

House Bill 2289

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Judiciary for Oregon State Bar Elder Law Section)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows claiming successor to small estate or personal representative to file one or more supplemental affidavits at any time after filing of original affidavit for purpose of correcting original affidavit.

A BILL FOR AN ACT

1
2 Relating to small estate affidavits; creating new provisions; and amending ORS 114.515 and 114.540.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 114.515 is amended to read:

5 114.515. (1) If the estate of a decedent meets the requirements of subsection (2) of this section,
6 any of the following persons may file an affidavit with the clerk of the probate court in any county
7 where there is venue for a proceeding seeking the appointment of a personal representative for the
8 estate:

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

10 (b) If the decedent died testate, any person named as personal representative in the decedent's
11 will.

12 (2) An affidavit under this section may be filed only if:

13 (a) The fair market value of the estate is \$140,000 or less;

14 (b) Not more than \$50,000 of the fair market value of the estate is attributable to personal
15 property; and

16 (c) Not more than \$90,000 of the fair market value of the estate is attributable to real property.

17 (3) An affidavit under this section may not be filed until 30 days after the death of the decedent.

18 (4) An affidavit filed under the provisions of this section must contain the information required
19 in ORS 114.525 and shall be made a part of the probate records.

20 (5) In determining fair market value under this section, the fair market value of the entire in-
21 terest in the property included in the estate shall be used without reduction for liens or other debts.

22 (6) **One or more supplemental affidavits may be filed at any time after the filing of an**
23 **affidavit under this section for the purpose of correcting the original affidavit. Copies of all**
24 **previously filed affidavits must be attached to the supplemental affidavit and all information**
25 **required in ORS 114.525 must be reflected in the supplemental affidavit. A supplemental af-**
26 **fidavit may not be filed if by reason of the corrections any limitation imposed by subsection**
27 **(2) of this section is exceeded.**

28 [~~4~~] (7) The clerk of the probate court shall charge and collect a fee of [~~\$21~~] **\$23** for the filing
29 of [~~the~~] **any affidavit under this section.**

30 [~~5~~] *An affidavit filed under this section may be amended by a new affidavit containing the infor-*

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 *mation required in ORS 114.525 filed by one or more of the claiming successors within four months*
 2 *after the filing of the prior affidavit.]*

3 *[(6) In addition to the fee provided for in subsection (4) of this section, for the period commencing*
 4 *September 1, 2003, and ending June 30, 2005, the clerk of the probate court shall charge and collect a*
 5 *surcharge of \$6 upon the filing of an affidavit under this section.]*

6 **SECTION 2.** ORS 114.515, as amended by section 60, chapter 737, Oregon Laws 2003, is
 7 amended to read:

8 114.515. (1) If the estate of a decedent meets the requirements of subsection (2) of this section,
 9 any of the following persons may file an affidavit with the clerk of the probate court in any county
 10 where there is venue for a proceeding seeking the appointment of a personal representative for the
 11 estate:

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

13 (b) If the decedent died testate, any person named as personal representative in the decedent's
 14 will.

15 (2) An affidavit under this section may be filed only if:

16 (a) The fair market value of the estate is \$140,000 or less;

17 (b) Not more than \$50,000 of the fair market value of the estate is attributable to personal
 18 property; and

19 (c) Not more than \$90,000 of the fair market value of the estate is attributable to real property.

20 (3) An affidavit under this section may not be filed until 30 days after the death of the decedent.

21 (4) An affidavit filed under the provisions of this section must contain the information required
 22 in ORS 114.525 and shall be made a part of the probate records.

23 (5) In determining fair market value under this section, the fair market value of the entire in-
 24 terest in the property included in the estate shall be used without reduction for liens or other debts.

25 **(6) One or more supplemental affidavits may be filed at any time after the filing of an**
 26 **affidavit under this section for the purpose of correcting the original affidavit. Copies of all**
 27 **previously filed affidavits must be attached to the supplemental affidavit and all information**
 28 **required in ORS 114.525 must be reflected in the supplemental affidavit. A supplemental af-**
 29 **fidavit may not be filed if by reason of the corrections any limitation imposed by subsection**
 30 **(2) of this section is exceeded.**

31 [(4)] (7) The clerk of the probate court shall charge and collect a fee of \$23 for the filing of
 32 [the] **any affidavit under this section.**

33 [(5) *An affidavit filed under this section may be amended by a new affidavit containing the infor-*
 34 *mation required in ORS 114.525 filed by one or more of the claiming successors within four months*
 35 *after the filing of the prior affidavit.]*

36 **SECTION 3. The amendments to ORS 114.515 by sections 1 and 2 of this 2005 Act apply**
 37 **to all affidavits filed under ORS 114.505 to 114.560, whether filed before, on or after the ef-**
 38 **fective date of this 2005 Act.**

39 **SECTION 4.** ORS 114.540 is amended to read:

40 114.540. (1) A claim against an estate with respect to which an affidavit is filed under ORS
 41 114.515 may be presented to the affiant within four months after the affidavit was filed. **If a sup-**
 42 **plemental affidavit is filed under ORS 114.515 (6), claims against the estate must be filed**
 43 **within four months after the filing of the supplemental affidavit.** Each claim presented to the
 44 affiant [shall] **must** include the information required by ORS 115.025.

45 (2) A claim presented to the affiant shall be considered allowed as presented unless within 60

1 days after the date of presentment of the claim the affiant mails or delivers a notice of disallowance
 2 of the claim in whole or in part to the claimant and any attorney for the claimant. A notice of dis-
 3 allowance of a claim shall inform the claimant that the claim has been disallowed in whole or in
 4 part and, to the extent disallowed, will be barred unless:

5 (a) The claimant proceeds as provided in subsection (3) of this section; or

6 (b) A personal representative is appointed within the time allowed under ORS 114.555.

7 (3) A creditor of the estate whose claim has been presented within the time permitted by sub-
 8 section (1) of this section and disallowed by the affiant may within 30 days after the date of mailing
 9 or delivery of the notice of disallowance file with the probate court a petition for summary deter-
 10 mination of the claim by the court. A creditor of the decedent whose claim is listed in the affidavit
 11 as disputed may within four months after the filing of the affidavit file with the probate court a
 12 petition for summary determination of the creditor's claim by the court. The court shall hear the
 13 matter without a jury, after notice to the creditor and affiant, and any interested person may be
 14 heard in the proceeding. The claim may be proved as provided in ORS 115.195 (2). Upon the hearing
 15 the court shall determine the claim in a summary manner and shall make an order allowing or dis-
 16 allowing the claim in whole or in part. If the court allows the claim in whole or in part, the order
 17 shall direct the affiant, to the extent of property of the estate allocable to the payment of the claim
 18 pursuant to ORS 115.125, or any claiming successor to whom payment, delivery or transfer has been
 19 made under ORS 114.505 to 114.560 as a person entitled thereto as disclosed in the affidavit, to the
 20 extent of the value of the property received, to pay to the creditor the amount so allowed. No appeal
 21 may be taken from the order of the court made upon the summary determination.

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