



RE: Senate Bill 15A Relating to Simple Estates

Chair Kropf, Vice-Chair Chotzen, Vice-Chair Wallan, and Members of the House Judiciary Committee:

About OLTA:

The Oregon Land Title Association (OLTA) is the professional association for the title insurance industry in Oregon. OLTA's membership includes title insurance underwriters and their policy-issuing agents. Title agents search the public records and prepare reports on land ownership called preliminary title reports. Underwriters insure land ownership through policies of title insurance.

OLTA promotes the educational, ethical, professional and legislative interests of the title industry. OLTA works with regulators, legislators, county clerks, and the public to ensure the title industry is responsive to evolving customer needs.

OLTA's position on SB 15 A-Engrossed: **Opposed**

As Judge Channing Bennett mentioned in his testimony to this Committee on May 7, allowing the sole devisee under a will to claim the entirety of a decedent's estate under the simple estate procedure is an "invitation to commit elder abuse and fraud." The devisee may not be an heir of the decedent and may have procured the will using undue influence.

The risks of fraud and negligence were amply detailed by others who spoke. OLTA shares their concerns. Apart from the clerk's ministerial act of accepting the filing, there is no court oversight of simple estates. The substantive review of the affidavit, and the risk of loss, is transferred to financial institutions with respect to personal property and **to title companies in the case of real estate.**

The risks to real estate are the same as with personal property: an heir may be omitted, a creditor is not notified (including the State's Estate Administration Unit, or Department of Revenue for unpaid Estate Tax), or a revoked will is attached to the affidavit. Although money on deposit is fungible and real estate is not, the outcome to real estate is the same when the simple estate is mishandled – a wronged creditor, heir, or taxing authority who may pursue its claim against the real estate later.

Non-probate alternatives for real estate are readily available.

From various speakers on May 7, the Committee heard that probate is costly and that in the name of helping people of modest means stay housed, the Committee should adopt the Engrossed Bill and raise the simple estate limit to \$1M (real property and personal property combined). Similarly, the written testimony in support of the Bill argues that the thresholds should be raised because:

“I do not want my heirs to go through probate.”

(E.g. testimony of Delores Harris in support of 2019 SB 843, refiled in support of 2025 SB 15.)

When it comes to estate planning for real property, there are affordable ways to establish title in the intended recipients that merely require signing and recording a deed such as:

- a.) Tenancy by the entireties for spouses;
- b.) *Erickson* estates for co-tenants even if they are not married to each other;
- c.) Transfer on death deeds (TODD) allowing the owner to designate a beneficiary, whether heir or not.

The transfer on death deed statute was enacted in 2011, well after the small estate statute. The TODD procedure is a tidy solution to the problem of owning real estate without any other estate plan. We routinely vest in the survivor or beneficiary under these relationships without requiring a probate be filed. Deed forms are available for a nominal charge at places like Stevens-Ness.

Even as to personal property manufactured homes, which are not real estate, the owner may make a survivorship designation in the MHODS database on the ownership record, formerly known as certificate of title.

OLTA offers these comments to dissuade the Committee from taking the view that expanding the combined simple estate threshold to \$1M is the best way to afford persons of modest means to easily dispose of their real estate at death because they do not want their heirs to have to endure probate.

Support for Amendments:

OLTA supports the -6 Amendment. If the existing threshold of \$200,000 must be raised, \$400,000 is around the median home price in Oregon. When the estate has a single devisee who is also the decedent's sole heir, \$400,000 is an acceptable threshold. It is a compromise solution that will satisfy many constituents while keeping risks to the insuring title company within acceptable levels.

OLTA opposes the -7 Amendment. While it correctly limits the procedure to the sole heir of the decedent, it keeps the \$1M combined threshold in place. \$750,000 is large risk for title

companies to insure in a single transaction. As discussed above, there are alternatives for passing title to real estate without probate. For estates nearing \$1M, there is usually enough equity in the land or funds in the estate to warrant probate.

There are the interests of an insured buyer to consider, too. A buyer should not be compelled to purchase a problematic title, even if there is coverage under the owner's policy in the event an heir is omitted or large creditor claim attaches to the property. An heir deprived of \$375,000 (half of \$750,000) has incentive to bring suit once the loss is discovered.

Global comments on probate:

The attorney fees for uncontested probates are not usually very high. Attorney Terry Hansen's testimony in opposition to the Bill dated May 7 states that his fees are around \$5,000-\$8,000 for estates valued around \$600,000. This is in line with the various probates I have recently reviewed in my work as an underwriter.

There is a common misconception that the probate must be completed before real estate can be sold, causing delays and suffering by the heirs. However, once appointed, the PR may sell estate assets in the ordinary course without a court order and before the judgment of distribution. ORS 114.325 (unless the will makes a specific devise otherwise). Probate must be completed to distribute property to an heir or devisee, but when it is sold on the open market, this impediment does not exist.

Conclusion

OLTA supports the -6 Amendment. It is a suitable compromise in which the title company assumes some risk, while allowing certain testate estates to pass without full probate.

Thank you for your consideration of this input from OLTA.

Submitted by Ian Kyle, Co-Chair, OLTA Legislative Committee
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