

Senate Bill 728

Sponsored by COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION (at the request of Oregon Law Commission, Probate Modernization Work Group)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies provisions of law relating to administration of decedents' estates.

Allows party to amend complaint to substitute personal representative of defendant's estate for deceased defendant in certain circumstances.

A BILL FOR AN ACT

1
2 Relating to decedents' estates; creating new provisions; amending ORS 12.190, 21.200, 28.050, 111.005,
3 111.085, 111.095, 111.105, 111.115, 111.205, 111.215, 111.218, 111.235, 111.245, 111.255, 111.275,
4 113.125, 114.225, 114.275, 115.195 and 116.183; and repealing ORS 28.040 and 111.265.

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

ADMINISTRATION OF DECEDENTS' ESTATES

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7
8
9 **SECTION 1. Sections 2 and 3 of this 2021 Act are added to and made a part of ORS**
10 **chapter 111.**

11 **SECTION 2. (1) As used in this section:**

12 (a) **"Probate proceeding" means a proceeding under ORS chapter 111, 112, 113, 114, 115,**
13 **116 or 117 for the administration of a decedent's estate.**

14 (b) **"Probate proceeding" does not include:**

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

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

17 (2) **Except as otherwise provided in ORS 111.205, 111.218, 112.588, 113.005, 113.105, 114.720,**
18 **115.315, 116.083 or 116.253, the Oregon Rules of Civil Procedure and the Oregon Evidence Code**
19 **do not apply to probate proceedings.**

20 (3) **Notwithstanding subsection (2) of this section:**

21 (a) **ORCP 12 applies to any probate proceeding.**

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

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

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

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

30 (b) **"Defendant" means:**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (A) Any party against whom the claim is asserted;
- 2 (B) Any party objecting to the petition or motion; or
- 3 (C) If the court issues a show cause order, the party subject to the order.

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

- 6 (A) A petition or motion for declaratory judgment, including a will contest;
- 7 (B) A petition to remove a court-appointed fiduciary;
- 8 (C) A petition or motion for affirmative relief of any sort against a person;
- 9 (D) A petition or motion to apportion the proceeds of a wrongful death settlement;
- 10 (E) If filed by a person other than the personal representative:

11 (i) A motion to increase the amount of the bond of the personal representative, or to
12 require a new bond;

13 (ii) A petition to restrict the powers of the personal representative;

14 (iii) A petition to determine heirship;

15 (iv) A petition for instructions; or

16 (v) A petition to appoint a fiduciary other than the fiduciary nominated in the will ad-
17 mitted to probate;

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

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

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

23 (A) A petition for summary review of administration of a small estate under ORS 114.550;

24 (B) A petition or motion for summary determination of a claim as provided in ORS
25 114.542 or 115.145 (1)(a); or

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

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

29 **SECTION 3. Hearing.** (1) The court may require that a hearing be held on any petition
30 or motion in a probate proceeding.

31 (2) A hearing must be held on a petition or a motion in a probate proceeding if an ob-
32 jection to the petition or motion is filed and the objection is not withdrawn before the hear-
33 ing.

34 **SECTION 4.** ORS 111.005 is amended to read:

35 111.005. As used in ORS chapters 111, 112, 113, 114, 115, 116 and 117, unless the context requires
36 otherwise:

37 (1) "Abate" means to reduce a devise on account of the insufficiency of the estate to pay all
38 claims, expenses and devises in full.

39 (2) "Action" includes suits and legal proceedings.

40 (3) "Administration" means any proceeding relating to the estate of a decedent, whether the
41 decedent died testate, intestate or partially intestate.

42 (4) "Advancement" means a gift by a decedent to an heir or devisee with the intent that the gift
43 satisfy in whole or in part the heir's share of an intestate estate or the devisee's share of a testate
44 estate.

45 (5) "Assets" includes real, personal and intangible property.

