

# House Bill 3006

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Law Commission Probate Modernization Work Group)

## 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 procedures for probate of estate with no known assets.

Allows personal representative to file statement in lieu of certain required accountings if distributees of estate consent in writing.

## A BILL FOR AN ACT

1  
2 Relating to probate; creating new provisions; and amending ORS 113.035, 113.105, 113.155, 113.165,  
3 113.175, 115.003, 115.135, 116.083 and 116.113.

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

5 **SECTION 1.** ORS 113.035 is amended to read:

6 113.035. Any interested person or the person nominated as personal representative named in the  
7 will may petition for the appointment of a personal representative and for the probate of a will. The  
8 petition must include the following information, so far as known:

9 (1) The name, age, domicile, post-office address and date and place of death of the decedent.

10 (2) Whether the decedent died testate or intestate.

11 (3) The facts relied upon to establish venue.

12 (4) The name and post-office address of the person nominated as personal representative and the  
13 facts that show the person is qualified to act.

14 (5) The names, relationship to the decedent and post-office addresses of persons who are or  
15 would be the heirs of the decedent upon the death of the decedent intestate, and the ages of any  
16 who are minors.

17 (6) A statement that reasonable efforts have been made to identify and locate all heirs of the  
18 decedent. If the petitioner knows of any actual or possible omissions from the list of heirs, the pe-  
19 tition must include a statement indicating that there are omissions from the information relating to  
20 heirs.

21 (7) If the decedent died testate, the names and post-office addresses of the devisees, and the ages  
22 of any who are minors. If the will devises property to a person who did not survive the decedent  
23 or who is otherwise not entitled to receive the devise, the petition must include a statement ex-  
24 plaining why the devise failed. If the petitioner knows of any actual or possible omissions from the  
25 list of devisees, the petition must include a statement indicating that there are omissions from the  
26 information relating to devisees.

27 (8) The name and post-office address of any person asserting an interest in the estate, or on  
28 whose behalf an interest has been asserted, based on a contention that:

29 (a) The will alleged in the petition to be the will of the decedent is ineffective in whole or part;

30 (b) There exists a will that has not been alleged in the petition to be the will of the decedent;

**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 or

2 (c) The decedent agreed, promised or represented that the decedent would make or revoke a  
 3 will or devise, or not revoke a will or devise, or die intestate.

4 (9) The name and post-office address of any person asserting an interest in the estate, or on  
 5 whose behalf an interest has been asserted, based on a contention that a parent of the decedent  
 6 willfully deserted the decedent or neglected without just and sufficient cause to provide proper care  
 7 and maintenance for the decedent, as provided by ORS 112.047.

8 (10) Whether the original of the last will of the decedent is in the possession of the court or  
 9 accompanies the petition. If the original will is not in the possession of the court or accompanying  
 10 the petition and an authenticated copy of the will probated in another jurisdiction does not accom-  
 11 pany the petition, the petition shall also state the contents of the will and indicate that it is lost,  
 12 destroyed or otherwise unavailable and that it was not revoked.

13 (11) A statement of the extent and nature of assets of the estate, **if any**, to enable the court to  
 14 set the amount of bond of the personal representative.

15 **(12) If the petition states that no assets of the estate are known to the petitioner under**  
 16 **subsection (11) of this section, a statement of the purpose for filing the petition.**

17 **SECTION 2.** ORS 113.105 is amended to read:

18 113.105. (1)(a) Except as provided in subsections (2) to [(4)] (5) of this section, the personal rep-  
 19 resentative may not act, and letters may not be issued to the personal representative, until the  
 20 personal representative provides a bond to the clerk of the court **in an amount set by the court.**  
 21 The bond must be for the security and benefit of all interested persons and must be conditioned upon  
 22 the personal representative faithfully performing the duties of the position. The bond must be exe-  
 23 cuted by a surety qualified under ORCP 82 D to G.

24 (b) The amount of the bond set by the court under this subsection must be adequate to protect  
 25 interested persons. In setting the amount of the bond, the court shall consider:

26 (A) The nature, liquidity and apparent value of the assets of the estate.

