

# Chapter 114

2011 EDITION

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## PROBATE LAW

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**SUPPORT OF SPOUSE AND CHILDREN**

**114.005 Occupancy of family abode by spouse and children.** The spouse and dependent children of a decedent, or any of them, may continue to occupy the principal place of abode of the decedent until one year after the death of the decedent or, if the estate therein is an estate of leasehold or an estate for the lifetime of another, until one year after the death of the decedent or the earlier termination of the estate. During that occupancy:

(1) The occupants shall not commit or permit waste to the abode, or cause or permit mechanic's or materialman's or other liens to attach thereto.

(2) The occupants shall keep the abode insured, to the extent of the fair market value of the improvements, against fire and other hazards within the extended coverage provided by fire insurance policies. In the event of loss or damage from those hazards, to the extent of the proceeds of the insurance, they shall restore the abode to its former condition.

(3) The occupants shall pay taxes and improvement liens on the abode as payment thereof becomes due.

(4) The abode is exempt from execution to the extent that it was exempt when the decedent was living. [1969 c.591 §103]

**114.010** [Repealed by 1969 c.591 §305]

**114.015 Support of spouse and children.** The court by order shall make necessary and reasonable provision from the estate of a decedent for the support of the spouse and dependent children of the decedent, or any of them, upon:

(1) Petition therefor by or on behalf of the spouse or any dependent child;

(2) Service of the petition and notice of hearing thereon to the personal representative, unless the petitioner is the personal representative;

(3) Notice to persons whose distributive shares of the estate may be diminished by the granting of the petition, unless the court by order directs otherwise; and

(4) Hearing. [1969 c.591 §104]

**114.020** [Amended by 1955 c.69 §1; repealed by 1969 c.591 §305]

**114.025 Petition for support and answer.** (1) The petition for support under ORS 114.015 shall include a description of property, other than property of the estate, available for the support of the spouse and children, and an estimate of the expenses anticipated for their support. If the petitioner is the personal representative, the petition shall also include, so far as known, a statement of the nature and estimated value of

the property of the estate and of the nature and estimated amount of claims, taxes and expenses of administration.

(2) If the personal representative is not the petitioner, the personal representative shall answer the petition for support. The answer shall include, so far as known, a statement of the nature and estimated value of the property of the estate and of the nature and estimated amount of claims, taxes and expenses of administration. [1969 c.591 §105]

**114.030** [Repealed by 1969 c.591 §305]

**114.035 Temporary support.** Pending hearing upon the petition under ORS 114.015, temporary support may be allowed by order of the court in an amount and of a nature the court considers reasonably necessary for the welfare of the surviving spouse and dependent children of the decedent or any of them. [1969 c.591 §106]

**114.040** [Repealed by 1969 c.591 §305]

**114.045 Modification or termination of support.** Provision for support under ORS 114.015 ordered by the court may be modified or terminated by the court by further order. [1969 c.591 §107]

**114.050** [Repealed by 1969 c.591 §305]

**114.055 Nature of support.** (1) Provision for support under ORS 114.015 ordered by the court may consist of any one or more of the following:

(a) Transfer of title to personal property.

(b) Transfer of title to real property.

(c) Periodic payment of moneys during administration of the estate, but the payments may not continue for more than two years after the date of death of the decedent.

(2) The court, in determining provision for support, shall take into consideration the solvency of the estate, property available for support other than property of the estate, and property of the estate inherited by or devised to the spouse and children. [1969 c.591 §108]

**114.060** [Repealed by 1969 c.591 §305]

**114.065 Limitations on support.** If it appears to the court that after provision for support under ORS 114.015 is made the estate will be insolvent, the provision for support ordered by the court shall not exceed one-half of the estimated value of the property of the estate, and any periodic payment of moneys so ordered shall not continue for more than one year after the date of death of the decedent. [1969 c.591 §109]

**114.070** [1957 c.345 §1; repealed by 1969 c.591 §305]

**114.075 Priority of support; treated as administration expense.** Subject to the limitations imposed by ORS 114.065, provision for support under ORS 114.015 ordered by the court has priority over claims and

expenses of administration. The provision is not charged against the distributive share of the person receiving support. The provision is treated as an expense of administration, but not as a deduction for estate tax purposes. [1969 c.591 §110; 2011 c.526 §18]

**114.085 Setting apart whole estate for support; termination of administration.**

If it appears, after the expiration of four months after the date of the first publication of notice to interested persons, that reasonable provision for support of the spouse and dependent children of the decedent, or any of them, warrants that the whole of the estate, after payment of claims, taxes and expenses of administration, be set apart for such support, the court may so order. There shall be no further proceeding in the administration of the estate, and the estate shall summarily be closed. [1969 c.591 §111]

