



# **A Date with Probate: Navigating Death, Title & the Probate Process**

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# Introduction

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# Key Definitions (ORS 111.005)

- **Estate:** Real and personal property of a decedent
- **Decedent:** Deceased person
- **Testate vs. Intestate:** With a will vs. without a will
- **Heirs:** Relatives inheriting under intestacy laws
- **Devisees:** Named in will to receive property
- **Personal Representative:** Court appointed fiduciary to administer the estate
- **Letters Testamentary / Administration:** Court documents appointing Personal Representative
- **Simple Estate Affidavit:** Alternative to probate for smaller estates (ORS 114.515)

# What is a Will

- Set of instructions that explains how property is to be distributed after death
- Written, signed by testator and two witnesses (ORS 112.235)
- A will can be amended at any time by testator
- Does not avoid probate; can reduce the cost and time
- Out-of-state wills generally valid if executed under laws of state where created

# What is Probate?

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- Court supervised process to distribute assets of a decedent
- Ensures debts are addressed, title cleared, and property transferred
- Not always required – depends on assets type, ownership, value and other considerations

# When Might Probate Be Needed?

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- Clear title to real property, stocks, or accounts held solely by a decedent
- Collect debts owed to decedent
- Pay debts owed by a decedent
- Resolve disputes over entitlement to assets
- Prove validity of a will

# Benefits of Probate for Title

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- Provides legal determination of rightful ownership
- Clears title for insurable conveyances
- Addresses creditor claims to prevent future challenges
  - Triggers 4-month claim period
- Creates a public record (publication, filings, final judgment)

# Major Steps in Probate

- File petition to open probate (ORS 111.205)
- Court appoints PR; letters issued
- Mail notice to heirs/devisees, DHS/OHA, & other interested parties; publish notice for 3 consecutive weeks
- File inventory (within 90 days); appraise estate assets
- Search for and manage claims; creditors have 4 months from publication (and 45 days for mailed notice) to present claims
- Pay taxes and expenses
- Final accounting, court approval, distribution of assets; PR discharged; estate is closed



# Conveyances During Probate

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- PR executes deed, not heirs/devisees
- PR can convey to non-devisees if proper notice is given
- Personal Representative Deed (bargain and sale deed)
- Grantor clause example:

“John Doe, Personal Representative of the Estate of Jane Doe, deceased, Multnomah County Circuit Court Case No. 25PB99999, Grantor, **conveys to...**”

# Closing & Reopening Estates

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- Estate is closed after everything is paid, property distributed, and PR is discharged
- Reopening possible for newly discovered property, unperformed acts, or court-approved cause
- Barred claims cannot be reasserted

- Out-of-state probate has no jurisdiction over Oregon real property
- Ancillary probate required in county where property is located
- If presented with probate documentation in another state, consult your underwriter
- Watch out for FIRPTA (*out-of-country* probate)

# Simple Estate Affidavit (ORS 114.515)



- Formerly “Small Estates”
- Eligibility:  $\leq$  \$200,000 real property,  $\leq$  \$75,000 personal property,  $\leq$  \$275,000 total
- May be filed 30+ days after death
- Less court oversight than full probate
- Must mail or deliver a copy of the affidavit within 30 days of filing
- Claims presented to affiant within 4 months after filing (or amended filing)
- Affiant administers assets
- Title may be conveyed after all claims, expenses and taxes have been paid

# No Probate Situations

- No statutory requirement to open probate, but underwriting may require depending on risk
- May insure based on Affidavit of Heirship / Lack of Probate Affidavit
- Requires proof of death (DC), affidavit, copy of will (if any), evidence of creditor resolution; all heirs join in deed
- Additional title premium applies for increased risk (see Section 1.010 of Rate Manual)

# Vesting & Survivorship

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- Title vests immediately in heirs/devisees at death, subject to support claims, creditor's rights, administration/sale by a PR (ORS 114.215)
- Tenancy by the Entirety: Default for spouses unless clearly stated otherwise (ORS 93.180)
- Survivorship Rights: Must be expressly stated in deed
- Without survivorship language, presumed tenants in common (ORS 93.180)

# Intestate Succession (ORS Ch. 112)

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- Generally:
  - Surviving spouse or registered domestic partner
  - Children
  - Parents
  - Siblings (and their descendants)
  - Grandparents and more distant relatives
  - Escheat to the State

# Transfer on Death Deeds (TODD)

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- Deed recorded during life, effective at death
- Revocable anytime
- Avoids probate, but subject to estate creditor claims for 18 months (as opposed to 4 months when estate is probated)
- Must confirm no revocation or prior transfer
- TODD Affidavit and Indemnity



# What is a Trust

- Legal arrangement in which one party (**trustor**, also called the **settlor** or **grantor**) transfers property to another party (the **trustee**) to hold and manage for the benefit of one or more persons (the **beneficiaries**) according to the terms set out in a trust agreement.
- Estate planning tool
- Avoids probate
- Revocable vs Irrevocable
- Often more complex

## QUESTIONS?