27 (B) The anticipated income during administration.

28 (C) The probable indebtedness and taxes.

29 (2) Subsection (1) of this section does not apply if:

30 (a) The will provides that no bond is required, but the court may, for good cause, require a bond  
 31 notwithstanding any provision in a will that no bond is required;

32 (b) The personal representative is the sole heir or devisee, but the court may, for good cause,  
 33 require a bond notwithstanding the fact that the personal representative is the sole heir or devisee;  
 34 [or]

35 (c) The personal representative is the Department of State Lands, the Department of Veterans'  
 36 Affairs, the Director of Human Services, the Director of the Oregon Health Authority or an attorney  
 37 approved under ORS 113.086[.]; or

38 **(d) The petition for appointment of the personal representative states that no assets of**  
 39 **the estate are known to the petitioner.**

40 **(3) If no bond was required under subsection (2)(d) of this section and assets of the estate**  
 41 **later come into the possession or knowledge of the personal representative, the personal**  
 42 **representative shall, within 30 days after filing the inventory or supplemental inventory first**  
 43 **showing assets of the estate, file a motion to set or waive the bond as provided in this sec-**  
 44 **tion.**

45 [(3)] (4) Upon a request by the personal representative, the court may waive the requirement

1 of a bond if:

2 (a) The request states the reasons why the waiver is requested; and

3 (b) The request describes the known creditors of the estate.

4 [(4)] (5) The court may waive or reduce the requirement of a bond to the extent that:

5 (a) The personal representative provides written confirmation from a financial institution that  
6 property of the estate is held by the financial institution subject to withdrawal only on order of the  
7 court; or

8 (b) The court restricts the sale, encumbrance or other disposition of property of the estate  
9 without prior court approval.

10 [(5)] (6) Nothing in this section affects the provisions of ORS 709.240, relating to a trust com-  
11 pany acting as personal representative.

12 **SECTION 3.** ORS 113.155 is amended to read:

13 113.155. (1) **Except as provided in subsection (5) of this section**, upon appointment a personal  
14 representative shall cause a notice to interested persons to be published once in each of three con-  
15 secutive weeks in:

16 (a) A newspaper published in the county in which the estate proceeding is pending; or

17 (b) If no newspaper is published in the county in which the estate proceeding is pending, a  
18 newspaper designated by the court.

19 (2) The notice shall include:

20 (a) The title of the court in which the estate proceeding is pending;

21 (b) The name of the decedent;

22 (c) The name of the personal representative and the address at which claims are to be presented;

23 (d) A statement requiring all persons having claims against the estate to present them, within  
24 four months after the date of the first publication of the notice to the personal representative at the  
25 address designated in the notice for the presentation of claims or they may be barred;

26 (e) The date of the first publication of the notice; and

27 (f) A statement advising all persons whose rights may be affected by the proceeding that addi-  
28 tional information may be obtained from the records of the court, the personal representative or the  
29 attorney for the personal representative.

30 (3) The failure of the personal representative to cause a notice to be published under this sec-  
31 tion is a breach of duty to the persons concerned, but does not affect the validity of appointment,  
32 duties or powers or the exercise of duties or powers.

33 (4) A personal representative shall file in the estate proceeding proof of the publication of notice  
34 required by this section. The proof shall include a copy of the published notice.

35 **(5)(a) This section does not apply if the petition for appointment of the personal repre-**  
36 **sentative states that no assets of the estate are known to the petitioner and no assets of the**  
37 **estate have come into the possession or knowledge of the personal representative.**

38 **(b) If the petition for appointment of the personal representative states that no assets**  
39 **of the estate are known to the petitioner and assets of the estate later come into the pos-**  
40 **session or knowledge of the personal representative, the personal representative shall, within**  
41 **30 days after the filing of the inventory or supplemental inventory first showing assets of the**  
42 **estate, commence publication of notice to interested persons as provided in this section.**

43 **SECTION 4.** ORS 113.165 is amended to read:

