

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

Re: SB 308A Estate Planning and Administration – Simple Estate Affidavit

Submitted by: Estate Planning and Administration Section

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

ORS 114.510 and subsequent Small Estate Affidavit Sections

2. Problem Presented:

When a settlor creates a revocable trust, settlors often fail 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.

3. Solution:

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. Proposal is to use the Current Small Estate Affidavit Structure.

Additional background materials are available upon request. Please contact Susan Grabe (sgrabe@osbar.org) or Amy Zubko (azubko@osbar.org) for more information.

**OREGON STATE BAR
LEGISLATIVE PROPOSAL
Part II – Legislative Language**

Please provide your legislative language below:

Please contact the Oregon State Bar before drafting.

Part 1.

1

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SIMPLE ESTATE AFFIDAVIT

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4 ORS 114.510 is amended to read:

5 114.510. (1) A person who meets the requirements of ORS 114.515 may file a [*small*] **simple** es
6 tate affidavit only with regard to an estate in which:

7 (a)(**A**) Not more than \$75,000 of the fair market value of the estate is attributable to personal
8 property; and

9 [(b)] (**B**) Not more than \$200,000 of the fair market value of the estate is attributable to real
10 property[.]; **or**

11 (**b**) **The decedent died testate and:**

12 (**A**) **Not more than \$75,000 of the fair market value of the estate is attributable to spe-**
13 **cifically devised personal property;**

14 (**B**) **Not more than \$200,000 of the fair market value of the estate is attributable to spe-**
15 **cifically devised real property; and**

16 (**C**) **The balance of the fair market value of the estate is attributable to property that is**
17 **devised to the trustee of a trust of which the decedent was a settlor, as defined in ORS**
18 **130.010, and which came into existence prior to the decedent's death.**

19 (2)(a) The fair market value of the estate **under subsection (1) of this section** shall be deter-
20 mined [*under this section*]:

21 [(a)] (**A**) As of the date of death; or

22 [(b)] (**B**) If the date of death is more than one year before the date of filing of the affidavit, as
23 of a date within 45 days before the filing of the affidavit.

24 [(3)] (**b**) In determining fair market value under this section, the fair market value of the entire
25 interest in the property included in the estate shall be used without reduction for liens or other
26 debts.

27 ORS 114.515 is amended to read:

28 114.515. (1) If the estate of a decedent meets the requirements of ORS 114.510, any of the fol-
29 lowing persons may file a [*small*] **simple** estate affidavit with the clerk of the probate court in any
30 county where there is venue for a proceeding seeking the appointment of a personal representative
31 for the estate:

32 (a) One or more of the claiming successors of the decedent.

33 (b) If the decedent died testate, any person named as personal representative in the decedent's

34 will.

35 (c) The Director of Human Services, the Director of the Oregon Health Authority or an attorney
36 approved under ORS 114.517, if the decedent received public assistance as defined in ORS 411.010,
37 received medical assistance as defined in ORS 414.025 or received care at an institution as defined
38 in ORS 179.010, and it appears that the assistance or the cost of care may be recovered from the
39 estate of the decedent

40 (2) A person may not file a [small] **simple** estate affidavit if:

41 (a) The person would be disqualified from acting as a personal representative under ORS
42 113.095; or

43 (b) The person has been convicted of a felony in Oregon or in another jurisdiction.

44 (3) A [small] **simple** estate affidavit may not be filed until 30 days after the death of the
1 decedent.

2 (4) A [small] **simple** estate affidavit must contain the information required in ORS 114.525 and
3 shall be made a part of the probate records. If the affiant is an attorney approved by the Director
4 of Human Services or the Director of the Oregon Health Authority, a copy of the document ap-
5 proving the attorney must be attached to the affidavit.

6 (5) The clerk of the probate court shall charge and collect the fee established under ORS 21.145
7 for the filing of a [small] **simple** estate affidavit.

8 (6)(a) Except as provided in subsection (7) of this section, the affiant shall file an amended
9 [small] **simple** estate affidavit in the following circumstances:

10 (A) To correct a material error or omission in a previous affidavit.

11 (B) To include property not described in a previous affidavit.

12 (b) The amended affidavit must include all information required under ORS 114.525 and state the
13 value of the property as of the date used to prepare the original affidavit.

14 (7) If the fair market value of the property of the estate exceeds the value limitations for a
15 [small] **simple** estate under ORS 114.510 (1) **and the estate of the decedent does not meet the**
16 **requirements of ORS 114.510 (1)(b)**, an affiant may not file an amended [small] **simple** estate af-
17 fidavit under subsection (6) of this section and the affiant's authority with regard to the estate is
18 terminated, except that the affiant shall deliver assets of the estate in the affiant's possession upon
19 request by a personal representative appointed under ORS 113.085. The affiant shall promptly file
20 notice with the court that the estate of the decedent is not subject to ORS 114.505 to 114.560 and
21 shall serve a copy of the notice on each person who received a copy of the previous affidavit.