**114.105** [1969 c.591 §112; 1997 c.99 §22; repealed by 2009 c.574 §25]

**114.110** [Repealed by 1969 c.591 §305]

**114.115** [1969 c.591 §113; repealed by 2009 c.574 §25]

**114.120** [Repealed by 1969 c.591 §305]

**114.125** [1969 c.591 §114; repealed by 2009 c.574 §25]

**114.130** [Amended by 1955 c.266 §1; 1965 c.506 §1; repealed by 1969 c.591 §305]

**114.135** [1969 c.591 §115; 2003 c.576 §374; repealed by 2009 c.574 §25]

**114.140** [Repealed by 1969 c.591 §305]

**114.145** [1969 c.591 §116; repealed by 2009 c.574 §25]

**114.150** [Repealed by 1969 c.591 §305]

**114.155** [1969 c.591 §117; 1973 c.823 §109; 1995 c.664 §85; repealed by 2009 c.574 §25]

**114.165** [1969 c.591 §118; repealed by 2009 c.574 §25]

**TITLE AND POSSESSION  
OF PROPERTY**

**114.205 No distinction between real and personal property.** ORS chapters 111, 112, 113, 114, 115, 116 and 117 apply without distinction between real and personal property. [1969 c.591 §119]

**114.210** [Repealed by 1969 c.591 §305]

**114.215 Devolution of and title to property.** (1) Upon the death of a decedent, title to the property of the decedent vests:

(a) In the absence of testamentary disposition, in the heirs of the decedent, subject to support of spouse and children, rights of creditors, administration and sale by the personal representative; or

(b) In the persons to whom it is devised by the will of the decedent, subject to support of spouse and children, rights of creditors, right of the surviving spouse to elect against the will, administration and sale by the personal representative.

(2) The power of a person to leave property by will, and the rights of creditors,

devisees and heirs to the property of the person, are subject to the restrictions and limitations expressed or implicit in ORS chapters 111, 112, 113, 114, 115, 116 and 117 to facilitate the prompt settlement of estates.

(3) Any animal of a value of less than \$2,500 that belonged to the decedent and that was kept by the decedent as a pet need not be listed on the inventory of the estate. Any family member of the decedent, friend of the decedent or animal shelter may take custody of the animal immediately upon the death of the decedent. A family member, friend or animal shelter that takes custody of an animal under this subsection is entitled to payment from the estate for the cost of caring for the animal. A family member, friend or animal shelter that takes custody of an animal under this subsection shall deliver the animal to the personal representative for the decedent, or to any heir or devisee entitled to possession of the animal, upon request of the personal representative, heir or devisee. [1969 c.591 §120; 1999 c.675 §1]

**114.220** [Repealed by 1969 c.591 §305]

**114.225 Possession and control of decedent's estate.**

A personal representative has a right to and shall take possession and control of the estate of the decedent, but the personal representative is not required to take possession of or be accountable for property in the possession of an heir or devisee unless in the opinion of the personal representative possession by the personal representative is reasonably required for purposes of administration. [1969 c.591 §121]

**114.230** [Repealed by 1969 c.591 §305]

**114.240** [Repealed by 1969 c.591 §305]

**114.250** [Repealed by 1969 c.591 §305]

**DUTIES AND POWERS OF  
PERSONAL REPRESENTATIVES**

**114.255 Commencement of duties and powers of personal representative; prior acts.**

The duties and powers of a personal representative commence upon the issuance of the letters of the personal representative. The powers of a personal representative relate back in time to give the acts of the personal representative occurring prior to appointment the same effect as those occurring thereafter. A personal representative may ratify and accept acts on behalf of the estate done by others where those acts would have been proper for a personal representative. [1969 c.591 §122]

**114.260** [Repealed by 1969 c.591 §305]

**114.265 General duties of personal representative.**

A personal representative is a fiduciary who is under a general duty to and shall collect the income from property

of the estate in the possession of the personal representative and preserve, settle and distribute the estate in accordance with the terms of the will and ORS chapters 111, 112, 113, 114, 115, 116 and 117 as expeditiously and with as little sacrifice of value as is reasonable under the circumstances. [1969 c.591 §123]

**114.270** [Repealed by 1969 c.591 §305]

**114.275 Personal representative to proceed without court order; application for authority, approval or instructions.**

A personal representative shall proceed with the administration, settlement and distribution of the estate without adjudication, order or direction of the court, except as otherwise provided in ORS chapters 111, 112, 113, 114, 115, 116 and 117. However, a personal representative or any interested person may apply to the court for authority, approval or instructions on any matter concerning the administration, settlement or distribution of the estate, and the court, without hearing or upon such hearing as it may prescribe, shall instruct the personal representative or rule on the matter as may be appropriate. [1969 c.591 §124]

**114.285 Naming or appointment of personal representative does not discharge claim.**

The naming or appointment of any person as personal representative does not discharge any claim which the decedent had against that person. The claim shall be included in the inventory. If the person agrees to act as personal representative, the person is liable for the claim as for so much money in the hands of the person at the time the claim becomes due and payable; otherwise the person is liable for the claim as any other debtor of the decedent. [1969 c.591 §125]

