

# House Bill 2314

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## 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**.

Modifies duties of guardians and conservators after death of protected person.

## A BILL FOR AN ACT

1  
2 Relating to estates of decedents; creating new provisions; and amending ORS 87.533, 113.238, 115.125,  
3 125.095, 125.475, 125.520 and 125.530.

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

5 **SECTION 1.** ORS 113.238 is amended to read:

6 113.238. (1) Any person who has knowledge that a decedent died wholly intestate, that the  
7 decedent owned property subject to probate in Oregon and that the decedent died without a known  
8 heir shall give notice of the death within [48 hours] **30 days** after acquiring that knowledge to an  
9 estate administrator of the Department of State Lands appointed under ORS 113.235.

10 (2) Except as provided by ORS **125.530**, 708A.430, 722.262 and 723.466, a person may not dispose  
11 of or diminish any assets of the estate of a decedent who has died wholly intestate, who owned  
12 property subject to probate in Oregon and who died without a known heir unless the person has  
13 prior written approval of an estate administrator of the Department of State Lands appointed under  
14 ORS 113.235. The prohibition of this subsection:

15 (a) Applies to a guardian or conservator for the decedent; and

16 (b) Does not apply to a personal representative appointed under ORS 113.085 (3) or to an affiant  
17 authorized under ORS 114.520 to file an affidavit under ORS 114.515.

18 (3) For purposes of this section, a known heir is an heir who has been identified and found.

19 **SECTION 2.** ORS 115.125 is amended to read:

20 115.125. (1) If the applicable assets of the estate are insufficient to pay all expenses and claims  
21 in full, the personal representative shall make payment in the following order:

22 (a) Support of spouse and children, subject to the limitations imposed by ORS 114.065.

23 (b) Expenses of administration.

24 (c) Expenses of a plain and decent funeral and disposition of the remains of the decedent.

25 (d) Debts and taxes with preference under federal law.

26 (e) Reasonable and necessary medical and hospital expenses of the last illness of the decedent,  
27 including compensation of persons attending the decedent.

28 **(f) Expenses of administration of a protective proceeding of the decedent in the order of**  
29 **priority described in ORS 125.520.**

30 [(f)] **(g)** Taxes with preference under the laws of this state that are due and payable while pos-  
31 session of the estate of the decedent is retained by the personal representative.

**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        [(g)] (h) Debts owed employees of the decedent for labor performed within 90 days immediately  
 2 preceding the date of death of the decedent.

3        [(h)] (i) Child support arrearages.

4        [(i)] (j) The claim of the Department of Human Services for the net amount of public assistance,  
 5 as defined in ORS 411.010, paid to or for the decedent, and the claim of the Department of Cor-  
 6 rections for care and maintenance of any decedent who was at a state institution to the extent  
 7 provided in ORS 179.610 to 179.770.

8        [(j)] (k) All other claims against the estate.

9        (2) If the applicable assets of the estate are insufficient to pay in full all expenses or claims of  
 10 any one class specified in subsection (1) of this section, each expense or claim of that class shall  
 11 be paid only in proportion to the amount thereof.

12        **SECTION 3.** ORS 125.095 is amended to read:

13        125.095. (1) Funds of the protected person may be used to pay reasonable compensation to any  
 14 visitor, attorney, physician, fiduciary or temporary fiduciary for services rendered in the protective  
 15 proceeding or for services rendered on behalf of the fiduciary or protected person.

16        (2) Prior court approval is required before the payment of the fees of any visitor or physician  
 17 if the fees are incurred for services relating to proceedings arising out of the filing of an objection  
 18 to a petition or motion.

19        (3) Prior court approval is required before payment of compensation to a fiduciary or to the  
 20 attorneys for a fiduciary, except that prior court approval is not required before payment of com-  
 21 pensation to a conservator if the conservator is a trust company that has complied with ORS  
 22 709.030, or if the conservator is the Director of Veterans' Affairs.

23        **(4) Compensation and expenses approved by the court under sections 8 and 9 of this 2005**  
 24 **Act may be paid from funds held by the fiduciary or from the protected estate in the same**  
 25 **manner as a claim reduced to judgment under ORS 115.070.**

26        **SECTION 4.** ORS 125.475 is amended to read:

27        125.475. (1) Unless the court by order provides otherwise, a conservator shall account to the  
 28 court for the administration of the protected estate within 30 days after each anniversary of ap-  
 29 pointment. In addition, a conservator must account to the court for the administration of the pro-  
 30 tected estate:

31        (a) Within 30 days after:

32        [(a) *The death of the protected person;*]

33        [(b)] (A) A minor protected person attains majority;

34        [(c)] (B) An adult protected person becomes able to manage the protected person's financial re-  
 35 sources;

36        [(d)] (C) Removal of the conservator; and

37        [(e)] (D) Termination of the conservator's authority under ORS 125.410 (7).