22 (8) The clerk of the probate court may acknowledge a [small] **simple** estate affidavit upon
23 presentation of the identification of the affiant and the affiant's statement under penalty of perjury.
24 ORS 114.537 is amended to read:

25 114.537. (1) If a person who is eligible to file a [small] **simple** estate affidavit is aware that the
26 decedent was the sole lessee or the last surviving lessee of a safe deposit box or was the owner of
27 the contents of a safe deposit box at the time of the decedent's death, the claiming successor or
28 other person may not file a [small] **simple** estate affidavit until the person requests an inventory
29 of the box under ORS 708A.655, if the lessor of the box is an Oregon operating institution as defined
30 in ORS 706.008, or under ORS 723.844, if the lessor of the box is a credit union as defined in ORS
31 723.008. Upon receiving the request, the lessor of the box shall cause an inventory of the contents
32 of the box to be made. The lessor shall retain the original inventory in the box and shall provide
33 a copy of the inventory to the person requesting the inventory. The person requesting the inventory

34 shall take the contents of the box into consideration in determining whether the estate of the
35 decedent is within the limits prescribed by ORS 114.510. If the person files a [small] **simple** estate
36 affidavit, the affidavit must contain a statement of the value of the contents of the box.

37 (2) If an affiant becomes aware after the filing of a [small] **simple** estate affidavit that the
38 decedent was the sole lessee or the last surviving lessee of a safe deposit box or was the owner of
39 the contents of a safe deposit box at the time of the decedent's death, the affiant shall promptly
40 request an inventory of the box under ORS 708A.655, if the lessor of the box is an Oregon operating
41 institution as defined in ORS 706.008, or under ORS 723.844, if the lessor of the box is a credit union
42 as defined in ORS 723.008. Upon receiving the request, the lessor of the box shall cause an inventory
43 of the contents of the box to be made. The lessor shall retain the original inventory in the box and
44 shall provide a copy of the inventory to the affiant. **If the estate of the decedent meets the re-**
45 **quirements of ORS 114.510 (1)(b) or** if the estate of the decedent remains within the limits pre-
1 scribed by ORS 114.510 **(1)(a)** after consideration of the value of the contents of the box, the affiant
2 shall file an amended [small] **simple** estate affidavit under ORS 114.515 (6). Upon receiving a certi-
3 fied copy of the amended affidavit, the lessor shall allow the affiant to take possession of the con-
4 tents of the box. **If the estate of the decedent does not meet the requirements of ORS 114.510**
5 **(1)(b) and** the estate of the decedent exceeds the limits prescribed by ORS 114.510 **(1)(a)** after
6 consideration of the value of the contents of the box, the affiant may not file an amended [small]
7 **simple** estate affidavit and shall file notice with the court that the estate of the decedent is not
8 subject to ORS 114.505 to 114.560 and shall serve a copy of the notice on the lessor of the box. The
9 lessor of the box shall deliver the contents of the box to the personal representative for the
10 decedent, or to such other person as may be provided for under the terms of the lease of the box.
11 ORS 114.540 is amended to read:

12 114.540. (1)(a) A claim against an estate with respect to which a [small] **simple** estate affidavit
13 is filed may be presented to the affiant within four months after the affidavit was filed. If an
14 amended [small] **simple** estate affidavit is filed under ORS 114.515 (6), claims against the estate may
15 be presented within four months after the filing of the amended affidavit.

16 (b) Except as provided in ORS 114.550 **or 130.350**, a claim presented after the limitations de-
17 scribed in paragraph (a) of this subsection is barred.

18 (c) Filing a claim with the court does not constitute presentation to the affiant.

19 (d)(A) Except as provided in subparagraph (B) of this paragraph, a claim is presented to the
20 affiant when the claim is mailed or personally delivered to the affiant at the mailing address for
21 presentment of claims included in the [small] **simple** estate affidavit under ORS 114.525.

22 (B) If the affiant authorized creditors to present claims by electronic mail or facsimile commu-
23 nication in the [small] **simple** estate affidavit as provided in ORS 114.525, a claim is presented to
24 the affiant when it is sent to the electronic mail address or the facsimile number designated by the
25 affiant for presentment of claims, unless the sender receives a notice that the electronic mail was
26 not delivered or the facsimile communication was not successful. If the affiant denies receiving the
27 electronic mail or facsimile communication, the burden of proof is on the creditor to demonstrate
28 that the electronic mail was properly addressed and sent or that the facsimile communication was
29 properly addressed and successfully delivered or transmitted.

