If the box is opened for the purpose of conducting a will search, the

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

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

23 (6) If the box is opened for the purpose of obtaining documents pertaining  
24 to the disposition of the decedent's remains, the Oregon operating institution  
25 shall comply with subsection (4) or (5) of this section with respect to any  
26 will or trust instrument of the decedent found in the box, and may in its  
27 discretion either:

28 (a) Make and retain in the box a copy of any documents pertaining to the  
29 disposition of the remains of the decedent and tender the original documents  
30 to the interested person; or

31 (b) Provide a copy of any documents pertaining to the disposition of the



1 remains of the decedent to the interested person and retain the original  
2 documents in the box.

3 (7) If the box is opened for the purpose of making an inventory of its  
4 contents, the Oregon operating institution shall comply with subsection (4)  
5 or (5) of this section with respect to any will or trust instrument of the  
6 decedent that is found in the box, and shall cause the inventory to be made.  
7 The inventory must be attested to by a representative of the Oregon operat-  
8 ing institution and may be attested to by the interested person, if the inter-  
9 ested person is present when the inventory is made. The Oregon operating  
10 institution shall retain the original inventory in the box, and shall furnish  
11 a copy of the inventory to the interested person upon request.

12 (8) If the interested person is an affiant of a [*small*] **simple** estate affi-  
13 davit filed under ORS 114.515 and delivers a certified copy of the affidavit  
14 in the manner provided by ORS 114.535, the Oregon operating institution  
15 shall provide to the affiant access to the decedent's property. The Oregon  
16 operating institution shall comply with subsection (4) or (5) of this section  
17 if a will or trust instrument of the decedent is found in the box. Subject to  
18 ORS 114.537, the Oregon operating institution shall allow the affiant to take  
19 possession of the personal property in the box.

20 (9) The Oregon operating institution may presume the truth of any  
21 statement contained in the affidavit required to be furnished under this sec-  
22 tion or ORS 114.535, and when acting in reliance upon such an affidavit, the  
23 Oregon operating institution is discharged as if it had dealt with the per-  
24 sonal representative of the decedent. The Oregon operating institution is not  
25 responsible for the adequacy of the description of any property included in  
26 an inventory of the contents of a box, or for the conversion of the property  
27 in connection with actions performed under this section, except for conver-  
28 sion by intentional acts of the Oregon operating institution or its employees,  
29 directors, officers or agents. If the Oregon operating institution is not sat-  
30 isfied that the requirements of this section have been satisfied, the Oregon  
31 operating institution may decline to open the box.

1 (10) If the interested person or affiant does not furnish the key needed to  
2 open the box, and the Oregon operating institution must incur expense in  
3 gaining entry to the box, the Oregon operating institution may require that  
4 the interested person or affiant pay the expense of opening the box.

5 (11) Any examination of the contents of a box under this section shall be  
6 conducted in the presence of at least one employee of the Oregon operating  
7 institution.

8 **SECTION 26.** ORS 723.844 is amended to read:

9 723.844. (1) This section applies to the safe deposit box of any person who  
10 is the sole lessee or last surviving lessee of the box and who has died.

11 (2) Subject to ORS 114.537, upon being furnished with a certified copy of  
12 the decedent's death record or other evidence of death satisfactory to the  
13 credit union, the credit union within which the box is located shall cause  
14 or permit the box to be opened, and the contents of the box examined, at the  
15 request of an individual who furnishes an affidavit stating:

16 (a) That the individual believes the box may contain the will of the  
17 decedent, a trust instrument creating a trust of which the decedent was a  
18 trustor or a trustee at the time of the decedent's death, documents pertaining  
19 to the disposition of the remains of the decedent, documents pertaining to  
20 property of the estate of the decedent or property of the estate of the  
21 decedent; and

22 (b) That the individual is an interested person and wishes to open the box  
23 to conduct a will search or trust instrument search, obtain documents re-  
24 lating to the disposition of the decedent's remains or inventory the contents  
25 of the box or remove property of the estate of the decedent pursuant to a  
26 [*small*] **simple** estate affidavit filed under ORS 114.515.

