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May 6, 2025

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

Re: SB15
Simple Estates

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

I am an attorney. I have practiced law for 34 years exclusively in the area of trusts and estates. I am the current chair of the Oregon State Bar Estate Planning and Estate Administration Section, although I am not appearing in that capacity today. I appear as a private citizen on the practical issues associated with SB15. I support the Amendment SB15-A6 requested by Rep. Mannix.

The simple estate affidavit process allows a person to claim all assets listed in the affidavit by simply completing and filing an affidavit with the court clerk's office with no review or oversight. The form can be downloaded for free from the court's website. The person completing the form fills it out, gets their signature notarized, takes it into the courthouse clerk's office and pays \$124, and walks away from the filing clerk's office with the court stamped affidavit which is the only document needed to require financial institutions to give the person all the money/assets listed in affidavit. If the financial institution does not turn over the money to the person, the financial institution can be liable for the person's attorney fees. The claiming successor who signs the affidavit is just that: a person who claims the assets. The person is not a personal representative or executor.

There is no review or court oversight of any kind regarding the contents of the affidavit or the relationship of the person to the decedent. The clerk looks to see if the boxes in the form are checked or initialed. It is common that the person completing the affidavit does not properly name or notice the heirs, does not name or notice creditors, and does none of the other tasks required by the simple estate statute and affidavit. Family members and creditors are often harmed by improper affidavits. There is no accountability unless suit is filed. Few suits are filed because by the time the improper affidavit is discovered, the money is gone.

The simple affidavit process, if done properly, is inexpensive and efficient. It is of great benefit to families with limited assets. However, under the current statute many intentional and unintentional errors occur. It is clear that the value limits need adjusted and the value of manufactured dwellings needs to be treated like the value of real property. The challenge for the legislature is that the higher the value limits in the simple process, the greater the risk is to the public, there is more incentive for wrongdoers, there are more practical problems for the public including income taxes, working with financial institutions, and there may be a long-run impact on the acceptability of the process. Raising the limits too high will create problems for both families and financial institutions. The goal is to adjust the values without destroying the benefits and effectiveness of the process for average families.

Amendments SB15A-6 and SBA-7 both reduce the risk to the public from wrongdoers who may be the sole devisee under a Will. Anyone can get a Will from the internet. Under the current version of the bill without the amendment, any person can be a sole devisee and file an affidavit, including bad caregivers and other wrongdoers. The amendment adds a requirement that the sole devisee (the only person named in the Will) also is the sole heir - the only family member entitled to assets if there was no Will. Lawyers commonly make mistakes about who heirs are. The public makes these mistakes as well. The amendment requires a simple and specific statement about who a sole heir is to prevent these errors. Surviving spouses and sole children are typically familiar with a person's creditors and may be equally liable on debts. This helps protect creditors.

Amendment SB15A-6 helps reduce the incentive for people to act inappropriately and encourages the continued cooperation of financial institutions by allowing a simplified probate process with limited financial risk for both families and the financial institutions. The lower limits more accurately reflect average families in Oregon. It is often difficult to get financial institutions to turn over money with an affidavit. This is why the attorney fee provision in ORS 114 exists. It is also very difficult to get financial institutions to allow checks in the decedent's name to be cashed, accounts to be opened for the simple estate process, and accounts to be closed. It is well meaning, but not very practical to increase the limits. More complexity is created with greater value and the simple estate process is not designed to address any complexity. It is important to retain the limited risk and maintain the integrity of the simple process. SB15A-6 allows for this

Sincerely,



HEATHER O. GILMORE

HG: gh

Enc.

C: Rep. Kevin Mannix

The simple estate affidavit process is as follows:

- Forms available on OJD website. Free to the public.
- The instructions are lengthy.
- Errors in completing the form by the public AND attorneys are very common. Common errors include:
 - Failure to properly identify heirs. This results in the wrong people getting the assets. This results in a lack of notice of the right to receive the assets.
 - Failure to properly include all creditors. This results in creditors going unpaid.
 - Failure to properly identify assets. This results in problems with claiming the assets.
 - Intentional and unintentional undervaluation of assets. This results in the proceeding and related transfers being void due to lack of jurisdiction.
- After the form is completed and notarized (which is just a confirmation of identity of who signed the form – nothing else), it is filed with the court and the \$124 filing fee is paid to the court.
- There is no check by the court other than the form being completed with the boxes checked. There is no further follow up by the court that the representations made in the form are accurate or the tasks completed.
- The person who files the form leaves the court with a document that allows the affiant to simply go to the bank or brokerage and claim all the money. There is nothing further.
- The filer is supposed to do the following after filing the form:
 - Mail a copy to each heir and to each devisee. These are different people. This task is often not completed.
 - Mail a copy to the Oregon Department of Human Services who may be a creditor under the EAU Medicaid benefits provided to the decedent or the decedent's spouse. This task is often not completed.
 - Mail a copy to each creditor, acknowledged or disputed. This task is regularly not completed.
- The financial institutions have no incentive to inquire further into the matter because if they do not turn over the assets, they can be liable for attorney fees under ORS 114. 535(7)(b).
- There is no accounting or other formal obligation to any party unless a formal court proceeding is brought. Often, the money has been inappropriately spent so there is no incentive for injured creditors or other family members to bring an action – the money is gone. The courts don't see this, but the attorneys in private practice regularly see this because the attorneys are the ones advising that there is no benefit to an action against a wrongdoer who has filed an affidavit.

