

## HOUSE AMENDMENTS TO HOUSE BILL 3007

By COMMITTEE ON JUDICIARY

April 15

1 On page 1 of the printed bill, line 2, after “58.387,” insert “112.238,”.

2 On page 2, line 43, delete “listed in the amended affidavit” and insert “of the estate”.

3 On page 4, delete lines 8 through 45.

4 On page 5, delete lines 1 through 37 and insert:

5 “**SECTION 7.** ORS 114.525 is amended to read:

6 “114.525. (1) [An] **A small estate** affidavit [*filed under ORS 114.515*] must:

7 “(a) **Contain a notice in substantially the following form, printed in at least 14-point bold**  
8 **type immediately below the caption on the first page of the small estate affidavit:**

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### NOTICE OF DUTY TO PAY DEBT OR TURN OVER PROPERTY

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**To: Any person to whom a copy of this small estate affidavit is mailed or delivered.**

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**Under ORS 114.535, if you owe a debt to the decedent or have personal property of the decedent, you must pay the debt or turn over the property to the affiant. If you refuse, the affiant may ask the court to compel you to pay the debt or turn over the property and you could be responsible for the affiant’s attorney fees.**

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“(b) **State the name and post-office address of the affiant.**

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“(c) **State the authority under which the affiant is filing the small estate affidavit, as provided in ORS 114.515.**

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“(d) **State that the small estate affidavit is made under ORS 114.505 to 114.560.**

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“[(1)] (e) **State the name, age, domicile[,] and post-office address and last four digits of the Social Security number of the decedent[;].**

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“[(2)] (f) **State the date and place of the decedent’s death. [A certified copy of the death record must be attached to the affidavit;]**

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“[(3)] (g) **Describe and state the fair market value of all property in the estate, valued as provided in section 3 of this 2019 Act, including a legal description of any real property[;].**

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“[(4)] **State that no application or petition for the appointment of a personal representative has been granted in Oregon;**

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“(h) **State that no personal representative of the estate has been appointed in Oregon, that there is no pending petition for appointment of a personal representative of the estate in Oregon and that the estate is not currently being administered in Oregon.**

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“[(5)] (i) **State whether the decedent died testate or intestate[, and if the decedent died testate,**

1 *the will must be attached to the affidavit;*].

2 “[6] (j) List the heirs of the decedent and the last address of each heir as known to the affiant,  
3 and state that a copy of the affidavit showing the date of filing and a copy of the will, if the  
4 decedent died testate, will be delivered to each heir or mailed to the heir at the last-known  
5 address;].

6 “[7] (k) If the decedent died testate, list the devisees of the decedent and the last address of  
7 each devisee as known to the affiant and state that a copy of the will and a copy of the affidavit  
8 showing the date of filing will be delivered to each devisee or mailed to the devisee at the last-  
9 known address;].

10 “[8] (L) State the interest in the property described in the affidavit to which each heir or  
11 devisee is entitled and the interest, if any, that will escheat;].

12 “[9] (m) State that reasonable efforts have been made to ascertain creditors of the estate;].

13 “[10] (n) List the [*expenses of and*] claims against the estate [*remaining*] **that are undisputed**  
14 **by the affiant and that remain** unpaid or on account of which the affiant or any other person is  
15 entitled to reimbursement from the estate, including the known or estimated amounts of the [*ex-*  
16 *periences and*] claims and the names and addresses of the creditors as known to the affiant, and state  
17 that a copy of the affidavit showing the date of filing will be delivered to each creditor who has not  
18 been paid in full or mailed to the creditor at the last-known address;].

19 “[11] (o) Separately list the name and address of each person known to the affiant to assert  
20 a claim against the estate that the affiant disputes and the known or estimated amount of the  
21 [*claim*] **claims disputed by the affiant** and state that a copy of the affidavit showing the date of  
22 filing will be delivered to each such person or mailed to the person at the last-known address;].