**114.295 Discharge or devise in will of claim of testator.**

The discharge or devise in a will of a claim of the testator against a personal representative or against any other person is of no effect as against creditors of the decedent. The claim shall be included in the inventory and for purposes of administration shall be regarded and treated as a specific devise of the amount of the claim. [1969 c.591 §126]

**114.305 Transactions authorized for personal representative.**

Subject to the provisions of ORS 97.130 (2) and (10) and except as restricted or otherwise provided by the will of the decedent, a document of anatomical gift under ORS 97.965 or by court order, a personal representative, acting reasonably for the benefit of interested persons, is authorized to:

(1) Direct and authorize disposition of the remains of the decedent pursuant to ORS 97.130 and incur expenses for the funeral, burial or other disposition of the remains in

a manner suitable to the condition in life of the decedent. Only those funeral expenses necessary for a plain and decent funeral and disposition of the remains of the decedent may be paid from the estate if the assets are insufficient to pay the claims of the Department of Human Services and the Oregon Health Authority for the net amount of public assistance, as defined in ORS 411.010, paid to or for the decedent and for care and maintenance of any decedent who was at a state institution to the extent provided in ORS 179.610 to 179.770.

(2) Retain assets owned by the decedent pending distribution or liquidation.

(3) Receive assets from fiduciaries or other sources.

(4) Complete, compromise or refuse performance of contracts of the decedent that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease real property, the personal representative, among other courses of action, may:

(a) Execute and deliver a deed upon satisfaction of any sum remaining unpaid or upon receipt of the note of the purchaser adequately secured; or

(b) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.

(5) Satisfy written pledges of the decedent for contributions, whether or not the pledges constituted binding obligations of the decedent or were properly presented as claims.

(6) Deposit funds not needed to meet currently payable debts and expenses, and not immediately distributable, in bank or savings and loan association accounts, or invest the funds in bank or savings and loan association certificates of deposit, or federally regulated money-market funds and short-term investment funds suitable for investment by trustees under ORS 130.750 to 130.775, or short-term United States Government obligations.

(7) Abandon burdensome property when it is valueless, or is so encumbered or is in a condition that it is of no benefit to the estate.

(8) Vote stocks or other securities in person or by general or limited proxy.

(9) Pay calls, assessments and other sums chargeable or accruing against or on account of securities.

(10) Sell or exercise stock subscription or conversion rights.

(11) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise.

(12) Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held.

(13) Insure the assets of the estate against damage and loss, and insure the personal representative against liability to third persons.

(14) Advance or borrow money with or without security.

(15) Compromise, extend, renew or otherwise modify an obligation owing to the estate. A personal representative who holds a mortgage, pledge, lien or other security interest may accept a conveyance or transfer of the encumbered asset in lieu of foreclosure in full or partial satisfaction of the indebtedness.

(16) Accept other real property in part payment of the purchase price of real property sold by the personal representative.

(17) Pay taxes, assessments and expenses incident to the administration of the estate.

(18) Employ qualified persons, including attorneys, accountants and investment advisers, to advise and assist the personal representative and to perform acts of administration, whether or not discretionary, on behalf of the personal representative.

(19) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of duties as personal representative.

(20) Prosecute claims of the decedent including those for personal injury or wrongful death.

(21) Continue any business or venture in which the decedent was engaged at the time of death to preserve the value of the business or venture.

(22) Incorporate or otherwise change the business form of any business or venture in which the decedent was engaged at the time of death.

(23) Discontinue and wind up any business or venture in which the decedent was engaged at the time of death.

(24) Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.

(25) Satisfy and settle claims and distribute the estate as provided in ORS chapters 111, 112, 113, 114, 115, 116 and 117.

(26) Perform all other acts required or permitted by law or by the will of the decedent. [1969 c.591 §127; 1969 c.597 §278; 1977 c.211 §1; 1981 c.278 §1; 1995 c.157 §16; 1997 c.472 §10; 2001 c.900 §17; 2005 c.348 §126; 2007 c.681 §25; 2011 c.164 §4; 2011 c.720 §59]

**114.310** [Repealed by 1969 c.591 §305]

**114.315 Right to perfect lien or security interest.** A personal representative has the same rights to perfect a lien or security interest as the decedent would have had if the decedent were living. [1969 c.591 §128]

**114.320** [Repealed by 1969 c.591 §305]

**114.325 Power to sell, mortgage, lease and deal with property.** (1) A personal representative has power to sell, mortgage, lease or otherwise deal with property of the estate without notice, hearing or court order.