- 1 (6) "Claim" includes liabilities of a decedent, whether arising in contract, in tort or otherwise.
- 2 (7) "Court" or "probate court" means the court in which jurisdiction of probate matters, causes
3 and proceedings is vested as provided in ORS 111.075.
- 4 (8) "Decedent" means a person who has died.
- 5 (9)(a) "Descendant" means a person who is descended from a specific ancestor and includes an
6 adopted child and the adopted child's descendants.
- 7 (b) When used to refer to persons who take by intestate succession, "descendant" does not in-
8 clude a person who is the descendant of a living descendant.
- 9 (10) "Devise," when used as a noun, means property disposed of by a will.
- 10 (11) "Devise," when used as a verb, means to dispose of property by a will.
- 11 (12) "Devisee" means a person designated in a will to receive a devise.
- 12 (13) "Distributee" means a person entitled to any property of a decedent under the will of the
13 decedent or under intestate succession.
- 14 (14) "Domicile" means the place of abode of a person, where the person intends to remain and
15 to which, if absent, the person intends to return.
- 16 (15)(a) "Estate" means the real and personal property of a decedent, as from time to time
17 changed in form by sale, reinvestment, substitutions or otherwise, augmented by any accretions or
18 additions or diminished by any decreases or distributions.
- 19 (b) "Estate" includes tangible and intangible personal property of a decedent domiciled in
20 Oregon, wherever the property is situated.
- 21 (16) "Funeral" includes the burial or other disposition of the remains of a decedent, any plot or
22 tomb and other necessary incidents to the disposition of the remains, any memorial ceremony or
23 other observance and related expenses.
- 24 (17) "General devise" means a devise chargeable generally on the estate of a testator so that
25 the devise is not distinguishable from other parts of the estate and does not constitute a specific
26 devise.
- 27 (18) "Heir" means any person who is or would be entitled under intestate succession to property
28 of a person upon that person's death.
- 29 *[(19) "Interested person" includes heirs, devisees, children, spouses, creditors and any others hav-*
30 *ing a property right or claim against the estate of a decedent that may be affected by the proceeding.*
31 *"Interested person" also includes fiduciaries representing interested persons.]*
- 32 **(19)(a) "Interested person" means any person having a property right in or claim against**
33 **the estate of a decedent that may be affected by the proceeding.**
- 34 **(b) "Interested person" includes a decedent's heir, devisee, child, spouse or creditor if the**
35 **heir, devisee, child, spouse or creditor has a property right in or claim against the decedent's**
36 **estate.**
- 37 **(c) "Interested person" also includes a fiduciary representing a person described in par-**
38 **agraph (a) or (b) of this subsection.**
- 39 (20) "Intestate" means one who dies without leaving a valid will, or the circumstance of dying
40 without leaving a valid will, effectively disposing of all the estate.
- 41 (21) "Intestate succession" means succession to property of a decedent who dies intestate or
42 partially intestate.
- 43 (22) "Issue" means a descendant or descendants.
- 44 (23) "Net estate" means the real and personal property of a decedent, except property used for
45 the support of the surviving spouse and children and for the payment of expenses of administration,

1 funeral expenses, claims and taxes.

2 (24) "Net intestate estate" means any part of the net estate of a decedent not effectively dis-
3 posed of by the will.

4 (25) "Personal property" includes all property other than real property.

5 (26) "Personal representative" includes executor, administrator, administrator with will annexed
6 and administrator de bonis non, but does not include special administrator.

7 (27) "Property" includes both real and personal property.

8 (28) "Real property" includes all legal and equitable interests in land, in fee and for life.

9 (29) "Settlement" includes, as to the estate of a decedent, the full process of administration,
10 distribution and closing.

11 (30) "Specific devise" means a devise of a specific thing or specified part of the estate of a
12 testator that is so described as to be capable of identification. A specific devise is a gift of a part
13 of the estate identified and differentiated from all other parts.

14 (31) "Will" includes codicil and also includes a testamentary instrument that merely appoints a
15 personal representative or that merely revokes or revives another will.

16 **SECTION 5.** ORS 111.085 is amended to read:

17 111.085. (1) The jurisdiction of the probate court includes, but is not limited to:

18 (a) Appointment and qualification of personal representatives.

19 (b) Probate and contest of wills.

20 (c) Determination of heirship.

21 (d) Determination of title to [*and*], rights in **and possession of** property claimed by or against
22 personal representatives, guardians and conservators.

23 (e) Administration, settlement and distribution of estates of decedents.

24 (f) Construction of wills, whether incident to the administration or distribution of an estate or
25 as a separate proceeding.

26 (g) Guardianships and conservatorships, including the appointment and qualification of guardi-
27 ans and conservators and the administration, settlement and closing of guardianships and conser-
28 vatorships.

29 (h) Supervision and disciplining of personal representatives, guardians and conservators.

