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May 7, 2025

Oregon State Legislature  
House Committee on Judiciary

RE: SB-15 Comment/ testimony

Dear Representatives;

I'm writing to address serious concerns I have concerning the public welfare in relation to SB-15. I have been a practicing attorney in the State of Oregon for 20 years. My practice consists of Probate, Estate Planning and Personal Injury. I believe the changes in the probate code as incorporated in SB-15 are in gross error and present an avenue for fraud and injustice.

First, probate as we know it has always existed in our legal system, going back to the English common law. The territorial government in Oregon formed for the purpose of probating the estate of Ewing Young, one of our earliest pioneers. The reason for probate still exists now the same as it ever has, to protect heirs and legitimate creditors of the estate from unscrupulous actors.

The small estate proceeding fulfills a need to quickly administer estates of low value where the chance of injury to heirs or creditors is lower and any injury is of less consequence. Therefore, due to the limited assets involved, court supervision isn't always necessary or financially prudent. I support the use of small estate affidavits whenever possible, but they should never be permissible to use in anything but a small estate.

The definition of a small estate may change over time and it's wise for the legislature to review those limits and to raise them accordingly, especially considering inflation. However, raising the limits to 1 million dollars, an amount to include most estates, is a recipe for disaster.

I can personally attest to numerous cases where the personal representative has wrongly disbursed funds to themselves and/or refused to honor legitimate claims. These instances are not rare and happen with some regularity. These cases all involved an attorney and court supervision, but attempts were made regardless by the personal representative or other family members. Due to the attorney's involvement and the probate court, these unlawful acts are caught early with little to no damage to the estate. With SB-15, those guard rails are completely taken down. I know of countless cases that I have had in the past where I believe it would be likely for the personal representative, or affiant, to secret/ hide funds if no attorney was involved.

If SB-15 becomes law as written, I have zero doubt there will be substantial wrongdoing on the part of affiants. Some of it will be unknowing, due to not understanding their obligations and the

law, but a lot of it will be intentional. This will cause a substantial loss to the other heirs and/or creditors.

Preventing this loss is the whole point of estate administration and probate in general. This exposure of wrongdoing on the part of the affiant is nothing new, it has always existed. That is why small estate administration has low limits for assets. To subject the majority of Oregon estates to this exposure is, frankly, incomprehensible to me.

What I do think is helpful is including mobile homes in the definition of real property. This will help many estates qualify for a small estate, that are otherwise ineligible due to the current inflated market value of mobile homes. I also think the limits of \$75,000.00 for personal property and \$200,000.00 for real property could be raised modestly or otherwise adjusted for inflation.

Lastly, I think the common mistaken assumption that probate is overly expensive, is likely driving the consideration of this bill. First, very few probate attorneys require a retainer for fees, I do not. Second, the majority of probate attorneys do not get paid their fees until the closing of the probate. Third, fees are much lower than most people expect. Some states use a fixed percentage of the estate to calculate attorney fees, Oregon does not. This makes Oregon's probate fees much more reasonable compared to a state such as California. Oregon probate attorney's bill by the hour and the fees per the law must be found by the court to be reasonable and necessary.

My average fee in a probate case is around \$5-8,000.00 dollars. My average estate value is about \$600,000.00 dollars. Therefore, on average my fees make up about 1% of total estate value. In my opinion, the estate paying 1 to 2% of its value in administration costs, to make sure the estate is administered according to the law and the will of the decedent, is more than reasonable and frankly cheap insurance.

If a person wants their estate to be able to avoid probate, there are ample ways to do that. In cases where a person has elected not to do that, the state of Oregon owes it to our residents to have a system in place to make sure their wishes are in fact carried out. I ask that this letter be submitted into the record, thank you.

Sincerely,

*s/ **TERRY R. HANSEN***

Terry R. Hansen