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April 15, 2025

Chair Jason Kropf
and Members of the Oregon Legislature House Committee on Judiciary

Re: SB168

Dear Chair Kropf and Members of the Oregon Legislature House Committee on Judiciary:

I am the Chairperson of the Oregon State Bar Estate Planning and Estate Administration Section. I am here today in that role. The Estate Planning Section Executive Committee is made up of some of the finest and most experienced estate planning and estate administration attorneys in Oregon. The Executive Committee and officers are elected by our peers statewide represent one of the largest sections of the Oregon State Bar. We volunteered time to identify technical problems in the probate statute that should be resolved by the Oregon Legislature. Those problems and the proposed resolutions are described below.

INTESTATE SUCCESSION FIX.

A drafting error was made in ORS 112.105(2) which addresses how to establish parentage for determining heirs of a decedent. Originally, the statute required establishing parentage by the family law statute ORS 109.065 OR a writing by the parent decedent acknowledging error. Due to a drafting error in the 2017 bill, the statute now requires establishing parentage by the family law ORS 109.065 AND a writing by the parent decedent acknowledging the relationship. The proposal eliminates the error by replacing the AND from 2017 with the OR from prior version.

SIMPLE ESTATES.

1. Corrects the general term Distributee (applies to both testate and intestate beneficiaries) to Devisee (which only applies to testate beneficiaries). - This is the amendment to the bill.

2. If more than $75,000 of personal property or more than $200,000 of real property is given to a specific devisee, even if a trust gets the remainder, then the simple estate affidavit is not available. Corrects the statute to allow the use of the simple estate affidavit if the specific devisee is the trust. Traditional for Wills to divide tangible personal property as a specific gift. If the tangible personal property is specifically gifted to the trust, then the simple estate affidavit may still be used. In addition, if this gifts specific real property to a trust and the value exceeds $200,000, then the simple estate affidavit will work. The practical effect of this statute is that any gift to a trust can be done without a dollar limit.

WILL EXECUTION FORMALITIES.

If a Decedent intended writing to be a will and the formalities are not followed, the law allows the document to be admitted to probate as a will. This is the current law in Oregon and many states. The goal of the underlying law is to preserve the intent of a testator in the distribution of assets if there is a harmless error in the process of execution of the Will. There is a high standard for the evidence required to prove it is a Will. The statute affects deaths after the effective date only. There is currently a question about **when** the writing could be signed under the current statute. It is an Oregon Court of Appeals Case. This statute answers the question and says **it doesn't matter when** the document/writing was signed if the testator intended the document to be the testator's Will and was signed before the date of death. Two components are added to clarify existing law:

1. Signed by the decedent; and
2. Signed before the decedent's death.

PROBATE PROCEDURE.

Probate Code Procedure: this is the process for how probate is managed by the courts when a dispute occurs. All the Oregon Rules of Civil Procedure do not apply in probate - there are too many conflicting and inapplicable rules. HOWEVER, WHEN THERE IS A CONTESTED MATTER/DISPUTE, there is a list of Oregon Rules of Civil Procedure that DO APPLY. THIS ADDS ORCP 45 to the list of Applicable ORCP's in ORS 111. It adds the use of requests for admission to try and reduce court time, refine issues for resolution, and reduce expense to parties. This is only probates and some impact on trusts. There is no affect on protective proceedings.

Thank you for taking the time to consider these important technical matters.

Sincerely,

HEATHER O. GILMORE

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