30 (i) [*Appointment of a successor testamentary trustee where the vacancy occurs prior to, or during*
31 *the pendency of, the probate proceeding.*] **If a testamentary trustee vacancy occurs during a**
32 **probate proceeding and the will does not name a trustee or successor trustee who is able to**
33 **serve, appointment of a testamentary trustee or successor testamentary trustee.**

34 (2) The distributees of an estate administered in Oregon are subject to the jurisdiction of the
35 courts of Oregon regarding any matter involving the distributees' interests in the estate. By ac-
36 cepting a distribution from an estate, the distributee submits personally to the jurisdiction of the
37 courts of this state regarding any matter involving the estate.

38 (3) This section does not preclude other methods of obtaining jurisdiction over a person to whom
39 assets are distributed from an estate.

40 **SECTION 6.** ORS 111.095 is amended to read:

41 111.095. (1) **A probate court has** the general legal and equitable powers of a circuit court [*ap-*
42 *ply to a probate court*].

43 (2) [*The same validity, finality and presumption of regularity shall be accorded to*] The determi-
44 nations, orders and judgments of a probate court [*as to*] **have the same validity, finality and**
45 **presumption of regularity as** those of a circuit court.

1 (3) A probate court has full, legal and equitable powers to make declaratory judgments, as pro-
 2 vided in ORS 28.010 to 28.160, in all matters involved in the administration of an estate, including
 3 matters pertaining to the title of real property and ownership of personal property, the determi-
 4 nation of heirship and the distribution of the estate.

5 (4) **A court having jurisdiction over a probate proceeding may:**

6 (a) **Compel the attendance of, or require the response to inquiries by and production of**
 7 **documents subject to discovery under ORCP 36 from, any person, including a beneficiary,**
 8 **creditor, fiduciary or any other person who may have knowledge about the decedent’s taxes,**
 9 **financial affairs or property.**

10 (b) **Exercise jurisdiction over any transaction entered into by a fiduciary to determine if**
 11 **a conflict of interest existed and enter an appropriate order or judgment with respect to the**
 12 **transaction.**

13 (c) **Surcharge a fiduciary and any surety for any loss caused by failure of a fiduciary to**
 14 **perform a fiduciary duty or any other duty imposed by ORS chapter 111, 112, 113, 114, 115,**
 15 **116 or 117.**

16 (d) **Determine ownership of title for real or personal property.**

17 (e) **Subject to ORS chapter 90, require delivery of possession of property of the decedent,**
 18 **including records, accounts and documents relating to that property.**

19 (f) **Require the fiduciary to produce any and all records that might provide information**
 20 **about the condition of the estate’s property.**

21 (g) **Remove a fiduciary whenever that removal is in the best interests of the interested**
 22 **persons of an estate.**

23 (h) **Appoint a successor fiduciary when a fiduciary has died, resigned or been removed.**

24 (i) **Impose any conditions and limitations upon the fiduciary that the court considers**
 25 **appropriate, including limitations on the duration of the appointment.**

26 (j) **Without hearing or upon such hearing as the court may prescribe, rule on any matter**
 27 **concerning the administration, settlement or distribution of the estate, including the**
 28 **fiduciary’s authority, the court’s approval of the fiduciary’s actions or the court’s in-**
 29 **structions to the fiduciary.**

30 **SECTION 7.** ORS 111.105 is amended to read:

31 111.105. (1) Except as otherwise provided in this section, no issue determined in a probate court
 32 **exercising probate jurisdiction** shall be tried again on appeal or otherwise reexamined in a man-
 33 ner other than those appropriate to issues determined by a court of record with general jurisdiction.

34 (2) Appeals from a circuit court [*sitting in*] **exercising probate jurisdiction** shall be taken to the
 35 Court of Appeals in the manner provided by law for appeals from the circuit court.

36 (3) Appeals from a county court [*sitting in*] **exercising probate jurisdiction** shall be taken to
 37 the circuit court and Court of Appeals in the manner provided by ORS 5.120.

38 **SECTION 8.** ORS 111.115 is amended to read:

39 111.115. (1) An estate proceeding may be transferred at any time from a county court to the
 40 circuit court for the county by order of the county court.

41 (2) An estate proceeding commenced in a county court and in which the county judge is a party
 42 or directly interested must be transferred from the county court to the circuit court for the county
 43 by order of the county court.