Risks to the Public:

- It is easy to get a will online for a person. The cost is less than \$20.
- Wrongdoers can easily become the sole devisee with an inappropriately procured will.

- Often wrongdoers do not identify the heirs at all or do not identify all the heirs in the affidavit. Often, wrongdoers do not send the notices even if the heirs are properly identified.
- Often wrongdoers do not identify the creditors at all or do not send the notices to the creditors or the State of Oregon.
- The wrongdoer has immediate access to liquid funds once the document is simply filed with the court.
- There are currently occurring with the smaller limits numerous problems with improperly completed affidavits that result in court supervision of cases or void affidavits and the resulting problems for the financial institutions and title companies.

The Current Bill:

The current bill makes some positive changes. An increase in value is appropriate and treating manufactured dwellings like real property for the value limits is proper. The current bill also increases the risk of fraud and mistakes. The legislature needs to resolve what amount of increase is proper and in the public interest. At some point, the legislature needs to work with the Uniform Law Commission or another group to provide a simplified probate process in general. That is not this year. Some of the concerns on the current bill are:

- Increased need for court supervision of cases without solutions because the money has been spent or innocent third parties, including but not limited to title companies, financial institutions and buyers of real property are drawn in.
- Increased limits increased incentive for bad actors.
- There will be increased tax issues.
 - The decedent owes a final income tax return.
 - The simple process is required to file an income tax return, and it is unclear whether it files as an estate or if the income is instead apportioned to the distributees. It is not as easy as just receiving money.
 - The current bill may easily involve taxable estates for Oregon Estate Tax. The responsibility to prepare and file the return is not affected by the change in how the assets pass from the decedent to the family. The estate tax remains unchanged with this bill, but uninformed families will end up paying more in estate taxes because of the potential for late filings and interest and penalties.
- Increased practical problems with management of legitimate affidavits because simple estates are not probate estates.
 - Many financial institutions will not allow this to be treated as a probate. Many banks will not allow accounts to be opened in the name of an estate with a simple affidavit.
 - The title companies already have additional requirements because of the exposure to liability. Increased transactions will increase exposure and are

likely to increase additional requirements including things like holding harmless the title company.

The Mannix Amendment:

- The amendment is a welcome addition to the bill.
- The amendment continues the positive feature of treating manufactured dwellings like real property for value purposes. This is in the public interest.
- The amendment reduces the risk to the public and risk of loss to families by wrongdoers because the higher limits only apply if a person is a sole heir AND a sole devisee. This prevents problems with the current bill where a bad actor could go online and get a will, have the elderly person sign it, and become the sole heir. Then, post death, simply download the affidavit from the OJD website and walk into the courthouse with no notice to anyone and walk out with the ability to claim all the assets.
- The amendment reduces the risk of improper completion of the affidavit for a sole heir who is also a sole devisee by bringing to the affiant's attention what a sole heir actually is. This reduces the risk of mistakes or intentional misrepresentation of who the heirs are. This will help both attorneys and the public to properly understand and complete the form.
- An adjustment to the values is appropriate.
 - The price of real property has increased.
 - The amendment limits the adjustment to the average home in Oregon.
 - Reasonable increases will help reduce the risk to the public where there may be an inappropriately procured will.
 - Reasonable increases reduce the incentive to wrongdoers.
 - Reasonable increases are needed, but the average median home is a 3-bedroom home under 2,000 square feet costs \$330,000 in Oregon. Homes with values of \$750,000 usually indicate that there is an Oregon Estate subject to Estate Tax which immediately increases the complexity of the situation because of Oregon's estate tax which begins at \$1 Million of gross value.
 - An adjustment in values like other states simplified processes will prevent financial institutions or title companies from refusing to do business with the simplified process. This will ensure the integrity of the process so that the public can properly use the process without unnecessary barriers. States commonly have numbers similar to the Mannix Amendment with an adjustment for inflation. For example, Washington uses \$100,000. California's limit increased April 1, 2025 to \$208,850. California requires a petition **and a court hearing** for the decedent's primary residence up to \$750,000.
<https://courts.ca.gov/sites/default/files/courts/default/2024-11/de300.pdf>