23 **“(p)(A) State the mailing address for presentment of claims; and**

24 **“(B) If the affiant wishes to authorize creditors to present claims by electronic mail or**  
25 **facsimile communication, state the electronic mail address or facsimile number for**  
26 **presentment of claims.**

27 **“(q) List anticipated administrative expenses and attorney fees, if any.**

28 **“(r) State that the affiant is not disqualified from acting as an affiant under ORS 114.515**  
29 **(2).**

30 “[12] (s) State that a copy of the affidavit showing the date of filing **and a copy of the death**  
31 **record** will be mailed or delivered to the Department of Human Services or to the Oregon Health  
32 Authority, as prescribed by rule by the department or authority;].

33 **“(t) State, to the best of the affiant’s knowledge, whether the decedent was incarcerated**  
34 **in a correctional facility in this state at any time in the 15 years before the decedent’s death**  
35 **and, if the decedent was incarcerated in a correctional facility in this state at any time in**  
36 **the 15 years before the decedent’s death, state that a copy of the affidavit showing the date**  
37 **of filing and a copy of the death record will be mailed or delivered to the Department of**  
38 **Corrections.**

39 **“(u) State that undisputed claims against the estate will be paid as provided in ORS**  
40 **114.545.**

41 “[13] (v) State that claims against the estate not listed in the affidavit or in amounts larger  
42 than those listed in the affidavit may be barred unless:

43 “[a] (A) A claim is presented to the affiant within four months of the filing of the affidavit **or**  
44 **amended affidavit** at the address, **electronic mail address or facsimile number** stated in the af-  
45 fidavit for presentation of claims; or

1       “(b) (B) [*A personal representative of the estate is appointed*] **A petition for appointment of**  
2 **a personal representative of the estate is filed** within the time allowed under ORS 114.555[;  
3 *and*].

4       “[(14)] (w) If the affidavit lists one or more claims that the affiant disputes, state that any such  
5 claim may be barred unless:

6       “[(a)] (A) A petition for summary determination is filed within four months of the filing of the  
7 affidavit; or

8       “(b) (B) [*A personal representative of the estate is appointed*] **A petition for appointment of**  
9 **a personal representative of the estate is filed** within the time allowed under ORS 114.555.

10       “(2) **The affiant shall file a certified copy of the death record of the decedent as a confi-**  
11 **dential document.**

12       “(3) **If the decedent died testate, the affiant shall file simultaneously with the small es-**  
13 **tate affidavit:**

14       “(a)(A) **The original will; or**

15       “(B) **If the original will is filed in an estate proceeding in another jurisdiction, a certified**  
16 **copy of the original will; and**

17       “(b) **Proof of the will meeting the requirements of ORS 113.055.”.**

18       On page 6, delete lines 23 through 32 and insert:

19       “(6)(a) If a person to whom a certified copy of a small estate affidavit is delivered under this  
20 section refuses to pay a debt or deliver, transfer, provide access to or allow possession of personal  
21 property as required by this section, the affiant may serve a written demand by certified mail on the  
22 person to pay the debt or deliver, transfer, provide access to or allow possession of the personal  
23 property. The demand must state that, if the person fails to pay the debt or deliver, transfer, provide  
24 access to or allow possession of the personal property, the affiant may file a motion to compel  
25 payment of the debt or delivery of, transfer of or access to the personal property.

26       “(b) If the person fails to pay the debt or deliver, transfer, provide access to or allow possession  
27 of the personal property within 30 days after service of a demand under paragraph (a) of this sub-  
28 section, the affiant may file a motion to compel payment of the debt or delivery of, transfer of or  
29 access to the personal property. The court may enter a judgment awarding reasonable attorney fees  
30 to the prevailing party if the court finds that the affiant filed the motion without an objectively  
31 reasonable basis or the person refused to pay the debt or deliver, transfer, provide access to or al-  
32 low possession of any personal property without an objectively reasonable basis.”.

