

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Oregon Law Commission)

**PROPOSED AMENDMENTS TO
HOUSE BILL 3007**

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
3 “of the estate”.

4 On page 3, delete lines 6 through 8.

5 On page 4, delete lines 18 through 20 and insert:

6 “(d) State that no petition for appointment of a personal representative
7 has been filed in Oregon.”.

8 On page 5, line 22, delete “personal representative of the estate is ap-
9 pointed” and insert “petition for appointment of a personal representative
10 of the estate is filed”.

11 In line 28, delete “personal representative of the estate is appointed” and
12 insert “petition for appointment of a personal representative of the estate is
13 filed”.

14 On page 8, line 13, delete “personal representative is appointed” and in-
15 sert “petition for appointment of a personal representative of the estate is
16 filed”.

17 On page 10, delete lines 42 through 45.

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

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

21 “(b) The affiant may transfer or sell any personal property that is spe-

1 cifically devised to an individual devisee with the consent of the individual
2 devisee.

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

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

9 On page 12, after line 4, insert:

10 “(d) A creditor may not file a petition under this section if the creditor
11 presented a claim to the affiant, the claim was disallowed and the creditor
12 did not file a petition for summary determination under section 12 of this
13 2019 Act.”.

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

15 In line 41, delete “114.540.”.

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

17 On page 23, after line 8, insert:

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

19 “112.238. (1) Although a writing was not executed in compliance with ORS
20 112.235, the writing may be treated as if it had been executed in compliance
21 with ORS 112.235 if the proponent of the writing establishes by clear and
22 convincing evidence that the decedent intended the writing to constitute:

23 “(a) The decedent’s will;

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

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

26 “(2) A writing described in subsection (1) of this section may be filed with
27 the court for administration as the decedent’s will pursuant to ORS 113.035.
28 The proponent of the writing shall give notice of the filing of the petition
29 **under ORS 113.035** to those persons identified in ORS 113.035 (5), (7), (8) and
30 (9). Persons receiving notice under this subsection shall have 20 days after

1 the notice was given to file written objections to the petition. The court may
2 make a determination regarding the decedent's intent after a hearing or on
3 the basis of affidavits.

4 “(3) The proponent of a writing described in subsection (1) of this section
5 may file a petition with the court to establish the decedent's intent that the
6 writing was to be **the decedent's will**, a partial or complete revocation of
7 the decedent's will, or an addition to or an alteration of the decedent's will.
8 The proponent shall give notice of the filing to any personal representative
9 appointed by the court, the devisees named in any will admitted to probate
10 and those persons identified in ORS 113.035 (5). Persons receiving notice
11 under this subsection shall have 20 days after the notice was given to file
12 written objections to the petition. The court may make a determination re-
13 garding the decedent's intent after a hearing or on the basis of affidavits.

14 “(4)(a) If the court determines that clear and convincing evidence exists
15 showing that a writing described in subsection (1) of this section was in-
16 tended by the decedent to accomplish one of the purposes set forth in sub-
17 section (1) of this section, the court shall:

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

19 “(B) Enter a limited judgment that admits the writing for probate as the
20 decedent's will or otherwise acknowledges the validity and intent of the
21 writing.

22 “(b) A determination under this subsection does not preclude the filing
23 of a will contest under ORS 113.075, except that the will may not be con-
24 tested on the grounds that the will was not executed in compliance with ORS
25 112.235.

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

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

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

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