30 (e) Each claim presented to the affiant must include the information required by ORS 115.025.

31 (2)(a) A claim presented to the affiant that was not listed in the [small] **simple** estate affidavit
32 shall be considered allowed as presented unless within 60 days after the date of presentment of the
33 claim the affiant mails or delivers a notice of disallowance of the claim in whole or in part to the

claimant and any attorney for the claimant. A notice of disallowance of a claim must state the reason for the disallowance and inform the claimant that the claim has been disallowed in whole or in part and, to the extent disallowed, will be barred unless:

(A) The claimant files a petition for summary determination as provided in ORS 114.542; or

(B) A petition for appointment of a personal representative of the estate is filed within the time allowed under ORS 114.555.

(b) Statement of a reason for disallowance under this subsection is not an admission by the affiant and does not preclude the assertion of other defenses to the claim.

ORS 238.390 is amended to read:

238.390. (1) If a member of the system dies before retiring, the amount of money, if any, credited at the time of death to the member account of the member in the fund shall be paid to the beneficiaries designated by the member. For this purpose a member may designate as a beneficiary any person or the executor or administrator of the estate of the member or a trustee named by the member to execute an express trust in regard to such amount. The termination of a person's membership in the system pursuant to ORS 238.095 (1) or (2) invalidates any designation of beneficiary made by the person before the termination of membership.

(2) If a member dies before retiring and has not designated a beneficiary under subsection (1) of this section, the Public Employees Retirement Board shall pay the amount of money, if any, credited at the time of death to the member account of the deceased member to a personal representative appointed for the estate of the deceased member. *[If a small estate affidavit has been filed under ORS 114.505 to 114.560, and the amount of money credited to the account does not exceed the maximum amount of personal property for which a small estate affidavit may be filed under ORS 114.505 to 114.560, the board shall pay the amount to the person who filed the affidavit.]* **If a simple estate affidavit has been filed under ORS 114.515, the board shall pay the amount to the person who filed the affidavit if:**

(a) The estate of the decedent remains within the limits prescribed by ORS 114.510 (1)(a) after consideration of the amount of money credited at the time of death to the member account; or

(b) The estate of the decedent meets the requirements of ORS 114.510 (1)(b).

(3) The beneficiary designated under subsection (1) of this section may elect to receive the amount payable in actuarially determined monthly payments for the life of such beneficiary as long as such monthly payments are at least \$200.

(4) Accrued benefits due a retired member at the time of death are payable to the designated beneficiary or as provided in subsection (2) of this section. For the purpose of determining accrued benefits due a retired member at the time of death, accrued benefits are considered to have ceased as of the last day of the month preceding the month in which the retired member dies; but if Option 2 or Option 3 under ORS 238.305 has been elected as provided in this chapter and the beneficiary survives the retired member, the benefits to the beneficiary shall commence as of the first day of the month in which the retired member dies, and payment of benefits under Option 2 or Option 3 shall cease with the payment for the month preceding the month in which the beneficiary dies.

(5) If a member dies before retiring and has designated a beneficiary under subsection (1) of this section, but the beneficiary dies before the member, or dies before distribution is made under this section, the Public Employees Retirement Board shall pay the amount of money, if any, that would otherwise have been paid to the beneficiary to a personal representative appointed for the estate of the deceased beneficiary. *[If a small estate affidavit has been filed under ORS 114.505 to 114.560,*

34 *and the amount of money that would have been paid to the beneficiary does not exceed the maximum*
35 *amount of personal property for which a small estate affidavit may be filed under ORS 114.505 to*
36 *114.560, the board shall pay the amount to the person who filed the small estate affidavit on behalf of*
37 *the estate of the beneficiary.] If a simple estate affidavit regarding the deceased beneficiary's*
38 **estate has been filed under ORS 114.515, the board shall pay the amount to the person who**
39 **filed the simple estate affidavit if:**

40 **(a) The estate of the deceased beneficiary remains within the limits prescribed by ORS**
41 **114.510 (1)(a) after consideration of the amount of money that would have been payable to**
42 **the deceased beneficiary; or**

43 **(b) The estate of the deceased beneficiary meets the requirements of ORS 114.510 (1)(b).**

44 (6) Interest upon the member account of the member shall accrue until the date that the amount
45 in the member account is distributed. Any balance in the variable account of the deceased member
1 is considered to be transferred to the regular account of the member as of the date of death. The
2 board shall establish procedures for computing and crediting interest on the balance in the member
3 account for the period between the date of death and date of distribution.

4 (7) Payment by the board of amounts in the manner provided by this section completely dis-
5 charges the board and system on account of the death, and shall hold the board and system harmless
6 from any claim for wrongful payment.