38        **(b) Within 60 days after the death of the protected person.**

39        (2) Each accounting shall include the following information:

40        (a) The period of time covered by the accounting.

41        (b) The total value of the property with which the conservator is chargeable according to the  
 42 inventory, or, if there was a prior accounting, the amount of the balance of the prior accounting.

43        (c) All money and property received during the period covered by the accounting.

44        (d) All disbursements made during the period covered by the accounting.

45        (e) The amount of bond posted by the conservator during the period covered by the accounting.

1 (f) Such other information as the conservator considers necessary, or that the court might re-  
2 quire, for the purpose of disclosing the condition of the estate.

3 (3) Vouchers for disbursements must accompany the accounting unless otherwise provided by  
4 order or rule of the court or unless the conservator is a trust company that has complied with ORS  
5 709.030. If vouchers are not required, the conservator shall:

6 (a) Maintain the vouchers for a period of not less than one year following the date on which the  
7 order approving the final accounting is entered;

8 (b) Permit interested persons to inspect the vouchers and receive copies of the vouchers at their  
9 own expense at the place of business of the conservator during the conservator's normal business  
10 hours at any time before the end of one year following the date on which the order approving the  
11 final accounting is entered; and

12 (c) Include in each annual accounting and the final accounting a statement that the vouchers  
13 are not filed with the accounting but are maintained by the conservator and may be inspected and  
14 copied as provided in this subsection.

15 (4) The court may waive a final accounting if:

16 (a) The conservator was appointed because the protected person was a minor, and the protected  
17 person has attained the age of majority, or the conservator was appointed because the protected  
18 person was financially incapable, and the protected person is no longer financially incapable;

19 (b) The protected person gives a receipt to the conservator for the property delivered to the  
20 protected person; and

21 (c) The conservator files with the court a copy of the receipt issued by the protected person to  
22 the conservator.

23 (5) Copies of accountings must be served on all persons listed in ORS 125.060 (3). The court may  
24 waive service on the protected person if service of the copy would not assist the protected person  
25 in understanding the proceedings.

26 (6) The court may require a conservator to submit to a physical check of the estate in the  
27 control of the conservator at any time and in any manner the court may specify.

28 (7) The Chief Justice of the Supreme Court may by rule specify the form and contents of ac-  
29 counts that must be filed by a conservator.

30 **SECTION 5.** ORS 125.520 is amended to read:

31 125.520. If it is likely that the estate of the protected person will be exhausted before all claims  
32 against the estate are paid, the conservator shall give preference in the payment of claims in the  
33 following order of priority:

34 (1) Funds needed for the current care, maintenance and support of the protected person and the  
35 dependents of the protected person and [*claims for*] the expenses of administration **of a protective**  
36 **proceeding.**

37 (2) Expenses and claims for the care, maintenance and support of the protected person and the  
38 dependents of the protected person that are not paid under subsection (1) of this section.

39 (3) Debts and taxes with preference under federal law.

40 (4) Taxes with preference under the laws of this state that are due and payable while possession  
41 of the estate of the protected person is retained by the conservator.

42 (5) All other claims against the conservatorship estate.

43 **SECTION 6.** ORS 125.530 is amended to read:

44 125.530. (1) If a protected person dies and the conservator has possession of a will of the pro-  
45 tected person, the conservator shall either deliver the will to the personal representative named in

1 the will or deliver the will to *[the]* a court **that has jurisdiction of the protected estate** for  
 2 safekeeping. If the conservator delivers the will to *[the]* a court for safekeeping, the conservator  
 3 must inform any personal representative named in the will that the conservator has made that de-  
 4 livery. If it is not possible to inform the named personal representative, the conservator shall inform  
 5 the beneficiaries named in the will of the delivery. *[The conservator shall retain and administer the*  
 6 *estate for delivery to the personal representative of the decedent or other persons entitled to the*  
 7 *estate.]*

8 **(2) If a protected person dies and the conservator knows of a will of the protected person**  
 9 **and the conservator does not have possession of the will, within 30 days after the death of**  
 10 **the protected person, the conservator shall inform any person known to the conservator to**  
 11 **have possession of the will and any person known to the conservator to be named as personal**  
 12 **representative in the will of the death. If it is not possible to inform the named personal**  
 13 **representative, the conservator shall inform any beneficiaries named in the will known to the**  
 14 **conservator of the death.**

15 **(3) If a protected person dies and the conservator believes that the protected person did**  
 16 **not have a will, within 30 days after the death of the protected person, the conservator shall:**