33       On page 8, line 13, delete “personal representative is appointed” and insert “petition for ap-  
34 pointment of a personal representative of the estate is filed”.

35       On page 10, delete lines 42 through 45.

36       On page 11, delete lines 1 through 5 and insert:

37       “(a) The affiant may transfer or sell any real property if each heir or devisee who would succeed  
38 to the interest conveyed joins in the conveyance.

39       “(b) The affiant may transfer or sell any personal property that is specifically devised to an in-  
40 dividual devisee with the consent of the individual devisee.

41       “(c) The affiant may transfer or sell any personal property that is not specifically devised to an  
42 individual devisee without the consent of any other person.

43       “(2) Notwithstanding subsection (1) of this section, the affiant need not obtain participation or  
44 consent of any person if a transfer is required for purposes of abatement under ORS 116.133.”.

45       On page 12, after line 4, insert:

1 “(d) A creditor may not file a petition under this section if the creditor presented a claim to the  
2 affiant, the claim was disallowed and the creditor did not file a petition for summary determination  
3 under section 12 of this 2019 Act.”.

4 In line 34, after the comma insert “then”.

5 On page 13, line 21, after “or” insert “the filing of a petition for”.

6 On page 23, after line 8, insert:

7 “**SECTION 32.** ORS 112.238 is amended to read:

8 “112.238. (1) Although a writing was not executed in compliance with ORS 112.235, the writing  
9 may be treated as if it had been executed in compliance with ORS 112.235 if the proponent of the  
10 writing establishes by clear and convincing evidence that the decedent intended the writing to  
11 constitute:

12 “(a) The decedent’s will;

13 “(b) A partial or complete revocation of the decedent’s will; or

14 “(c) An addition to or an alteration of the decedent’s will.

15 “(2) A writing described in subsection (1) of this section may be filed with the court for admin-  
16 istration as the decedent’s will pursuant to ORS 113.035. The proponent of the writing shall give  
17 notice of the filing of the petition **under ORS 113.035** to those persons identified in ORS 113.035 (5),  
18 (7), (8) and (9). Persons receiving notice under this subsection shall have 20 days after the notice  
19 was given to file written objections to the petition. The court may make a determination regarding  
20 the decedent’s intent after a hearing or on the basis of affidavits.

21 “(3) The proponent of a writing described in subsection (1) of this section may file a petition  
22 with the court to establish the decedent’s intent that the writing was to be **the decedent’s will**, a  
23 partial or complete revocation of the decedent’s will, or an addition to or an alteration of the  
24 decedent’s will. The proponent shall give notice of the filing to any personal representative ap-  
25 pointed by the court, the devisees named in any will admitted to probate and those persons identi-  
26 fied in ORS 113.035 (5). Persons receiving notice under this subsection shall have 20 days after the  
27 notice was given to file written objections to the petition. The court may make a determination re-  
28 garding the decedent’s intent after a hearing or on the basis of affidavits.

29 “(4)(a) If the court determines that clear and convincing evidence exists showing that a writing  
30 described in subsection (1) of this section was intended by the decedent to accomplish one of the  
31 purposes set forth in subsection (1) of this section, the court shall:

32 “(A) Prepare written findings of fact in support of the determination; and

33 “(B) Enter a limited judgment that admits the writing for probate as the decedent’s will or  
34 otherwise acknowledges the validity and intent of the writing.

35 “(b) A determination under this subsection does not preclude the filing of a will contest under  
36 ORS 113.075, except that the will may not be contested on the grounds that the will was not exe-  
37 cuted in compliance with ORS 112.235.

38 “(5) The fee imposed and collected by the court for the filing of a petition under this section  
39 shall be in accordance with ORS 21.135.”.

40 In line 9, delete “32” and insert “33”.

41 In line 16, delete “33” and insert “34”.