(2) Exercise of the power of sale by the personal representative is improper, except after notice, hearing and order of the court, if:

(a) The sale is in contravention of the provisions of the will; or

(b) The property is specifically devised and the will does not authorize its sale; or

(c) A bond of the personal representative has been required and filed, the sale price of the property to be sold exceeds \$5,000 and the bond of the personal representative has not been increased by the amount of cash to be realized on the sale, unless the court has directed otherwise. [1969 c.591 §129]

**114.330** [Repealed by 1969 c.591 §305]

**114.333 Transfer of title and interest to real property by foreign personal representative.** Upon performance of a recorded contract of sale of real property the foreign personal representative of a deceased vendor whose estate is being administered in a foreign jurisdiction may convey the title and interest of the vendor in the property to the vendee or the assignee of the vendee upon recording in the deed records of the county where the property is located a certified copy of letters testamentary or of administration. The certificate shall include a statement that the letters are in effect. [1973 c.506 §28]

**114.335 Court order for sale, mortgage or lease.** Upon proof satisfactory to the court by an interested person that a sale, mortgage or lease of property of the estate is required for paying support of spouse and children, elective share of surviving spouse, claims or expenses of administration, or for distribution, and that the personal representative has failed or declined to act, the court may order the personal representative to

make the sale, mortgage or lease. [1969 c.591 §130]

**114.340** [Repealed by 1969 c.591 §305]

**114.345 Title conveyed free of claims of creditors.** Property sold, mortgaged or leased by a personal representative is subject to liens and encumbrances against the decedent or the estate of the decedent, but is not subject to rights of creditors of the decedent or liens or encumbrances against the heirs or devisees of the decedent. The filing and allowance of a claim in an estate proceeding does not make the claimant a secured creditor. [1969 c.591 §131]

**114.350** [Repealed by 1963 c.287 §1]

**114.355 Sale or encumbrance to personal representative voidable; exceptions.** (1) Any sale or encumbrance to the personal representative, the spouse, agent or attorney of the personal representative, or any corporation or trust in which the personal representative has more than a one-third beneficial interest, is voidable unless:

(a) The transaction was consented to by all interested persons affected thereby; or

(b) The will expressly authorizes the transaction by the personal representative; or

(c) The transaction was made in compliance with another statute or with a contract or other instrument executed by the decedent.

(2) The title of a purchaser for value without notice of the circumstances of the transaction with the personal representative is not affected unless the purchaser should have known of the defect in the title of the seller. [1969 c.591 §132]

**114.360** [Repealed by 1963 c.287 §1]

**114.365 Validation of certain sales.** The following are the subject of validating Acts:

(1) Certain sales of decedent's real property made prior to 1903 where confirmation of sale was premature, validated by page 133, section 2, General Laws of Oregon 1903.

(2) Certain sales of decedent's property made prior to 1907 under power in will, validated by chapter 175, General Laws of Oregon 1907.

(3) Certain sales of decedent's real property made prior to 1917 where publication of the notice of sale was improper, validated by section 2, chapter 114, General Laws of Oregon 1917.

(4) Certain sales by executors or administrators made prior to 1943, validated by chapter 26, Oregon Laws 1943. [Formerly 116.835]

**114.370** [Repealed by 1963 c.287 §1]

**114.375 Nonliability of transfer agents.**

A transfer agent or a corporation transferring its own securities incurs no liability to any person by making a transfer of securities of an estate as requested or directed by a personal representative. [1969 c.591 §134]

**114.385 Persons dealing with personal representative; protection.**

A person dealing with or assisting a personal representative without actual knowledge that the personal representative is improperly exercising the power of the personal representative is protected as if the personal representative properly exercised the power. The person is not bound to inquire whether the personal representative is properly exercising the power of the personal representative, and is not bound to inquire concerning the provisions of any will or any order of court that may affect the propriety of the acts of the personal representative. No provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection expressed in this section extends to a person dealing with or assisting a personal representative appointed under ORS 113.085 without actual knowledge that the personal representative was not qualified as provided in ORS 113.095 or that the appointment of the personal representative involved procedural irregularity. [1969 c.591 §135]

**114.395 Improper exercise of power; breach of fiduciary duty.**

If the exercise of power by a personal representative in the administration of an estate is improper, the personal representative is liable for breach of fiduciary duty to interested persons for resulting damage or loss to the same extent as a trustee of an express trust. Exercise of power in violation of a court order is a breach of duty. Exercise of power contrary to the provisions of the will may be a breach of duty. [1969 c.591 §136]

**114.405 Personal liability of personal representative.**

(1) The personal liability of a personal representative to third parties, as distinguished from fiduciary accountability to the estate, arising from the administration of the estate is that of an agent for a disclosed principal.

(2) A personal representative is not personally liable on contracts properly entered into in the fiduciary capacity in the course of administration of the estate unless the personal representative expressly agrees to be personally liable.

(3) A personal representative is not personally liable for obligations arising from

possession or control of property of the estate or for torts committed in the course of administration of the estate unless the personal representative is personally at fault.

