

# WHITE PETERSON

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February 28, 2023

### Oregon House Committee on the Judiciary

Hon. Jason Kropf, Chair  
Hon. Tom Andersen, Vice-Chair  
Hon. Kim Wallan, Vice-Chair  
Hon. Janelle Bynum  
Hon. Farrah Chaichi  
Hon. Charlie Conrad  
Hon. Rick Lewis  
Hon. Lily Morgan  
Hon. Lisa Reynolds  
Hon. Thuy Tran

Re: HB 2509

Good morning Chairman Kropf, and distinguished members of this committee. For the record, my name is William Nichols, my office address is 5700 E. Franklin Road, Nampa, Idaho. I also live in Nampa. It is my privilege to come before you today and share with you my experience that led me to contact Representative Owens and Senator Findlay and suggest an amendment to ORS 604.041.

Regarding my background, I am an attorney. I was first admitted to practice in Oregon in 1980. In fact, I was sworn in as a member of the Oregon State Bar on the floor of the House of Representatives in which you now serve. I am a graduate of Burns Union High School, Linfield College now known as Linfield University just up the road in McMinnville, and the University of Oregon School of Law. My first job out of law school was with a small firm in Nyssa, Oregon just south of Ontario on the border with Idaho. In my 42 years as an Oregon lawyer, I have had many ranching clients who own registered brands. And although my current office is in Idaho, I still practice law in Oregon, primarily probate, trust administration, and estate planning.

Late in 2021 I was contacted by an Idaho attorney who had a client who needed some help with a relatively small Oregon estate in Harney County. I agreed to help. I looked at the will, asked about the assets involved in the estate and determined that the total value of all the assets were such that this client could use the Oregon Small Estate proceeding via the Affidavit of Claiming Successor (ORS 114.505 et seq.). One of those assets was a recorded brand that had been in the family for at least two, if not three, generations. The will in question left all the decedent's assets to his son by what we lawyers call the residuary clause. The will intentionally omitted two other children. I did not draft the will in question. A copy of the residuary clause from that will, with the surnames redacted for confidentiality purposes, is submitted as Exhibit 1.

When I called a Brand Recorder in Salem to verify that the Claiming Successor under the Small Estate Affidavit could transfer the registered Brand, the Brand Recorder I spoke with told me that the Department took the position that registered brands had to be specifically named in the will and could not be transferred by a residuary clause. She said that the Department either required a court order for the transfer (which implied a full probate), or, my client could use an affidavit that the Department had developed. She offered to send the form affidavit to me, which she did. A copy of the Affidavit that was emailed to me is submitted as Exhibit 2.

After I reviewed the Affidavit, I could see it essentially asked my client, the son, to say that he was the sole surviving heir at law which would not have been correct. He was the sole beneficiary of the will via the residuary clause, but not the sole heir because the omitted children, his siblings, were also heirs. I could not have my client commit perjury. And the size of this estate, less than \$25,000, did not warrant a regular probate with all of its requirements, fees, etc.

I then reviewed ORS 604.041 and the applicable Administrative Rules to see if there was a codified rule that set out the Department's practice and could not find support for the practice in the statute or the OAR.

I called and spoke with Jack Noble, a well-respected Program Manager in the Office of Animal Identification at the Department of Agriculture, who, at that time, was a 26-year veteran in that department. Mr. Noble told me that as long as he had been in the Department, it had been the policy of the department that a will had to

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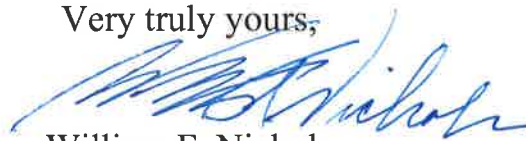
specifically call out a brand as an asset to be distributed to a specific person and if not, you had to use the Affidavit developed by the Department.

That is what caused me to suggest a change to the statute. In my years as an Oregon lawyer, I had never come across this unwritten rule that if you had a client with a registered brand you had to list the brand in the will and specifically call it out as to which beneficiary that brand was to be distributed. I have had clients throughout Eastern Oregon, many of whom had registered brands. For the first nineteen years of my practice, I was in Nyssa in a firm with other lawyers and there were multiple probates of ranches and not once did I ever hear one of the senior partners admonish us to be sure that we listed a brand separately in the wills we drafted.

In conclusion, I see this amendment as simplifying the registered brand transfer process after a death where the decedent had a will or a trust with a residuary clause. It will reduce the number of cases where the Department will need to also use an Affidavit, and will allow for small estates to transfer a registered brand via the Affidavit of Claiming Successor. The Department can still use its affidavit for decedents who don't have a will or a trust. But where there is a will or a trust with a residuary clause that should be the defining instrument for distribution of a registered brand.

Thank you for considering my comments on this bill.

Very truly yours,



William F. Nichols

Enc.

cc: Sen: Findlay  
Rep. Owens

**SECTION 3: RESIDUARY ESTATE**

3.1 **Definition of Residuary Estate.** For the purposes of this Will, my “residuary estate” consists of the entire residue of my estate, real and personal, tangible and intangible, but excluding property over which I may have a power of appointment.

3.2 **Gift of Residuary Estate.** I give my entire residuary estate to my son, JOSEPH [REDACTED].

3.3 **Death of Joseph [REDACTED].** In the event that JOSEPH [REDACTED] does not survive me, then I give my residuary estate to his spouse, [REDACTED], if she survives me, and to JOSEPH [REDACTED]’s issue, by right of representation, to be divided among them in equal shares. If any of JOSEPH [REDACTED]’s issue are entitled to receive any share of my estate and are then under the age of twenty-one (21) years, I authorize the Personal Representative to distribute such issue’s share to a custodian under the Oregon Uniform Transfers to Minors Act who shall be chosen by my Personal Representative, in his or her absolute discretion, and who may be the Personal Representative.

**SECTION 4: PAYMENT OF DEBTS, EXPENSES AND TAXES**

4.1 **Debts, Taxes and Expenses.** I authorize my Personal Representative to pay from my residuary estate, without right of contribution from any person, my debts, taxes, the administrative expenses of my estate, my funeral and burial expenses and the expenses of my last illness. Despite any other provision in this instrument, my Personal Representative may decline to pay any alleged debt, in whole or in part, or may contest any claim, in whole or in part, on any reasonable basis.