44 113.165. Within 90 days after the date of appointment, unless a longer time is granted by the  
45 court, a personal representative shall file in the estate proceeding an inventory of all property of

1 the estate that has come into the possession or knowledge of the personal representative. The in-  
 2 ventory shall show the estimates by the personal representative of the respective fair market values  
 3 as of the date of the death of the decedent of the properties described in the inventory. **If no**  
 4 **property of the estate has come into the possession or knowledge of the personal represen-**  
 5 **tative, the personal representative shall file an inventory stating that no property of the**  
 6 **estate has come into the possession or knowledge of the personal representative.**

7 **SECTION 5.** ORS 113.175 is amended to read:

8 113.175. (1) Whenever any property of the estate not included in the inventory comes into the  
 9 possession or knowledge of the personal representative, the personal representative shall either file  
 10 in the estate proceeding a supplemental inventory within 30 days after the date of receiving pos-  
 11 session or knowledge, or include the property in the next accounting.

12 **(2) If the inventory states that no assets of the estate are known to the petitioner and**  
 13 **assets of the estate later come into the possession or knowledge of the personal represen-**  
 14 **tative, the personal representative shall file in the estate proceeding a supplemental inven-**  
 15 **tory within 30 days after receiving possession or knowledge of the assets.**

16 **SECTION 6.** ORS 115.003 is amended to read:

17 115.003. (1) **Except as provided in subsection (6) of this section,** during the three months  
 18 following appointment, unless a longer time is allowed by the court, the personal representative  
 19 shall make reasonably diligent efforts to investigate the financial records and affairs of the decedent  
 20 and shall take such further actions as may be reasonably necessary to ascertain the identity and  
 21 address of each person who has or asserts a claim against the estate. The personal representative  
 22 shall request and the court shall allow a longer time for ascertaining claims if the personal repre-  
 23 sentative cannot complete reasonably diligent efforts to identify persons with claims during the time  
 24 required by this section or by a previous order of the court.

25 (2) Not later than 30 days after expiration of the period, including any extensions, described in  
 26 subsection (1) **or (6)** of this section, the personal representative shall cause to be delivered or mailed  
 27 to each person known by the personal representative during such period to have or assert a claim  
 28 against the estate a notice containing the information required in subsection (3) of this section[,  
 29 *except that it shall not be necessary to*]. **The personal representative is not required to** give notice  
 30 on account of a claim that has already been presented, accepted or paid in full or on account of a  
 31 claim that is merely conjectural. The personal representative may also cause such a notice to be  
 32 delivered or mailed to any person discovered by the personal representative after expiration of the  
 33 period described in subsection (1) **or (6)** of this section to have or assert a claim against the estate.

34 (3) The notice shall include:

- 35 (a) The title of the court in which the estate proceeding is pending;
- 36 (b) The name of the decedent;
- 37 (c) The name of the personal representative and the address at which claims are to be presented;
- 38 (d) A statement that claims against the estate not presented to the personal representative  
 39 within 45 days of the date of the notice may be barred; and
- 40 (e) The date of the notice, which shall be the date on which it is delivered or mailed.

41 (4) Not later than 60 days after expiration of the period, including any extensions, described in  
 42 subsection (1) **or (6)** of this section, the personal representative shall cause to be filed in the estate  
 43 proceeding proof of compliance with subsections (1) and (2) of this section. The proof shall include  
 44 a copy of the form of any notice delivered or mailed, the date on which each notice was delivered  
 45 or mailed and the name and address of the person to whom each notice was delivered or mailed.

1 (5) The failure of the personal representative to make reasonably diligent efforts to ascertain  
 2 claims as required by subsection (1) of this section or to cause a notice to be delivered or mailed  
 3 as required by subsection (2) of this section is a breach of duty to the persons concerned, but does  
 4 not affect the validity of appointment, duties or powers or the exercise of duties or powers.