(4) Claims based upon contracts, obligations and torts of the types described in subsections (2) and (3) of this section may be allowed against the estate whether or not the personal representative is personally liable therefor. [1969 c.591 §137]

114.410 [Repealed by 1969 c.591 §305]

**114.415 Copersonal representatives; when joint action required.** (1) When two or more persons are appointed copersonal representatives, the concurrence of all is required for all acts connected with the administration and distribution of the estate, except:

(a) Any copersonal representative may receive and receipt for property due the estate.

(b) When the concurrence of all cannot readily be obtained in the time reasonably available for emergency action.

(c) Where any others have delegated their power to act.

(d) Where the will provides otherwise.

(e) Where the court otherwise directs.

(2) Persons dealing with a copersonal representative who are actually unaware that another has been appointed to serve with the person are as fully protected as if the person with whom they dealt had been the sole personal representative. [1969 c.591 §138]

114.420 [Repealed by 1969 c.591 §305]

**114.425 Discovery of property, writings and information.** (1) The court may order any person to appear and give testimony by deposition if it appears probable that the person:

(a) Has concealed, secreted or disposed of any property of the estate of a decedent;

(b) Has been entrusted with property of the estate of a decedent and fails to account therefor to the personal representative;

(c) Has concealed, secreted or disposed of any writing, instrument or document pertaining to the estate;

(d) Has knowledge or information that is necessary to the administration of the estate; or

(e) As an officer or agent of a corporation, has refused to allow examination of the books and records of the corporation that the decedent had the right to examine.

(2) If a person cited as provided in subsection (1) of this section fails to appear or to answer questions asked as authorized by the order of the court, the person is in con-

tempt and may be punished as for other contempts. [1969 c.591 §139; 1979 c.284 §106]

114.430 [Repealed by 1969 c.591 §305]

**114.435 Power to avoid transfers.** The property liable for the payment of expenses of administration, funeral expenses, claims and taxes shall include property transferred by the decedent with intent to defraud the creditors of the decedent or transferred by any means which is in law void or voidable as against the creditors of the decedent. The right to recover that property so far as necessary for the payment of those expenses, claims and taxes is in the personal representative, who shall take necessary steps to recover it. That property constitutes general assets for the payment of creditors. [1969 c.591 §140]

114.440 [Repealed by 1969 c.591 §305]

### SMALL ESTATES

**114.505 Definitions for ORS 114.505 to 114.560.** As used in ORS 114.505 to 114.560:

(1) "Affiant" means the person or persons signing an affidavit filed under ORS 114.515.

(2) "Claiming successors" means:

(a) If the decedent died intestate, the heir or heirs of the decedent, or if there is no heir, an estate administrator of the Department of State Lands appointed under ORS 113.235;

(b) If the decedent died testate, the devisee or devisees of the decedent; and

(c) Any creditor of the estate entitled to payment or reimbursement from the estate under ORS 114.545 (1)(c) who has not been paid or reimbursed the full amount owed such creditor within 60 days after the date of the decedent's death.

(3) "Estate" means decedent's property subject to administration in Oregon. [1973 c.710 §2; 1977 c.239 §1; 1979 c.340 §1; 1979 c.467 §3; 1989 c.228 §1; 2003 c.395 §14; 2005 c.22 §92]

**114.515 Value of estate; where affidavit filed; fee; amended affidavit; supplemental affidavit.** (1) If the estate of a decedent meets the requirements of subsection (2) of this section, any of the following persons may file an affidavit with the clerk of the probate court in any county where there is venue for a proceeding seeking the appointment of a personal representative for the estate:

(a) One or more of the claiming successors of the decedent.

(b) If the decedent died testate, any person named as personal representative in the decedent's will.

(c) The Director of Human Services, the Director of the Oregon Health Authority or an attorney approved under ORS 114.517, if

the decedent received public assistance pursuant to ORS chapter 411 or 414 or received care at an institution as defined in ORS 179.010, and it appears that the assistance or the cost of care may be recovered from the estate of the decedent.

(2) An affidavit under this section may be filed only if:

(a) The fair market value of the estate is \$275,000 or less;

(b) Not more than \$75,000 of the fair market value of the estate is attributable to personal property; and

(c) Not more than \$200,000 of the fair market value of the estate is attributable to real property.

(3) An affidavit under this section may not be filed until 30 days after the death of the decedent.

(4) An affidavit filed under the provisions of this section must contain the information required in ORS 114.525 and shall be made a part of the probate records. If the affiant is an attorney approved by the Director of Human Services or the Director of the Oregon Health Authority, a copy of the document approving the attorney must be attached to the affidavit.

(5) In determining fair market value under this section, the fair market value of the entire interest in the property included in the estate shall be used without reduction for liens or other debts.

