

**Testimony before the
Senate Committee on the Judiciary and
Ballot Measure 110 Implementation
in support of Senate Bill 182
On behalf of the
Oregon State Bar Estate Planning and Administration Section
February 11, 2021**

Chair Prozanski and Members of the Committee:

My name is Eric Wieland. I'm a lawyer in private practice in Portland, Oregon and the current chair of the Oregon State Bar's Estate Planning and Administration Section. I am here today in support of Senate Bill 182.

The Oregon State Bar (OSB) is a public corporation and an instrumentality of the court with over 15,000 active members. The Oregon State Bar serves the public interest by: regulating the legal profession and improving the quality of legal services; supporting the judiciary and improving the administration of justice; and advancing a fair, inclusive and accessible justice system.

The Estate Planning and Administration section of the Oregon State Bar is made up of over 1000 attorneys who practice throughout Oregon. Our members represent clients from eastern Oregon to Hood River, to the Portland metro area and out to the coast. The Estate Planning and Administration section's executive committee has 16 members with a wealth of experience throughout the state.

Senate Bill 182 will address three problems.

First the bill will automatically prevent individuals from acting as agents under powers of attorney for their spouse once divorce proceedings begin between the spouses. The question of whether to revoke the agency granted under powers of attorney is not considered in many divorce proceedings, meaning that they remain in force following the divorce even though the parties likely would have revoked them had they considered the issue.

Under this proposal, Oregon would join ten other states in providing a default rule that the agency of an ex-spouse granted under a power of attorney would be revoked upon divorce. While this would be the default rule, the parties would continue to have the power to choose

to leave the power of attorney in effect by so specifying in the divorce proceeding or signing a new power of attorney.

Secondly, this bill addresses liability protection to spouses who place real property in a trust. Currently, when a married couple owns real property jointly as tenant by the entirety, each spouse has liability protection from their partner's creditors with respect to the jointly owned property. However, if they place the real property into a revocable living trust for estate planning purposes, they may unknowingly lose that protection. This bill provides the same protection for property placed into a revocable living trust as spouses would normally enjoy if they did not transfer the property to a revocable living trust.

Finally, the bill streamlines the process that an attorney may use to dispose of an old will that is in their possession. The bill specifies how long an attorney must wait before disposing of a will and requires that the attorney must diligently attempt to locate the testator or named personal representative, sign an affidavit, and make a full digital copy of the will. The attorney must retain the digital copy. The length of time the attorney must keep the original will and the digital copy is the same length of time the attorney is required to maintain the original will under the current law.

The bill, as introduced, also addressed transfers of property to a revocable trust after the Settlor's death without the need for a full Probate. The -1 amendment removes these sections of the bill. The section looks forward to working on this issue with stakeholders and hopes to come back to the legislature in the future.

On behalf of the Oregon State Bar's Estate Planning and Administration Section, I thank the committee for its consideration and urge the passage of Senate Bill 182. I am happy to answer any questions.