



RE: Senate Bill 626 - Relating to functional children of deceased persons, modifies definition of "descendant" for purposes of decedents' estates to include person with functional child relationship with decedent and functional child's descendants.

Dear Chair Meek, Vice-Chair Boquist and Members of the Senate Committee on Finance and Revenue:

The Oregon Land Title Association (OLTA) is the professional association for the title insurance industry in Oregon, and membership includes title insurance underwriters and underwritten agent companies, many of which are locally owned throughout the State. OLTA promotes the educational, ethical, professional and legislative interests of the title industry. OLTA works with regulators, legislators, county clerks, and the public to ensure the title industry is responsive to evolving customer needs.

If passed, SB 626 would allow a functional child to inherit from a decedent's estate in the absence of a biological or adoptive relationship. OLTA agrees that where a parent and functional child have invested time, care, and support in one another's wellbeing, recognizing this relationship is a laudable policy goal. **OLTA has no position regarding the policy behind SB 626; but does have concerns over its implementation.**

OLTA underwriter members insure title to real estate. Title insurance is required by institutional lenders to finance the purchase of real property. Title insurance underwriters are often asked to insure over apparent gaps in ownership of real estate in the absence of probate. Section 1.010 of the Oregon Title Insurance Rating Manual states that underwriters may insure titles "**in the absence of probate proceedings** or small estate proceedings to establish a decedent's title ... upon affidavit of heirship or other satisfactory evidence of inheritance." [Link](#). Underwriters do not always insure in the absence of probate, but when they do, they rely on settled heirship relations and the intestacy statute.

Not everyone can make a valid will with the assistance of an attorney. Many heirs cannot afford probate, but nonetheless continue to live in property, pay taxes, and treat it as their own. Sometimes a decedent has passed away decades ago, with no probate having been filed. **It is hard to imagine that OLTA members will be able to continue to rely on heirship to clear gaps in the chain of title if SB 626 passes in its present form.** This means that every estate will need to be probated, to cure the slightest apparent defect in ownership of real property.¹ This would place persons without the means to hire counsel at a significant disadvantage, as well as persons living in rural areas with few practicing attorneys. See, e.g., Oregon State Bar Bulletin, November 2022: "[High Desert, Legal Desert](#)".

If SB 626 passes, OLTA members will have no way to reduce the risk of a claim of a putative functional child, parent, or their respective successors, which may be brought at any time after a decedent dies. The functional child would become an owner of real estate once the court enters its judgment, potentially upsetting the **finality** of a previously-insured title.

OLTA requests that a functional child be required to petition a court for recognition within a limited period of time following the decedent's death. After a discrete period – say 6 to 18 months - a functional child should not be permitted to make a claim on an estate. This limitation should apply mutatis mutandis to the claims of a functional parent, and the descendants of the functional parent and child.

In the alternative, OLTA suggests that the bill be amended to exclude real property interests altogether. As others have mentioned in their testimony, a functional parent can always make a will and name a functional child a beneficiary of his or her estate. But when it comes to bequeathing an interest in real estate, it is even easier than making a will: A variety of devices exist to pass an interest in real estate upon death – a transfer on death deed under the Uniform Real Property Transfer on Death Act (ORS 93.948 *et seq.*), a deed reserving a life estate in the grantor but creating a remainder interest in the grantee, a deed creating a survivorship interest in the child (an *Erickson* estate), or a revocable living trust, for example.

¹ As others have pointed out in testimony, SB 626 presents obstacles to resolving probated estates, too.

For this reason, land should be removed from the scope of SB 626 if there is no amendment with a time limit for a functional child or a functional parent (or their successors) to make a claim of inheritance. There are easy ways to pass an interest in land that will not result in the uncertainty of title that SB 626 would create.

In conclusion, at their discretion OLTA member underwriters may rely on heirship relations and the intestacy statute to insure real estate titles in the absence of probate. Underwriters may “insure around” apparent gaps in the chain of title, to the benefit of persons who may not be able to afford a probate or find an attorney, or around gaps created long ago. SB 626 indefinitely expands the universe of persons who might make claims to real estate with no outer limit on when those claims could be made. There should be a time limit for such claims or real estate title should be excluded from SB626 altogether.

Thank you for your consideration of this input from OLTA.

Submitted by Ian Kyle, Chair, OLTA Legislative Committee

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