



# Small Estates

- the new and, in theory, improved edition

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# Probate in Oregon

- Two Options
  - Probate
  - Affidavit of Claiming Successor aka Small Estate
- There are not ancillary or other abbreviated options in Oregon
- Oregon Law Commission is updating and modernizing the probate code. There were significant changes made in the 2019 legislative session that affect small estate proceedings for people who died on or after January 1, 2020 (\*)

# What is a Small Estate?

- Probate process for estate with a limited value
  - Total value \$275,000 [ORS 114.510 – previously 114.515 (2)]
    - \$75,000 personal property
    - \$200,000 real property – Fair Market Value
- If the Fair Market Value exceeds the value limitations the affiant's authority is terminated. ORS 114.515 (7) \*
- The Fair Market Value is the value of the entire interest without reduction for liens or other debts. ORS 114.510 [previously 114.515 (5)]

# Valuation Date (ORS 114.510\*)

- For decedents who died on or after January 1, 2020:
  - Date of death Fair Market Value if date of death is within one year of filing the small estate.
  - Fair Market Value within 45 days before filing the affidavit of small estate if it has been more than one year from the date of death.
- For decedents who died prior to January 1, 2020:
  - ORS did not include a valuation date
  - Generally determined at the decedent's date of death

# Who Can file a Small Estate?

- One or More Claiming Successors.
- The person named as personal representative in the deceased's will.
- As of January 1, 2010, the Director of Human Services, the Director of the Oregon Health Authority or an attorney appointed by either of them if the decedent received certain public assistance and the assistance may be recovered from the decedent's estate. (ORS 114.515)
- A Claiming Successor is:
  - The heirs or devisees of the decedent, and
  - Any creditor of the estate entitled to payment or reimbursement from the estate. (ORS 114.505)

# Affiant's Authority

- The affiant is the person who signed the small estate affidavit and is has a general duty to “administer, preserve, settle and distribute” the estate according to the will or intestate succession laws “as expeditiously and with as little sacrifice of value as is reasonable under the circumstances.” ORS 114.545 (1)\*
- The affiant may open a checking account. ORS 114.545 (1)(e) (as of January 1, 2016)
- The affiant may sell the estate property. ORS 114.545 (h) & ORS 114.547\*
- Note: The affiant's authority is narrower than a personal representative's authority, for example ORS 114.545 does not authorize the affiant to borrow or lend money on behalf of the estate.

# Sales to Third Parties

## ORS 114.545 (7) and 114.547\*

Affiant can sell the estate property

“each heir or devisee who would succeed to the interest conveyed ... [needs to] join in the conveyance.” ORS 114.547

Exception, the DHS, OHA, or attorney appointed by it can convey the property to a third party for valuable consideration without the heirs or devisees joining in the conveyance. ORS 114.545 (2) (as of January 1, 2016)

The affiant can convey the property free and clear of

the rights of the creditors of the decedent and,

as of January 1, 2016, the liens or encumbrances of the heirs or devisees. ORS 114.545 (3)

# Claim vs Encumbrance or what has to be paid in escrow

- A voluntary or involuntary lien against the deceased owner remains a lien on the property. The death of the debtor does not avoid, discharge, or otherwise remove a secured interest or lien on the property.
- A claim filed in the estate does not attach to the real property – it attaches to the property held by the estate, so either the real property or the proceeds from the sale. “The presentation and allowance of a claim in a proceeding ... does not make the claimant a secured creditor.” ORS 114.545 (3)
- There is statutory protection for a “purchaser in good faith and for a valuable consideration” from the interests of claiming successors; the purchaser has no duty as to how the affiant applies the consideration. ORS 114.547 (6)



# Time frames

Affiant basically has two years to administer the estate

- A small estate affidavit can be filed 30 days after the decedent's death. ORS 114.515 (3)
- The affiant has two years from the date the affidavit is filed to sell the property. ORS 114.547\*
- The affiant may distribute the assets of the estate after the four month claim period is complete, the unsecured creditors have been paid,\* and a petition to appoint a PR has not filed and before the expiration of the two year period that began with the filling of the small estate affidavit.\* ORS 114.555 (1)(a) [formerly 114.515 (5)]
- Property conveyed to the heirs or devisees is "subject to the rights of the creditors of the decedent or the estate" for the two year period beginning with the filing of the affidavit. ORS 114.555 (2)\*

# Deed for Distribution

The affiant “shall cause to be recorded” a bargain and sale deed when it is transferring a real property interest from the estate to the heirs or devisees.  
ORS 114.555 (3)\*

The 2019 legislation changed the distribution deed from an “affiant or claiming successor deed” to a “bargain and sale deed.”

The requirement to record the distribution deed remains the same.

Date of Change	New Rule	Old Rule	
January 1, 2006	A supplemental affidavit can be filed to include property not in the original affidavit	An affidavit could be amended during the four month period after filing the affidavit	
January 1, 2010	The State or an attorney appointed by the State can initiate a small estate proceeding if the decedent was receiving public assistance	N/A	
January 1, 2016	The State or an attorney authorized by the estate acting as the affiant can convey the real property without the heirs or devisees joining in the conveyance	The heirs or devisees were required to join in the conveyance	
January 1, 2016	The small estate statutes authorize the affiant to open a deposit account for the estate	There was no statutory authority for the affiant to open a checking account	
January 1, 2016	The affiant can convey the estate property to third parties free and clear of the liens or encumbrances of the heirs or devisees	The heirs or devisees liens and encumbrances had to be cleared through escrow	

January 1, 2020  
Applies to decedents who die after January 1, 2020

The Fair Market Value of the Property is determined at date of death or at a date within 45 days of filing the Small Estate Affidavit if the Small Estate Affidavit is filed more than a year after the date of death

The Fair Market Value was determined on the date of death

January 1, 2020  
Applies to decedents who die after January 1, 2020

The affiant's authority is terminated if the Fair Market Value exceeds the small estate value limitation

There was not an explicit statute that stated what would happen if the property exceed the small estate value limitations

January 1, 2020  
Applies to decedents who die after January 1, 2020

The affiant is authorized to sell the small estate property in the two year period starting with the filing of the small estate affidavit

There was no statutory time limit on the affiant's authority to sell the small estate property



The End!