

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

Re: [SB 182](#) - Omnibus Estate Planning Bill

Submitted by: OSB Estate Planning and Administration Section

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

A) Automatic revocation of agency under power-of-attorney upon divorce. Create an automatic revocation of the agency of the ex-spouse under a power-of-attorney upon divorce. Adds a new statute.

B) Finalize asset transfer to a revocable trust when transfer is incomplete. Allow a petition to be filed requesting a court order authorizing the transfer of assets from the settlor's name to the settlor's revocable trust when there is evidence of intent that the assets were intended to be held in the trust. Adds a new provision (possibly to ORS 130.245).

C) Extend liability protection for tenants by the entirety with revocable trusts. Adopt a provision which extends liability protection for tenants by the entirety if a married couple transfers such real estate to a revocable trust. Modifies ORS 93.180.

D) Will Retention. Modifies ORS 112.815 and ORS 112.820

2. Problem Presented:

A) Power of attorney: If a married couple divorces in Oregon, the former spouse's agency established under a power of attorney is not automatically revoked upon dissolution of marriage. This power, if placed in the hands of a disgruntled or resentful ex-spouse, could have disastrous implications for the principal spouse who granted power of attorney. Currently, ten states have enacted legislation that automatically revokes the agency established under powers of attorney granted from one spouse to another on the date of divorce. In the remaining 40 states, including Oregon, the agent who has been granted power of attorney has the full ability and authority to enter into any transaction on behalf of their principal, former spouse, including selling or transferring ownership of assets, gaining sensitive information regarding accounts, assets, and debts, and contracting for debts in the principal's name. This situation applied to health care powers of attorney as well. The level of severity is high when considering the implications of Oregon's current law.

B) Unfunded Revocable Trust: When a settlor creates a revocable trust, the settlor often fails to complete the funding of the trust by re-titling assets or naming the revocable trust as the pay-on-death beneficiary. The settlor may also remove assets from the trust in order to complete a refinance and then forgets to transfer it back to the trust. Under current

law, the small estate affidavit may only be used if the value of the assets meets certain limitations. As a result, a probate is frequently required to transfer ownership of the assets to the trust.

Oregon has case law which indicates that a trust may be created by listing assets on a schedule to the trust agreement or by stating "in trust". However, financial institutions and title companies will not transfer title to assets to the trust without a court order, letters of administration/testamentary or a small estate affidavit.

- C) Tenants by Entirety:** Under current law, when a married couple owns real estate as tenants by the entirety, there is liability protection for each spouse from the other spouse's separate creditors. If the married couple transfers tenants by the entirety real estate to a trust for estate planning purposes, the couple loses that liability protection.
- D) Will Retention:** Current will retention requirements are too long and financially burdensome to law firms, especially solo and small firms; Retaining paper documents for 40 years is excessive, then the steps and costs once the 40 years has run, even when it is know the testator is deceased.

3. Solution:

Please include each of these concepts in the same bill draft with as narrow a relating clause as possible.

- A) Power of attorney:** Adopt language mirroring automatic revocation statutes from other states; namely, California. California is the closest state to Oregon that has an automatic revocation statute, and it is very straightforward.
- B) Unfunded Revocable Trust:** Modify the current law to allow a petition to be filed requesting a court order authorizing the transfer of assets from the settlor's name to the trust when there is evidence of intent that the assets be held in the trust, that there is a Will that names the trust as the sole beneficiary, and if creditors and DHS are not harmed.
- C) Tenants by entirety:** Add a provision which extends the liability protection for tenants by the entirety if a married couple transfers such real estate to a revocable trust or trusts.
- D) Will Retention:** 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**

SB 182 - <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB182>