44 (3) Upon transfer of an estate proceeding from a county court to the circuit court for the county
 45 under this section:

1 (a) The county clerk shall certify and cause to be filed in the records of the circuit court all
 2 original papers, **records** and proceedings pertaining to the estate proceeding; and

3 (b) Jurisdiction over the estate proceeding vests in the circuit court as if the jurisdiction had
 4 been originally and exclusively vested in the circuit court.

5 **SECTION 9.** ORS 111.205 is amended to read:

6 111.205. *[No particular pleadings or forms of pleadings are required in the exercise of jurisdiction*
 7 *of probate courts. The mode of procedure in the exercise of jurisdiction is in the nature of an action*
 8 *not triable by right to a jury except as otherwise provided by statute. The proceedings shall be in*
 9 *writing and upon the petition of a party in interest or the order of the court. All petitions, reports and*
 10 *accounts in proceedings before a probate court must include a declaration under penalty of perjury in*
 11 *the form required by ORCP 1 E, or an unsworn declaration under ORS 194.800 to 194.835, if the*
 12 *declarant is physically outside the boundaries of the United States, made by at least one of the persons*
 13 *making the petitions, reports and accounts or by the attorney for the person, or in case of a corporation*
 14 *by its agent. The court exercises its powers by means of:]*

15 [(1) A petition of a party in interest.]

16 [(2) A notice to a party.]

17 [(3) A subpoena to a witness.]

18 [(4) Orders and judgments.]

19 [(5) An execution or warrant to enforce its orders and judgments.]

20 **(1) A probate proceeding is commenced by the filing of a petition in a court with juris-**
 21 **isdiction over probate proceedings. Petitions to commence probate proceedings are authorized**
 22 **in ORS chapters 113 and 117.**

23 **(2) No particular pleadings or forms of pleadings are required in the exercise of jurisdic-**
 24 **tion of probate courts. All petitions, inventories, reports and accountings in a probate pro-**
 25 **ceeding must be in writing and include a declaration under penalty of perjury in the form**
 26 **required by ORCP 1 E. The declaration must be made by at least one of the persons making**
 27 **the pleading or by the attorney for the person, or in the case of a business entity by an au-**
 28 **thorized agent. A declarant who is physically outside the boundaries of the United States**
 29 **must make an unsworn declaration under ORS 194.800 to 194.835.**

30 **(3) Actions in a probate proceeding are not triable by a jury except as otherwise provided**
 31 **by law.**

32 **SECTION 10.** ORS 111.215 is amended to read:

33 111.215. **(1)(a) A notice required under ORS chapter 111, 112, 113, 114, 115, 116 or 117 must**
 34 **contain the following:**

35 **(A) The name, address and telephone number of the person giving the notice and the**
 36 **nature of that person's interest in the estate;**

37 **(B) A statement where objections may be filed and the deadline for filing those ob-**
 38 **jections, if any; and**

39 **(C) A statement that the objection must include a plain and concise statement of the**
 40 **basis for the objection.**

41 **(b) The notice must be accompanied by copies of any relevant documents filed or to be**
 42 **filed with the court.**

43 **(2)(a) Except as otherwise specifically provided in ORS [chapters] chapter 111, 112, 113, 114,**
 44 **115, 116 [and] or 117, whenever notice is required [to be given of a hearing on any petition or other**
 45 **matter upon which an order or judgment is sought] in ORS chapter 111, 112, 113, 114, 115, 116 or**

1 **117**, the petitioner or other person filing the [matter] **document** shall cause notice [of the date, time
2 and place of the hearing] to be given to [each person interested in the subject of the hearing or to the
3 attorney of the person, if the person has appeared by attorney or requested that notice be sent to the
4 attorney of the person,] **the personal representative, to each interested person whose interests**
5 **may be affected by the substance of the document or the grant or denial of the requested**
6 **action or relief.**

7 **(b) If the person giving notice under this section knows that a person who is entitled to**
8 **notice under paragraph (a) of this subsection is represented by a fiduciary, the notice must**
9 **also be given to the person's fiduciary.**

10 **(c) If a person who is entitled to notice under paragraph (a) of this subsection is a minor,**
11 **as that term is defined in ORS 125.005, the notice must be given to the minor's parents and,**
12 **if the minor is 14 years of age or older, to the minor.**