5 **(6)(a) This section does not apply if the petition for appointment of the personal repre-**  
 6 **sentative states that no assets of the estate are known to the petitioner and no assets of the**  
 7 **estate have come into the possession or knowledge of the personal representative.**

8 **(b) If the petition for appointment of the personal representative states that no assets**  
 9 **of the estate are known to the petitioner and assets of the estate later come into the pos-**  
 10 **session or knowledge of the personal representative, the personal representative shall comply**  
 11 **with this section. The three-month period for compliance with subsection (1) of this section**  
 12 **begins on the date of filing of the inventory or supplemental inventory first showing assets**  
 13 **of the estate.**

14 **SECTION 7.** ORS 115.135 is amended to read:

15 115.135. (1) **Except as provided in subsection (5) of this section,** a claim presented to the  
 16 personal representative shall be considered allowed as presented unless within 60 days after the  
 17 date of presentation of the claim as provided in ORS 115.005 the personal representative mails or  
 18 delivers a notice of disallowance of the claim in whole or in part to the claimant and, if any, the  
 19 attorney of the claimant. The personal representative shall file in the estate proceeding the claim  
 20 as presented and a copy of the notice of disallowance.

21 (2) A notice of disallowance of a claim shall state the reason for the disallowance and inform  
 22 the claimant that the claim has been disallowed in whole or in part and, to the extent disallowed,  
 23 will be barred unless the claimant proceeds as provided in ORS 115.145. Statement of a reason for  
 24 disallowance under this subsection is not an admission by the personal representative and does not  
 25 preclude the assertion of other defenses to the claim.

26 (3) The personal representative may rescind the previous allowance of an unpaid claim, if the  
 27 claim was allowed because of error, misinformation or excusable neglect. Not less than 30 days be-  
 28 fore the date of the filing of the final account the personal representative shall give notice of  
 29 rescission of previous allowance of a claim to the claimant and, if any, the attorney of the claimant  
 30 in the same manner and containing the same information as a notice of disallowance.

31 (4) If allowed, the claim shall be paid only to the extent of the assets of the estate available for  
 32 the payment of the claim pursuant to the priorities established in ORS 115.115 and 115.125.

33 **(5)(a) If the petition for appointment of the personal representative states that no assets**  
 34 **of the estate are known to the petitioner and no assets of the estate have come into the**  
 35 **possession or knowledge of the personal representative, the personal representative has no**  
 36 **duty to allow or disallow claims presented to the personal representative.**

37 **(b) If the petition for appointment of the personal representative states that no assets**  
 38 **or property of the estate are known to the petitioner and assets of the estate later come into**  
 39 **the possession or knowledge of the personal representative, a claim presented to the personal**  
 40 **representative before the filing of the inventory or supplemental inventory first showing as-**  
 41 **sets of the estate shall be considered allowed as presented unless within 60 days after the**  
 42 **date of filing of the inventory or supplemental inventory the personal representative mails**  
 43 **or delivers a notice of disallowance of the claim in whole or in part to the claimant and, if**  
 44 **any, the attorney of the claimant. The personal representative shall file in the estate pro-**  
 45 **ceeding the claim as presented and a copy of the notice of disallowance.**

**SECTION 8.** Section 9 of this 2019 Act is added to and made a part of ORS chapter 116.

**SECTION 9.** (1) If the petition for appointment of the personal representative states that no assets of the estate are known to the petitioner and no assets of the estate have come into the possession or knowledge of the personal representative, the personal representative may move to close the estate no earlier than four months after the latest date of delivery or mailing of the information described in ORS 113.145.

(2) The motion must state that no assets of the estate have come into the possession or knowledge of the personal representative and that the purpose for filing the petition under ORS 113.035 has been accomplished.

(3) The personal representative shall set a time for filing objections to the motion to close the estate. Not less than 20 days before the time set, the personal representative shall mail a copy of the motion to close the estate to the persons who would be entitled to receive a copy of the final account under ORS 116.093.

(4) If the court grants the motion, the court shall enter a general judgment closing the estate and discharging the personal representative. The discharge so entered operates as a release of the personal representative from further duties and as a bar to any action against the personal representative. The court may, in its discretion and upon such terms as may be just, within one year after entry of the judgment of discharge, permit an action to be brought against the personal representative if the judgment of discharge was taken through fraud or misrepresentation of the personal representative or through the mistake, inadvertence, surprise or excusable neglect of the claimant.

