

**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) 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.

C) 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) 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.

C) 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) **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.
- C) **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>