13 **(d) As used in this subsection, "parent" means a parent as defined in ORS 419A.004 whose**
14 **rights have not been terminated or whose rights were terminated but reinstated under ORS**
15 **419B.532.**

16 **(3) Except as otherwise specifically provided in ORS chapter 111, 112, 113, 114, 115, 116**
17 **or 117, a notice described in subsection (1) or (2) of this section must be given in one or more**
18 **of the following ways [in any one or more of the following ways and within the following times]:**

19 **(a) [By mailing a copy of the notice addressed to the person or the attorney of the person at least**
20 **14 days before the date set for the hearing.] By first class mail to the person's place of residence**
21 **or business.**

22 **(b) [By delivering a copy of the notice to the person personally or to the attorney of the person at**
23 **least five days before the date set for the hearing.] By personal delivery at the person's place of**
24 **residence or business.**

25 **(c) If the person consents in writing to electronic notice, or if the notice is being given**
26 **to the Department of Human Services or the Oregon Health Authority and the department**
27 **or authority has adopted rules allowing for the department or authority to accept electronic**
28 **notice, by properly directed electronic mail.**

29 **(d) If the person has appeared by attorney or has requested that notice be sent to the**
30 **person's attorney, by mailing or delivery to the person's attorney. If notice is given to a**
31 **person's attorney consistent with this paragraph, the person giving notice is not required to**
32 **also send notice to the person.**

33 **[(c)] (e) If the [address] place of residence or business of any person is not known or cannot**
34 **be ascertained with reasonable diligence, by publishing a copy of the notice once in each of three**
35 **consecutive weeks in a newspaper of general circulation in the county where the [hearing is to be**
36 **held] probate court sits[, the last publication of which shall be at least 10 days before the date set**
37 **for the hearing].**

38 **(f) Upon good cause shown any other method determined by the court to be reasonably**
39 **suitable under the circumstances and likely to result in receipt of the notice, including notice**
40 **by electronic mail irrespective of whether the person has consented to electronic service.**

41 **[(2) Upon good cause shown the court may change the requirements as to the method or time of**
42 **giving notice for any hearing. The court may authorize notice by electronic means under this sub-**
43 **section.]**

44 **(4)(a) Except as otherwise ordered by the court or specifically provided in ORS chapter**
45 **111, 112, 113, 114, 115, 116 or 117, the notice described in subsection (1) of this section must**

1 **be given no later than 15 days before the earlier of the date for filing objections to the peti-**
 2 **tion or other pleading or the date set for the hearing.**

3 **(b) If a notice of time for filing objections or of the date set for a hearing is published**
 4 **as provided in subsection (3)(e) of this section, the last date of publication of the notice shall**
 5 **be at least 15 days before the earlier of the date for the filing of objections to the petition**
 6 **or motion or the date set for the hearing.**

7 [(3)] (5) Proof of the giving of notice **described in subsection (1) of this section** must be made
 8 at or before the hearing, **if any**, and filed in the proceeding.

9 [(4) *The Department of Human Services and the Oregon Health Authority may adopt rules allowing*
 10 *for the department or authority to accept electronic notice in lieu of the notice required under subsection*
 11 *(1) of this section.*]

12 **(6) The time within which an act is to be done under ORS chapter 111, 112, 113, 114, 115,**
 13 **116 or 117 is determined under ORS 174.120 and 174.125.**

14 **SECTION 11.** ORS 111.218 is amended to read:

15 111.218. (1) [*When proof of mailing, or other delivery of notice or other documents, is required to*
 16 *be filed in probate court, proof shall be made in the form required by ORCP 9 C.*] **Proof of service**
 17 **must be made for all documents for which statutes require giving notice. If notice of a doc-**
 18 **ument is not required, no proof of service is required.**

19 **(2) Proof of service of a document may be on the document filed in the form of a certif-**
 20 **icate of service that specifies the date of mailing or other service or may be by a separate**
 21 **filing.**

22 [(2)] (3) [*When*] Proof of publication [*is*] required to be filed in probate court[, *proof shall*] **must**
 23 **be made in the form required by ORCP 7 F.**

24 **SECTION 12.** ORS 111.235 is amended to read:

25 111.235. (1) Any interested person[, *on or before the date set for a hearing,*] **or the personal**
 26 **representative may file a written [*objections*] objection to a petition or motion previously filed.**