27 (3) For the purpose of this section, "interested person" means any of the  
28 following:

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

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

1 (c) A person who was serving as the court-appointed guardian or  
2 conservator of the decedent or as trustee for the decedent immediately prior  
3 to the decedent's death;

4 (d) A person named as successor trustee in a purported trust instrument  
5 creating a trust of which the decedent was a trustor or a trustee at the time  
6 of the decedent's death;

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

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

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

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

16 (4) If the box is opened for the purpose of conducting a will search, the  
17 credit union shall remove any document that appears to be a will, make a  
18 true and correct copy of it and deliver the original will to a person desig-  
19 nated in the will to serve as the decedent's personal representative, or if no  
20 such person is designated or the credit union cannot, despite reasonable ef-  
21 forts, determine the whereabouts of such person, the credit union shall retain  
22 the will or deliver it to a court having jurisdiction of the estate of the  
23 decedent. A copy of the will shall be retained in the box. At the request of  
24 the interested person, a copy of the will, together with copies of any docu-  
25 ments pertaining to the disposition of the remains of the decedent, may be  
26 given to the interested person.

27 (5) If the box is opened for the purpose of conducting a trust instrument  
28 search, the credit union shall remove any document that appears to be a  
29 trust instrument creating a trust of which the decedent was a trustor or  
30 trustee at the time of the decedent's death, make a true and correct copy of  
31 it and deliver the original trust instrument to a person designated in the

1 trust instrument to serve as the successor trustee on the death of the  
2 decedent. If no such person is designated or the credit union cannot, despite  
3 reasonable efforts, determine the whereabouts of such person, the credit un-  
4 ion shall retain the trust instrument. A copy of the trust instrument shall  
5 be retained in the box. At the request of any interested person, a copy of the  
6 trust instrument may be given to the interested person.

7 (6) If the box is opened for the purpose of obtaining documents pertaining  
8 to the disposition of the decedent's remains, the credit union shall comply  
9 with subsection (4) or (5) of this section with respect to any will or trust  
10 instrument of the decedent found in the box, and may in its discretion either:

11 (a) Make and retain in the box a copy of any documents pertaining to the  
12 disposition of the remains of the decedent and tender the original documents  
13 to the interested person; or

14 (b) Provide a copy of any documents pertaining to the disposition of the  
15 remains of the decedent to the interested person and retain the original  
16 documents in the box.

17 (7) If the box is opened for the purpose of making an inventory of its  
18 contents, the credit union shall comply with subsection (4) or (5) of this  
19 section with respect to any will or trust instrument of the decedent that is  
20 found in the box, and shall cause the inventory to be made. The inventory  
21 must be attested to by a representative of the credit union and may be at-  
22 tested to by the interested person, if the interested person is present when  
23 the inventory is made. The credit union shall retain the original inventory  
24 in the box, and shall furnish a copy of the inventory to the interested person  
25 upon request.

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

1 allow the affiant to take possession of the personal property in the box.

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

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

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

19

20

## APPLICABILITY

21

22 **SECTION 27. (1) The amendments to ORS 112.105 by section 1 of this**  
23 **2023 Act apply to parentage determinations made before, on or after**  
24 **the effective date of this 2023 Act.**

25 **(2) The amendments to statutes by sections 2 to 26 of this 2023 Act**  
26 **apply to simple estate affidavits filed on or after the effective date of**  
27 **this 2023 Act.**

28

29

## CAPTIONS

30

31 **SECTION 28. The unit captions used in this 2023 Act are provided**

1 **for the convenience of the reader and do not become part of the stat-**  
2 **utory law of this state or express any legislative intent in the**  
3 **enactment of this 2023 Act.**

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