- 17 **(a) Inform any heirs of the protected person known to the conservator of the death; or**
- 18 **(b) Give notice of the death to an estate administrator of the Department of State Lands**

19 **appointed under ORS 113.235 if:**

20 **(A) The protected person owned property subject to probate in Oregon; and**

21 **(B) The conservator has not given notice of the death to at least one heir of the pro-**  
 22 **ected person or does not know whether an heir has received actual notice of the death.**

23 **SECTION 7. Sections 8 and 9 of this 2005 Act are added to and made a part of ORS**  
 24 **chapter 125.**

25 **SECTION 8. (1) Within 30 days after the death of a protected person, the conservator**  
 26 **shall inform persons known to the conservator to be entitled to assets of the protected per-**  
 27 **son not subject to probate, including persons with survivorship rights and beneficiaries under**  
 28 **life insurance policies and retirement plans, of the death. The conservator shall deliver to a**  
 29 **successor or beneficiary all original records in the possession of the conservator that the**  
 30 **successor or beneficiary may need to claim the property. Court approval for delivery of**  
 31 **property to a successor under this subsection is not required. A successor entitled to pos-**  
 32 **session of property restricted under ORS 125.410 may apply to the court for an order re-**  
 33 **leasing the restrictions and directing delivery of the property to the successor.**

34 **(2) Court approval is not required for delivery of property to a personal representative**  
 35 **of the decedent or an affiant entitled to possession of the property under ORS 114.535. A**  
 36 **personal representative or affiant entitled to possession of property restricted under ORS**  
 37 **125.410 may apply to the court for an order releasing the restrictions and directing delivery**  
 38 **of the property to the personal representative or affiant.**

39 **(3) After the death of a protected person, a conservator may not incur expenses for the**  
 40 **protected person or pay expenses of administration of the protective proceeding.**

41 **(4)(a) The conservator shall retain and administer the assets of the estate subject to**  
 42 **probate for delivery to the personal representative of the decedent or to an affiant under**  
 43 **ORS 114.515.**

44 **(b) Notwithstanding paragraph (a) of this subsection, a conservator may retain sufficient**  
 45 **funds to pay expenses and compensation requested under subsection (5) of this section.**

1 (5) In a final accounting filed under ORS 125.475, the conservator may request approval  
2 of expenses for the protected person incurred before the death of the protected person and  
3 reasonable compensation under ORS 125.095 for fees incurred and services rendered before  
4 and after the death of the protected person.

5 (6) Notice of a final accounting requesting approval of reasonable compensation must be  
6 served in the manner provided in ORS 125.065 (2) on the personal representative of the  
7 decedent and any affiant under ORS 114.515.

8 **SECTION 9.** (1) Within 30 days after the death of a protected person, a guardian shall file  
9 with the court a verified written report of the death of the protected person. In the report,  
10 the guardian may request approval of reasonable compensation described in ORS 125.095 for  
11 fees incurred or services rendered before or after the death of the protected person.

12 (2) Notice of a report requesting approval of compensation must be served in the manner  
13 provided in ORS 125.065 (2) on the personal representative of the decedent or any affiant  
14 under ORS 114.515. If a personal representative has not been appointed and no affidavits have  
15 been filed under ORS 114.515, notice of the report must be served on the following persons  
16 known to the guardian:

- 17 (a) Beneficiaries named in the will of the decedent;
- 18 (b) Heirs of the decedent; and
- 19 (c) Successors and beneficiaries of property not subject to probate.

20 (3) A guardian shall give the notices required under section 8 of this 2005 Act and ORS  
21 125.530 if a conservator was not appointed under ORS 125.400 for the protected person.

22 **SECTION 10.** ORS 87.533 is amended to read:

23 87.533. A lien created by ORS 87.503 shall not be enforced so as to interfere with:

24 (1) Any assets or income allowed to the community spouse or dependent family member under  
25 42 U.S.C. 1396r-5(d) or any rule of the Department of Human Services.

26 (2) The priority given to the recovery of medical assistance payments under ORS 115.125  
27 [(1)(i)] (1)(j) or other medical assistance claims under ORS 414.105 (2) and (3).

28 (3) The eligibility of a person for medical assistance or entitlement to Medicaid assistance pay-  
29 ments.

30 **SECTION 11.** Sections 8 and 9 of this 2005 Act and the amendments to ORS 87.533,  
31 113.238, 115.125, 125.095, 125.475, 125.520 and 125.530 by sections 1 to 6 and 10 of this 2005 Act  
32 apply to protective proceedings commenced before, on or after the effective date of this 2005  
33 Act.

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