(6) The clerk of the probate court shall charge and collect the fee established under ORS 21.145 for the filing of any affidavit under this section.

(7) Any error or omission in an affidavit filed under this section may be corrected by filing an amended affidavit within four months after the filing of the affidavit.

(8) One or more supplemental affidavits may be filed at any time after the filing of an affidavit under this section for the purpose of including property not described in the original affidavit. Copies of all previously filed affidavits must be attached to the supplemental affidavit and all information required in ORS 114.525 must be reflected in the supplemental affidavit. A supplemental affidavit may not be filed if by reason of the additional property described in the supplemental affidavit any limitation imposed by subsection (2) of this section is exceeded. [1973 c.710 §§3, 8; 1977 c.239 §2; 1979 c.467 §1; 1981 s.s. c.3 §36; 1985 c.368 §1; 1985 c.496 §6; 1987 c.586 §28; 1989 c.228 §2; 1989 c.856 §1; 1995 c.682 §1; 1997 c.447 §1; 1997 c.801 §32; 2003 c.737 §§59,60; 2005 c.122 §§1,2; 2005 c.273 §§1,2; 2005 c.702 §§69,70,71; 2009 c.262 §7; 2009 c.413 §1; 2009 c.828 §10; 2011 c.595 §22]

**Note:** Section 2, chapter 413, Oregon Laws 2009, provides:

**Sec. 2.** The amendments to ORS 114.515 by section 1 of this 2009 Act apply only to decedents who die on or after the effective date of this 2009 Act [January 1, 2010]. [2009 c.413 §2]

**114.517 Approval of attorneys filing affidavits for recipients of Medicaid or other public assistance.** The Director of Human Services, or the director's designated representative, or the Director of the Oregon Health Authority, or the director's designated representative, may approve in writing attorneys who are eligible to file an affidavit under ORS 114.515 if the decedent received public assistance pursuant to ORS chapter 411 or 414 or received care at an institution as defined in ORS 179.010, and it appears that the assistance or the cost of care may be recovered from the estate of the decedent. An attorney approved under this section does not represent the Director of Human Services or the Director of the Oregon Health Authority when the attorney files an affidavit under ORS 114.515. [2009 c.262 §6; 2009 c.828 §9]

**114.520 Authorization from Department of State Lands required for filing of affidavit by creditor if decedent dies intestate and without heirs; rules.** (1) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming successor may not file an affidavit under ORS 114.515 unless the creditor has received written authorization from an estate administrator of the Department of State Lands appointed under ORS 113.235. Except as provided by rule adopted by the Director of the Department of State Lands, an estate administrator shall consent to the filing of an affidavit under ORS 114.515 by a creditor only if it appears after investigation that the estate is insolvent.

(2) A creditor of an estate who is subject to subsection (1) of this section may give written notice to an estate administrator of the Department of State Lands informing the estate administrator that the creditor intends to file an affidavit under ORS 114.515. Upon receiving the notice permitted by this subsection, the estate administrator shall investigate the assets and liabilities of the estate. Within 30 days after receiving the notice required by this subsection, the estate administrator shall either:

(a) Give written authorization to the creditor for the filing of an affidavit by the creditor under ORS 114.515; or

(b) Inform the creditor that the Department of State Lands will file an affidavit as claiming successor under ORS 114.515.

(3) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming successor and who files an affidavit under ORS 114.515 must notate at the top of

the affidavit that the affidavit is being filed by a creditor of the estate. If the affidavit contains the notation required by this subsection, the clerk of the probate court may not accept the affidavit for filing unless there is attached to the affidavit written authorization for the filing of the affidavit by the creditor from an estate administrator of the Department of State Lands. The written authorization may be a copy of a memorandum of an interagency agreement between the Department of State Lands and another state agency. [1997 c.88 §2; 2003 c.395 §15]

**114.525 Content of affidavit.** An affidavit filed under ORS 114.515 shall:

(1) State the name, age, domicile, post-office address and Social Security number of the decedent;

(2) State the date and place of the decedent's death. A certified copy of the death certificate shall be attached to the affidavit;

(3) Describe and state the fair market value of all property in the estate, including a legal description of any real property;

(4) State that no application or petition for the appointment of a personal representative has been granted in Oregon;

(5) State whether the decedent died testate or intestate, and if the decedent died testate, the will shall be attached to the affidavit;

(6) List the heirs of the decedent and the last address of each heir as known to the affiant, and state that a copy of the affidavit showing the date of filing and a copy of the will, if the decedent died testate, will be delivered to each heir or mailed to the heir at the last-known address;

(7) If the decedent died testate, list the devisees of the decedent and the last address of each devisee as known to the affiant and state that a copy of the will and a copy of the affidavit showing the date of filing will be delivered to each devisee or mailed to the devisee at the last-known address;

(8) State the interest in the property described in the affidavit to which each heir or devisee is entitled and the interest, if any, that will escheat;

