

OREGON STATE BAR
LEGISLATIVE PROPOSAL
Part I – Legislative Summary

Re: Will Retention; Disposal of Wills; Destruction of Wills; Filing of Affidavits

Submitted by: OSB Estate Planning and Administration Section

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

Modifies ORS 112.815 and ORS 112.820

2. Problem Presented:

Current will retention requirements are too long and financially burdensome to law firms, especially solo and small firms. Not only are retaining paper documents for 40 years excessive, the steps and costs once the 40 years has run are also excessive, even when it is known the testator is deceased.

3. Solution:

Reduce the amount of time an attorney is required to retain wills, create a provision that allows for retention of electronic copies of wills, modernize procedures for retention and destruction of wills.

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Part II – Legislative Language

Please provide your legislative language below:

An attorney who has custody of a will may dispose of a will five years after the death of the testator if:

- (1) The attorney knows the testator is deceased; and
- (2) Cannot locate the personal representative and successors named in the Will for the testator following a 90 day diligent inquiry (known addresses, known emails, public records, and known phone numbers), and the named personal representatives will not accept the Will; and
- (3) The attorney must sign an affidavit affirming that they have knowledge of the testator's death and state the undertook diligent inquiry in locating the personal representative(s); and
- (4) The attorney has created a digital complete copy of the affidavit, Will including affidavit of witnesses and codicils.
- (5) The Attorney must retain the complete digital copy of the Will for at least another 15 years before deleting the file.

An attorney who has custody of a will may dispose of a Will after holding the original for twenty years if:

- (1) The attorney cannot locate the testator following a 90 day diligent inquiry (known addresses, known emails, public records, and known phone numbers); and
- (2) The attorney must sign an affidavit affirming that they have attempted to locate the testator and state the undertook diligent inquiry in locating the Testator; and
- (3) The attorney has created a digital complete copy of the affidavit, Will including affidavit of witnesses and codicils.
- (4) The Attorney must retain the complete digital copy of the Will for at least another 15 years before deleting the file.