**SECTION 10.** ORS 116.083 is amended to read:

116.083. (1) A personal representative shall make and file in the estate proceeding an account of the personal representative's administration:

(a) Unless the court orders otherwise, annually within 60 days after the anniversary date of the personal representative's appointment.

**(b) Within 30 days after the date of the personal representative's resignation.**

[(b)] (c) Within 30 days after the date of the personal representative's removal [or resignation] or the revocation of the personal representative's letters.

[(c)] (d) When the estate is ready for final settlement and distribution.

[(d)] (e) At such other times as the court may order.

(2) Each account must include the following information:

(a) The period of time covered by the account.

(b) The total value of the property with which the personal representative is chargeable according to the inventory, or, if there was a prior account, the amount of the balance of the prior account.

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

(d) All disbursements made during the period covered by the account. Evidence of disbursements must accompany the account, unless otherwise provided by order or rule of the court, or unless the personal representative is a trust company that has complied with ORS 709.030, but that personal representative shall:

(A) Maintain the evidence of disbursement for a period of not less than one year following the date on which the order approving the final account is entered;

(B) Permit interested persons to inspect the evidence of disbursement and receive copies of the evidence at their own expense at the place of business of the personal representative during the

1 personal representative's normal business hours at any time prior to the end of the one-year period  
 2 following the date on which the order approving the final account is entered; and

3 (C) Include in each annual account and in the final account a statement that the evidence of  
 4 disbursement is not filed with the account but is maintained by the personal representative and may  
 5 be inspected and copied as provided in subparagraph (B) of this paragraph.

6 (e) The money and property of the estate on hand.

7 (f) Any other information that the personal representative considers necessary to show the  
 8 condition of the affairs of the estate or as the court may require.

9 (g) A declaration under penalty of perjury in the form required by ORCP 1 E, or an unsworn  
 10 declaration under ORS 194.800 to 194.835, if the declarant is physically outside the boundaries of the  
 11 United States.

12 **(3)(a) Unless otherwise provided by order of the court, the personal representative may**  
 13 **file a statement under this subsection in lieu of the account required under subsection (1)(a)**  
 14 **or (b) of this section if the distributees consent in writing.**

15 **(b) A statement under this subsection must include:**

16 **(A) The period of time covered by the statement;**

17 **(B) A description and statement of the value of the money and property on hand at the**  
 18 **beginning and ending of the period of time covered by the statement;**

19 **(C) A copy of the most recent statement received before the accounting for each financial**  
 20 **account owned by the estate;**

21 **(D) A list of the unpaid claims that are allowed or disputed, including the name of the**  
 22 **creditor, a description of the claim, the amount of the claim, the priority of the claim under**  
 23 **ORS 115.125 and the reason the claim has not been paid;**

24 **(E) A statement describing why the estate is not ready for final settlement and distrib-**  
 25 **ution; and**

26 **(F) A declaration under penalty of perjury in the form required by ORCP 1 E, or an un-**  
 27 **sworn declaration under ORS 194.800 to 194.835, if the declarant is physically outside the**  
 28 **boundaries of the United States.**

29 **(c) Upon filing a statement under this subsection, the personal representative shall mail**  
 30 **a copy of the statement to each creditor of the estate whose claim has not been paid in full**  
 31 **and is allowed or disputed. Within 30 days after the date of the mailing of the statement, a**  
 32 **creditor entitled to receive the statement under this paragraph may, by written notice to the**  
 33 **personal representative, require the personal representative to make and file an account of**  
 34 **the personal representative's administration under subsection (1) of this section within 30**  
 35 **days of the date of the creditor's notice.**

36 ~~[(3)]~~ **(4) When the estate is ready for final settlement and distribution, the account must also**  
 37 **include:**

38 (a) A statement that any required estate tax return has been filed.