27 **(2) An objection filed under this section must:**

28 **(a) Include a plain and concise statement of the basis for the objection;**

29 **(b) Be served on the persons described in ORS 111.215 (2); and**

30 **(c) Be filed on or before the final date for the filing of objections to the petition or mo-**
 31 **tion.**

32 **(3) If no objections are filed before the final date for the filing of objections to the peti-**
 33 **tion or motion, or if all filed objections are withdrawn, the court may sign the proposed order**
 34 **or judgment without further notice.**

35 **SECTION 13.** ORS 111.245 is amended to read:

36 111.245. (1) Proof of documents pursuant to ORS [*chapters*] **chapter** 111, 112, 113, 114, 115, 116
 37 [*and*] **or 117 may be made as follows:**

38 **(a) Of a will, by a certified copy of the will.**

39 **(b) That a will has been probated or established in a foreign jurisdiction, by a certified copy of**
 40 **the [*order*] document entered in the foreign jurisdiction admitting the will to probate or [*evi-***
 41 **dencing its establishment] recognizing the validity of the will.**

42 **(c) Of letters testamentary or letters of administration, by a certified copy of the letters. The**
 43 **certification may include a statement that the letters have not been revoked.**

44 **(2) A document[or order] filed or entered in a foreign jurisdiction may be proved by a copy of**
 45 **the document[or order], certified by a clerk of the court in which the document[or order] was filed**

1 or entered or by any other official having legal custody of the original document[*or order*].

2 **SECTION 14.** ORS 111.255 is amended to read:

3 111.255. If [*a document*] **all** or part of a document is not in the English language, a translation
4 certified by the translator to be accurate may be attached to the document. **If no objection is made**
5 **to the certified translation**, [*and shall be regarded as sufficient evidence of the contents of the doc-*
6 *ument, unless objection is made. In the absence of objection, if*] any person **who** relies in good faith
7 on the accuracy of the translation [*the person shall*] **may** not be prejudiced because of its inaccu-
8 racy.

9 **SECTION 15.** ORS 111.275 is amended to read:

10 111.275. (1) The court in a probate proceeding [*under ORS chapters 111, 112, 113, 114, 115, 116*
11 *and 117*] may enter a limited judgment only for the following decisions of the court:

12 (a) A decision on a petition for appointment or removal of a personal representative, **including**
13 **a successor personal representative.**

14 (b) A decision in a will contest filed in the probate proceeding.

15 (c) **A decision to require delivery of possession of property of the decedent, including**
16 **records, accounts or documents relating to the property.**

17 (d) **A decision to determine ownership of title for real or personal property.**

18 (e) **A decision on a petition or motion for support or elective share.**

19 [(c)] (f) A decision on an objection to [*an*] **a final** accounting.

20 [(d)] (g) A decision on a request made in the proceeding for a declaratory judgment under ORS
21 111.095.

22 [(e)] (h) A decision on a request for an award of expenses under ORS 116.183.

23 [(f) A decision on a petition filed under ORS 112.238 admitting a writing for probate or otherwise
24 acknowledging the validity and intent of the writing.]

25 (i) **A decision on surcharge of a fiduciary or a surety.**

26 [(g)] (j) Such decisions of the court as may be specified by rules or orders of the Chief Justice
27 of the Supreme Court under ORS 18.028.

28 (k) **Any other decision that is a final determination of the rights of one or more persons.**

29 (2) A court may enter a limited judgment under this section only if the court determines that
30 there is no just reason for delay. The judgment document need not reflect the court's determination
31 that there is no just reason for delay.

32 **SECTION 16.** ORS 113.125 is amended to read:

33 113.125. (1) The court shall issue letters testamentary or letters of administration to the personal
34 representative appointed by the court upon the filing with the clerk of the court the bond, if any,
35 required by the court.

36 (2) **The letters testamentary or letters of administration must reflect any conditions or**
37 **limitations imposed by the court on the fiduciary.**

38 [(2)] (3) Letters testamentary may be in the following form:

39 _____

40 _____

41 LETTERS TESTAMENTARY

42 No. _____

43 THIS CERTIFIES that the will of _____, deceased, has been proved and
44 _____ has (have) been appointed and is (are) at the date hereof the duly ap-
45 pointed, qualified and acting _____ (Personal Representative(s) with

1 the Will Annexed) of the will and estate of the decedent.

