



May 6, 2025

BY ELECTRONIC SUBMISSION

Oregon Legislature  
900 Court St. NE, Hearing Room F  
Salem, OR 97301

RE: SB -15: Access to Justice or Recipe for Injustice?

Dear Representatives:

My primary practice for several decades involves estate and disability planning, probate and trust administration, and litigation or litigation support for related disputes. I was licensed in Oregon in 1991, and in Washington in 2007. I am also licensed in Arizona.

In my estate planning practice, I have systems and methods that result in smooth probate and trust administrations. Not once has any of my documents resulted in a probate or trust challenge or administrative dispute. I credit my clients' and their families' success in avoiding painful estate litigation to two factors, careful drafting of documents and equally careful selection of agents under the power of attorney, trustee or probate executor. Unfortunately, many lawyers go along with their client appointment selections without sufficient analysis. Some can't write and the combination of poor selection of administrators and document ambiguities leads to disputes of all types. The result is that at Wool Landon we make far more fees disentangling bad administrations than we do creating successful plans or helping an executor administer a well-thought-out plan.

I have represented both beneficiaries and executors in countless Oregon probates both smooth and troubled, in trust administrations and disputes that cross state and sometimes international lines, and many probates in the state of Washington. I can confidently say that the Oregon probate process and associated statutes, although not perfect, provide many opportunities for checks and balances so that the intent of the deceased person can be realized. This is often more important for smaller probate estates because these estates are frequently for families with fewer resources and grateful beneficiaries. The loss of a smaller inheritance to which a beneficiary is entitled is no less painful than the loss of a larger inheritance. Proportionately, it is more expensive to pursue but the Oregon probate process provides many opportunities to identify and rectify or surcharge bad acts of a probate executor.

Oregon probate statutes provide creditors, beneficiaries and executors many avenues to obtain corrections when an administration goes awry; Oregon has relatively easy access to obtain





judicial interference at many stages when such interference will prevent wrongdoing. Since the process is more complicated than the Simple Estate Affidavit process, creditors, beneficiaries and executors are likely to hire an attorney to assist. Attorneys add cost, but they also provide protection from wrongdoing and advice and counsel about non-probate assets such as retirement assets, trusts that may be part of the planning for a decedent, recovery of life insurance proceeds and tax obligations associated with a decedent's administration.

Although the Simple Estate Affidavit limits might benefit from a slight increase, the increase proposed by SB-15 is too expansive and the statutes limit remedies for errors and wrongdoing. Affiants are not educated by either an attorney, or the Guardian Partners program as to their duties, and frequently do not follow the rules either intentionally or accidentally. The only public act they are required to take is filing the Affidavit. In filing they can, and often do, omit heirs at law or beneficiaries and do not adequately search for creditors. By the time a valid but omitted beneficiary or creditor learns of the omission, the assets have been distributed, frequently to the affiant themselves, with no likelihood of recovery. In most cases, if there is an omission, the cost of hiring counsel to correct the omission through the summary determination process exceeds the value of the loss. Most lawyers are not willing to undertake a proceeding where there is a slim likelihood of recovery for their client. Failing to find or hire an attorney, a wronged creditor or beneficiary acting pro se, merely adds to the demand on the court.

The state of Oregon will also lose tax revenue. Under the tax code, if there is no executor or administrator appointed, that is unless designated in a trust or Will, the person in actual or constructive possession of a decedent's assets is also the "tax executor" for tax purposes.<sup>1</sup> The affiant will be the tax executor. Oregon law for the Simple Estate Affidavit doesn't address tax duties at all. Non probate assets are included in an estate in determining the size of the estate for estate tax purposes.<sup>2</sup> If the Simple Estate Affidavit is expanded to \$1M or even \$500,000 in total value, and there is also a life insurance policy or retirement account or any combination of these that drives up the value of the estate over the Oregon estate tax exemption of \$1M, the likelihood that the Affiant would know they have tax obligations is slim. They also won't have any way to know that they are responsible for the decedent's final income tax return, and any income that arises in the Simple Estate itself. Ultimately, this is a disservice to the Affiant, who will be personally liable for the lost tax revenue if either Oregon or the IRS pursues these obligations.

The proposed increase will result in the following unfortunate consequences:

- Lost inheritances for many middle-class family members and costly difficult efforts to collect these losses
- Lost opportunity to challenge a fraudulent Will created by a bad acting Affiant who fails to serve all heirs and devisees.

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<sup>1</sup> Internal Revenue Code §2203, and ORS 118.005 (4)

<sup>2</sup> Internal Revenue Code §2031 and ORS 118.005 (6)





- Lost opportunities for creditors to collect their due
- Lost tax revenue for the state of Oregon

Our office fields many calls from many Oregonians from around the state who have been treated unfairly by one or more trustees or executors of a probate estate. These people have the probate process and Oregon Uniform Trust Code Act to offer extensive opportunities to right any wrongs. Persons entitled to an inheritance subject to the Simple Estate Affidavit process have a limited summary determination proceeding that most frequently is too little and too late for recovery.

I will be attending the hearing tomorrow and have asked for time to speak.

Very truly yours,

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