(9) State that reasonable efforts have been made to ascertain creditors of the estate. List the expenses of and claims against the estate remaining unpaid or on account of which the affiant or any other person is entitled to reimbursement from the estate, including the known or estimated amounts thereof and the names and addresses of the creditors as known to the affiant, and state that a copy of the affidavit showing the date

of filing will be delivered to each creditor who has not been paid in full or mailed to the creditor at the last-known address;

(10) Separately list the name and address of each person known to the affiant to assert a claim against the estate that the affiant disputes and the known or estimated amount thereof and state that a copy of the affidavit showing the date of filing will be delivered to each such person or mailed to the person at the last-known address;

(11) State that a copy of the affidavit showing the date of filing will be mailed or delivered to the Department of Human Services and the Oregon Health Authority;

(12) State that claims against the estate not listed in the affidavit or in amounts larger than those listed in the affidavit may be barred unless:

(a) A claim is presented to the affiant within four months of the filing of the affidavit at the address stated in the affidavit for presentment of claims; or

(b) A personal representative of the estate is appointed within the time allowed under ORS 114.555; and

(13) If the affidavit lists one or more claims that the affiant disputes, state that any such claim may be barred unless:

(a) A petition for summary determination is filed within four months of the filing of the affidavit; or

(b) A personal representative of the estate is appointed within the time allowed under ORS 114.555. [1973 c.710 §6; 1977 c.239 §3; 1979 c.340 §2; 1989 c.228 §3; 1991 c.191 §3; 1995 c.453 §1; 2001 c.104 §35; 2001 c.620 §2; 2001 c.900 §18a; 2003 c.196 §1; 2003 c.395 §16; 2005 c.22 §93; 2009 c.595 §79]

**114.535 Transfer of decedent's property to affiant; proceedings to compel transfer.** (1) Not sooner than 10 days after the filing of an affidavit under ORS 114.515, the affiant may deliver a certified copy of the affidavit to any person who was indebted to the decedent or who has possession of personal property belonging to the estate. Except as provided in this section, upon receipt of the copy, the person shall pay, transfer, deliver, provide access to and allow possession of the personal property to the affiant.

(2) Subject to ORS 114.537, if a copy of an affidavit is delivered under subsection (1) of this section to a person that controls access to personal property belonging to the estate of the decedent, including personal property held in a safe deposit box for which the decedent was the sole lessee or the last surviving lessee, the person shall:

(a) Provide the affiant with access to the decedent's personal property; and

(b) Allow the affiant to take possession of the personal property.

(3) Subject to ORS 114.537, if a copy of an affidavit is delivered under subsection (1) of this section to a person who has received property of the decedent under ORS 446.616, 708A.430, 723.466 or 803.094, or a similar statute providing for the transfer of property of an estate that is not being probated, the person shall pay, transfer, deliver, provide access to or allow possession of the property to the affiant if the person would be required to pay, transfer, deliver, provide access to or allow possession of the property to a personal representative of the estate.

(4) Any person that pays, transfers, delivers, provides access to or allows possession of property of a decedent in the manner provided by this section is discharged and released from any liability or responsibility for the property in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the decedent.

(5) A transfer agent of any corporate security registered in the name of the decedent shall change the registered ownership on the books of the corporation to the person entitled thereto on presentation of a certified copy of the affidavit filed under ORS 114.515.

(6) If a person to whom an affidavit is delivered refuses to pay, deliver, transfer, provide access to or allow possession of any personal property as required by this section, the property may be recovered or payment, delivery, transfer of or access to the property may be compelled upon proof of the transferee's entitlement in a proceeding brought for the purpose by or on behalf of the transferee.

(7) If the affidavit was signed by the Director of Human Services, the Director of the Oregon Health Authority or an attorney approved under ORS 114.517, the Director of Human Services, the Director of the Oregon Health Authority or the attorney may certify a copy of the affidavit for the purposes described in this section. [1973 c.710 §4; 1979 c.340 §3; 1989 c.228 §4; 1991 c.67 §23; 1997 c.631 §404; 2003 c.196 §2; 2003 c.655 §60; 2009 c.541 §4; 2009 c.595 §80; 2009 c.828 §11; 2011 c.422 §3]

**114.537 Safe deposit boxes.** (1) If a claiming successor or other person who is eligible to file an affidavit under ORS 114.515 is aware that the decedent was the sole lessee or the last surviving lessee of a safe deposit box at the time of the decedent's death, the claiming successor or other person may not file an affidavit under ORS 114.515 until the person requests an inventory of the box under ORS 708A.655, if the lessor of the box is an Oregon operating institution as de-

finied in ORS 706.008, or under ORS 723.844, if the lessor of the box is a credit union as defined in ORS 723.008. Upon receiving the request, the lessor of the box shall cause an inventory of the contents of the box to be made. The lessor shall retain the original inventory in the box and shall provide a copy of the inventory to the person requesting the inventory. The person requesting the inventory shall take the contents of the box into consideration in determining whether the estate of the decedent is within the limits prescribed by ORS 114.515 (2). If an affidavit under ORS 114.515 is filed by the person, the value of the contents of the box shall be stated in the affidavit.