2 IN WITNESS WHEREOF, I, as Clerk of the Circuit Court of the State of Oregon for the County
3 of _____, in which proceedings for administration upon the estate are pending,
4 subscribe my name and affix the seal of the court this ____ day of _____, 2____.

5
6 _____ Clerk of the Court

7
8 By _____ Deputy

9
10 (Seal)

11 _____
12
13 [(3)] (4) Letters of administration may be in the following form:
14 _____

15
16 LETTERS OF ADMINISTRATION

17 No. _____

18 THIS CERTIFIES that _____ has (have) been appointed and is (are) at the date hereof the
19 duly appointed, qualified and acting personal representative(s) of the estate of _____, deceased,
20 and that no will of the decedent has been proved in this court.

21 IN WITNESS WHEREOF, I, as Clerk of the Circuit Court of the State of Oregon for the County
22 of _____, in which proceedings for administration upon the estate are pending, subscribe my name
23 and affix the seal of the court this ____ day of _____, 2____.

24
25 _____ Clerk of the Court

26
27 By _____ Deputy

28
29 (Seal)

30 _____
31
32 **SECTION 17.** ORS 114.225 is amended to read:

33 114.225. (1) A personal representative has a right to and shall take possession and control of the
34 estate of the decedent, but the personal representative is not required to take possession of or be
35 accountable for property in the possession of an heir or devisee unless in the opinion of the personal
36 representative possession by the personal representative is reasonably required for purposes of ad-
37 ministration.

38 (2) If a personal representative files a motion for delivery of possession of real property
39 under ORS 111.095 (4)(e):

40 (a) The personal representative shall state in the motion why ORS chapter 90 does not
41 apply.

42 (b) The personal representative shall give notice as provided in ORS 111.215 of the motion
43 to all adult occupants of the real property whose names can be determined with reasonable
44 effort. In addition, the personal representative shall attach written notice in a secure man-
45 ner to the main entrance of any dwelling unit that is the subject of the motion.

1 **SECTION 18.** ORS 114.275 is amended to read:

2 114.275. A personal representative shall proceed with the administration, settlement and dis-
3 tribution of the estate without adjudication, order or direction of the court, except as otherwise
4 provided in ORS chapters 111, 112, 113, 114, 115, 116 and 117. However, a personal representative
5 or any interested person may apply to the court for [*authority, approval or instructions on any matter*
6 *concerning the administration, settlement or distribution of the estate, and the court, without hearing*
7 *or upon such hearing as it may prescribe, shall instruct the personal representative or rule on the*
8 *matter as may be appropriate*] **relief pursuant to ORS 111.095 (4).**

9 **SECTION 19.** ORS 115.195 is amended to read:

10 115.195. (1) A claim that has been disallowed by the personal representative may not be allowed
11 by any court except upon some competent, satisfactory evidence other than the testimony of the
12 claimant.

13 (2)(a) Notwithstanding subsection (1) of this section, claims for recovery of public assistance as
14 defined by ORS 411.010 or medical assistance as defined in ORS 414.025 may be allowed based on
15 evidence in the form of documents from the Department of Human Services or the Oregon Health
16 Authority that contain information relating to that public assistance or medical assistance, such as
17 the date that services were provided to the decedent, the classification of those services, the name
18 of the provider or the provider's identification number, and the amount of the public assistance or
19 medical assistance payment made for the services. The documents may be prints obtained from
20 microfilm or microfiche, or printouts from computer records or other electronic storage medium.

21 (b) [*Notwithstanding ORS 40.460 and 40.510,*] A document described in **paragraph (a)** of this
22 subsection is prima facie evidence of the information contained in the document and is not excluded
23 from introduction as hearsay, and extrinsic evidence of authenticity of the document as a condition
24 precedent to admissibility is not required, if the document bears a seal that on its face is the seal
25 of the Director of Human Services or the designee of the director, or the Director of the Oregon
26 Health Authority or the designee of the director, and:

27 [(a)] (A) For a print obtained from microfilm or microfiche, also bears a statement indicating
28 that the print is a true copy of the microfilm or microfiche record, signed by a person who purports
29 to be an officer or employee of the department or the authority; or

30 [(b)] (B) For a printout from computer records or other electronic storage medium, also bears
31 a statement indicating that the printout accurately reflects the data retrieved, signed by a person
32 who purports to be an officer or employee of the department or the authority.