39 (b) A statement that all Oregon income taxes, estate taxes and personal property taxes that are  
 40 due, if any, have been paid, or if not paid, that payment of those taxes has been secured by bond,  
 41 deposit or otherwise, and that all tax returns currently due have been filed.

42 (c) Any request to retain a reserve for the determination and payment of any additional taxes,  
 43 interest and penalties, and of all related reasonable expenses.

44 (d) A statement describing the determination of the compensation of the personal representative  
 45 under the will or under ORS 113.038 or 116.173 (3) and (4).

1 (e) A petition for a judgment authorizing the personal representative to distribute the estate to  
 2 the persons and in the portions specified in the judgment.

3 [(4)(a)] (5)(a) The personal representative may file a statement under this subsection in lieu of  
 4 the final account otherwise required by **subsection (4) of** this section if:

5 (A) The distributees, other than distributees whose only distribution is a cash or specific bequest  
 6 that will be paid or satisfied in full, consent in writing; and

7 (B) All creditors of the estate, other than creditors owed administrative expenses that require  
 8 court approval, have been paid in full.

9 (b) A statement under this subsection must include:

10 (A) The period of time covered by the statement.

11 (B) A statement that all creditors of the estate, other than creditors owed administrative ex-  
 12 penses that require court approval, have been paid in full.

13 (C) The statement and petition and any request for a reserve under subsection [(3)] (4) of this  
 14 section.

15 (D) A declaration under penalty of perjury in the form required by ORCP 1 E, or an unsworn  
 16 declaration under ORS 194.800 to 194.835, if the declarant is physically outside the boundaries of the  
 17 United States.

18 [(5)] (6) Notice of time for filing objections to the statement described in subsection [(4)] (5) of  
 19 this section is not required.

20 [(6)] (7) The Chief Justice of the Supreme Court may by rule specify the form and contents of  
 21 accounts that must be filed by a personal representative.

22 **SECTION 11.** ORS 116.113 is amended to read:

23 116.113. (1) If no objections to the final account and petition for distribution are filed, or if ob-  
 24 jections are filed, upon the hearing or upon the filing of a statement in lieu of the final account  
 25 under ORS 116.083 [(4)] (5), the court shall enter a general judgment of final distribution. In the  
 26 judgment the court shall designate the persons in whom title to the estate available for distribution  
 27 is vested and the portion of the estate or property to which each is entitled under the will, by  
 28 agreement approved by the court or pursuant to intestate succession. The judgment shall also con-  
 29 tain any findings of the court in respect to:

30 (a) Advancements.

31 (b) Election against will by the surviving spouse.

32 (c) Renunciation.

33 (d) Lapse.

34 (e) Adjudicated controversies.

35 (f) Partial distribution, which shall be confirmed or modified.

36 (g) Retainer.

37 (h) Claims for which a special fund is set aside, and the amount set aside.

38 (i) Contingent claims that have been allowed and are still unpaid.

39 (j) Any reserve requested under ORS 116.083.

40 (k) Attorney fees.

41 (L) Approval of the final account or the statement filed in lieu of the final account under ORS  
 42 116.083 [(4)] (5) in whole or in part.

43 (2) If, by agreement approved by the court, property is distributed to persons in whom title is  
 44 vested by the judgment of final distribution otherwise than as provided by the will or pursuant to  
 45 intestate succession, the judgment operates as a transfer of the property between those persons.



1 (3) The judgment of final distribution is a conclusive determination of the persons who are the  
2 successors in interest to the estate and of the extent and character of their interest, subject only  
3 to the right of appeal and the power of the court to vacate the judgment.

4 **SECTION 12. (1) Section 9 of this 2019 Act and the amendments to ORS 113.035, 113.105,**  
5 **113.155, 113.165, 113.175, 115.003, 115.135 and 116.113 by sections 1 to 7 and 11 of this 2019 Act**  
6 **apply to estates in which a petition to appoint a personal representative is filed on or after**  
7 **the effective date of this 2019 Act.**

8 (2) The amendments to ORS 116.083 by section 10 of this 2019 Act apply to accounts re-  
9 quired to be filed on or after the effective date of this 2019 Act.

10