

**OREGON STATE BAR
LEGISLATIVE PROPOSAL
Part I – Legislative Summary**

Re: Suits Against Deceased Persons

Submitted by: Council on Court Procedures

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1. Does this amend current law or program? Yes No Specify

Yes, ORS 12.190

2. Problem Presented:

Under ORS 12.190, many civil legal claims survive the death of a would-be defendant and may be pursued against the decedent's estate. However, in order to pursue such a claim, a plaintiff must properly file against the defendant's personal representative. If the plaintiff is aware of the defendant's death, this does not present a problem.

In some cases, a plaintiff may be unaware of the death of the defendant. When such a plaintiff files their case they will often learn of the defendant's death when service is attempted. If they learn of the defendant's death before the statute of limitations expires, they can currently refile against the personal representative and pursue the claim. However, if the statute of limitations expires between the initial filing against the defendant and the time the plaintiff is informed of the defendant's death, courts have held that amending the original claim is not allowable, and that filing a new complaint is barred by the statute of limitations.

Such a plaintiff is left without a remedy because they were unaware of the defendant's death until too late.

3. Solution:

Amend ORS 12.190(2) to permit the personal representative of the defendant's estate to be substituted for a deceased defendant.

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LEGISLATIVE PROPOSAL
Part II – Legislative Language**

Please provide your legislative language below:

Add a new subsection (b) to ORS 12.190(2).

12.190 Effect of death on limitations.

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

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

(b) If a complaint is filed against a person who dies before the expiration of the time limited for commencement of the action or within 60 days after the action is filed, then notwithstanding subparagraph (a), within 90 days after the complaint is filed, a party may amend the pleading to substitute the personal representative of the defendant's estate in place of the deceased defendant. That amendment shall relate back to the date the complaint was filed.