33 **SECTION 20.** ORS 116.183 is amended to read:

34 116.183. (1) A personal representative shall be allowed in the settlement of the final account all
35 necessary expenses incurred in the care, management and settlement of the estate, including rea-
36 sonable fees of appraisers, attorneys and other qualified persons employed by the personal repre-
37 sentative. A partial award of such expenses, including fees, may be allowed prior to settlement of
38 the final account upon petition, showing that the final account reasonably cannot be filed at that
39 time, and upon notice as directed by the court.

40 (2)(a) An award of reasonable attorney fees under this section shall be made after consideration
41 of the customary fees in the community for similar services, the time spent by counsel, counsel's
42 experience in such matters, the skill displayed by counsel, the result obtained, any agreement as to
43 fees between the personal representative and the counsel of the personal representative, the amount
44 of responsibility assumed by counsel considering the total value of the estate, and other factors as
45 may be relevant. No single factor is controlling.

1 (b) Before the court awards attorney fees in an amount less than the amount requested by the
 2 personal representative, the court must allow the attorney an opportunity to submit additional ma-
 3 terials supporting the requested amount.

4 *[(c) ORCP 68 does not apply to requests for attorney fees under this section.]*

5 (3) A personal representative who defends or prosecutes any proceeding in good faith and with
 6 just cause, whether successful or not, is entitled to receive from the estate necessary expenses and
 7 disbursements, including reasonable attorney fees, in the proceeding.

8 **SECTION 21.** ORS 21.200 is amended to read:

9 21.200. (1) In any action or other proceeding subject to a fee under ORS 21.135, 21.145, [or]
 10 21.160 or **21.170**, a \$111 fee must be paid by the party filing one of the following motions and by the
 11 party responding to the motion:

12 (a) A motion for summary judgment under ORCP 47.

13 (b) A motion for judgment notwithstanding the verdict under ORCP 63.

14 (c) A motion for new trial under ORCP 64.

15 (d) A motion for relief from judgment under ORCP 71.

16 (e) A motion for preliminary injunction under ORCP 79.

17 (f) A motion seeking remedies for contempt of court.

18 (2) The fees provided for in this section may not be collected from the state, a county, a city
 19 or a school district.

20 (3) The fees provided for in this section may not be collected for motions made to an arbitrator
 21 or mediator in an arbitration or mediation required or offered by a court, or to any motion relating
 22 to an arbitration or mediation required or offered by a court.

23 (4) The clerk shall file a motion or response that is subject to a fee under this section only if
 24 the fee required by this section is paid when the motion or response is submitted for filing.

25 **SECTION 22.** ORS 28.050 is amended to read:

26 28.050. The enumeration in ORS 28.010, [*to 28.040*] **28.020 or 28.030** does not limit or restrict the
 27 exercise of the general powers conferred in ORS 28.010, in any proceedings where declaratory relief
 28 is sought, in which a judgment will terminate the controversy or remove an uncertainty.

29 **SECTION 23.** ORS **28.040 and 111.265 are repealed.**

30 DECEASED DEFENDANTS IN CIVIL ACTIONS

31
 32
 33 **SECTION 24.** ORS 12.190 is amended to read:

34 12.190. (1) If a person entitled to bring an action dies before the expiration of the time limited
 35 for its commencement, an action may be commenced by the personal representative of the person
 36 after the expiration of that time, and within one year after the death of the person.

37 (2)(a) If a person against whom an action may be brought dies before the expiration of the time
 38 limited for its commencement, an action may be commenced against the personal representative of
 39 the person after the expiration of that time, and within one year after the death of the person.

40 (b) **Notwithstanding paragraph (a) of this subsection, if an action is commenced against**
 41 **a defendant who dies before the expiration of the time limited for commencement of the**
 42 **action or within 60 days after the action is commenced, a party may amend the complaint**
 43 **within 90 days after the action is commenced to substitute the personal representative of the**
 44 **defendant's estate for the deceased defendant. An amendment under this paragraph relates**
 45 **back to the date the complaint was filed.**

MISCELLANEOUS

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SECTION 25. Application. The amendments to ORS 12.190 by section 24 of this 2021 Act apply to actions commenced before, on or after the effective date of this 2021 Act.

SECTION 26. Captions. The unit and section captions used in this 2021 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 2021 Act.
