

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 4, delete lines 8 through 45.

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

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

7 “114.525. (1) [*An*] **A small estate** affidavit [*filed under ORS 114.515*]  
8 must:

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

12 “  
13 **NOTICE OF DUTY TO PAY DEBT OR TURN OVER PROPERTY**

14

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

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

1 “ \_\_\_\_\_

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

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

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

7 “[1] **(e) State the name, age, domicile[,] and post-office address and last**  
8 **four digits of the Social Security number of the decedent[;].**

9 “[2] **(f) State the date and place of the decedent’s death. [A certified**  
10 **copy of the death record must be attached to the affidavit;]**

11 “[3] **(g) Describe and state the fair market value of all property in the**  
12 **estate, valued as provided in section 3 of this 2019 Act,** including a legal  
13 description of any real property[;].

14 “[4] *State that no application or petition for the appointment of a personal*  
15 *representative has been granted in Oregon;]*

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

20 “[5] **(i) State whether the decedent died testate or intestate[, and if the**  
21 **decedent died testate, the will must be attached to the affidavit;].**

22 “[6] **(j) List the heirs of the decedent and the last address of each heir**  
23 **as known to the affiant, and state that a copy of the affidavit showing the**  
24 **date of filing and a copy of the will, if the decedent died testate, will be**  
25 **delivered to each heir or mailed to the heir at the last-known address[;].**

26 “[7] **(k) If the decedent died testate, list the devisees of the decedent and**  
27 **the last address of each devisee as known to the affiant and state that a copy**  
28 **of the will and a copy of the affidavit showing the date of filing will be de-**  
29 **livered to each devisee or mailed to the devisee at the last-known**  
30 **address[;].**

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

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

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

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

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

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

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

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

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

1 by the department or authority[;].

2 **“(t) State, to the best of the affiant’s knowledge, whether the**  
3 **decedent was incarcerated in a correctional facility in this state at any**  
4 **time in the 15 years before the decedent’s death and, if the decedent**  
5 **was incarcerated in a correctional facility in this state at any time in**  
6 **the 15 years before the decedent’s death, state that a copy of the affi-**  
7 **davit showing the date of filing and a copy of the death record will be**  
8 **mailed or delivered to the Department of Corrections.**

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

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

13 **“[(a)] (A) A claim is presented to the affiant within four months of the**  
14 **filing of the affidavit or amended affidavit at the address, electronic mail**  
15 **address or facsimile number stated in the affidavit for presentation of**  
16 **claims; or**

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

20 **“[(14)] (w) If the affidavit lists one or more claims that the affiant dis-**  
21 **putes, state that any such claim may be barred unless:**

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

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

27 **“(2) The affiant shall file a certified copy of the death record of the**  
28 **decedent as a confidential document.**

29 **“(3) If the decedent died testate, the affiant shall file simultane-**  
30 **ously with the small estate affidavit:**

1       **“(a)(A) The original will; or**  
2       **“(B) If the original will is filed in an estate proceeding in another**  
3 **jurisdiction, a certified copy of the original will; and**  
4       **“(b) Proof of the will meeting the requirements of ORS 113.055.”.**

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

6       “(6)(a) If a person to whom a certified copy of a small estate affidavit is  
7 delivered under this section refuses to pay a debt or deliver, transfer, provide  
8 access to or allow possession of personal property as required by this section,  
9 the affiant may serve a written demand by certified mail on the person to  
10 pay the debt or deliver, transfer, provide access to or allow possession of the  
11 personal property. The demand must state that, if the person fails to pay the  
12 debt or deliver, transfer, provide access to or allow possession of the per-  
13 sonal property, the affiant may file a motion to compel payment of the debt  
14 or delivery of, transfer of or access to the personal property.

15       “(b) If the person fails to pay the debt or deliver, transfer, provide access  
16 to or allow possession of the personal property within 30 days after service  
17 of a demand under paragraph (a) of this subsection, the affiant may file a  
18 motion to compel payment of the debt or delivery of, transfer of or access  
19 to the personal property. The court may enter a judgment awarding reason-  
20 able attorney fees to the prevailing party if the court finds that the affiant  
21 filed the motion without an objectively reasonable basis or the person re-  
22 fused to pay the debt or deliver, transfer, provide access to or allow pos-  
23 session of any personal property without an objectively reasonable basis.”.

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

27       On page 10, delete lines 42 through 45.

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

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

1 “(b) The affiant may transfer or sell any personal property that is spe-  
2 cifically devised to an individual devisee with the consent of the individual  
3 devisee.

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

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

10 On page 12, after line 4, insert:

11 “(d) A creditor may not file a petition under this section if the creditor  
12 presented a claim to the affiant, the claim was disallowed and the creditor  
13 did not file a petition for summary determination under section 12 of this  
14 2019 Act.”.

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

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”.

30