(2) If a person who has filed an affidavit under ORS 114.515 becomes aware after the filing of the affidavit that the decedent was the sole lessee or the last surviving lessee of a safe deposit box at the time of the decedent's death, the person shall promptly request an inventory of the box under ORS 708A.655, if the lessor of the box is an Oregon operating institution as defined in ORS 706.008, or under ORS 723.844, if the lessor of the box is a credit union as defined in ORS 723.008. Upon receiving the request, the lessor of the box shall cause an inventory of the contents of the box to be made. The lessor shall retain the original inventory in the box and shall provide a copy of the inventory to the person requesting the inventory. If the estate of the decedent remains within the limits prescribed by ORS 114.515 (2) after consideration of the value of the contents of the box, the person shall file an amended affidavit under ORS 114.515. Upon providing the lessor of the box with a certified copy of the amended affidavit, the lessor shall allow the person to take possession of the contents of the box. If the estate of the decedent exceeds the limits prescribed by ORS 114.515 (2) after consideration of the value of the contents of the box, the person may not file an amended affidavit under ORS 114.515 and shall file notice with the court that the estate of the decedent is not subject to ORS 114.505 to 114.560 and shall serve a copy of the notice on the lessor of the box. The lessor of the box shall thereafter deliver the contents of the box to the personal representative for the decedent, or to such other person as may be provided for under the terms of the lease of the box. [2011 c.422 §2]

**114.540 Procedure for claims; disallowance; summary determination.** (1) A claim against an estate with respect to which an affidavit is filed under ORS 114.515 may be presented to the affiant within four months after the affidavit was filed. If an amended affidavit is filed under ORS 114.515 (7), claims against the estate must be filed within four months after the filing of the

amended affidavit. If a supplemental affidavit is filed under ORS 114.515 (8), claims against the estate must be filed within four months after the filing of the supplemental affidavit. Each claim presented to the affiant must include the information required by ORS 115.025.

(2) A claim presented to the affiant shall be considered allowed as presented unless within 60 days after the date of presentation of the claim the affiant mails or delivers a notice of disallowance of the claim in whole or in part to the claimant and any attorney for the claimant. A notice of disallowance of a claim shall inform the claimant that the claim has been disallowed in whole or in part and, to the extent disallowed, will be barred unless:

(a) The claimant proceeds as provided in subsection (3) of this section; or

(b) A personal representative is appointed within the time allowed under ORS 114.555.

(3) A creditor of the estate whose claim has been presented within the time permitted by subsection (1) of this section and disallowed by the affiant may within 30 days after the date of mailing or delivery of the notice of disallowance file with the probate court a petition for summary determination of the claim by the court. A creditor of the decedent whose claim is listed in the affidavit as disputed may within four months after the filing of the affidavit file with the probate court a petition for summary determination of the creditor's claim by the court. The court shall hear the matter without a jury, after notice to the creditor and affiant, and any interested person may be heard in the proceeding. The claim may be proved as provided in ORS 115.195 (2). Upon the hearing the court shall determine the claim in a summary manner and shall make an order allowing or disallowing the claim in whole or in part. If the court allows the claim in whole or in part, the order shall direct the affiant, to the extent of property of the estate allocable to the payment of the claim pursuant to ORS 115.125, or any claiming successor to whom payment, delivery or transfer has been made under ORS 114.505 to 114.560 as a person entitled thereto as disclosed in the affidavit, to the extent of the value of the property received, to pay to the creditor the amount so allowed. No appeal may be taken from the order of the court made upon the summary determination. [1989 c.228 §7; 2003 c.523 §3; 2005 c.122 §4]

**114.545 Duties of person filing affidavit; payment of claims; conveyance of real property; liability of person to whom property transferred or payment made.**  
(1) The affiant:

(a) Shall take control of the property of the estate coming into the possession of the affiant.

(b) Within 30 days after filing the affidavit shall mail, deliver or cause to be recorded each instrument which the affidavit states will be mailed, delivered or recorded.

(c) From and to the extent of the property of the estate, shall pay or reimburse any person who has paid:

(A) Expenses described in ORS 115.125 (1)(b) and (c) and listed in the affidavit;

(B) Claims listed in the affidavit as undisputed;

(C) Allowed claims presented to the affiant within the time permitted by ORS 114.540; and

(D) Claims which the probate court directs the affiant to pay.

(d) Shall pay claims and expenses under paragraph (c) of this subsection in the order of priority prescribed by ORS 115.125.

(e) May transfer or sell any vehicle that is part of the estate before the completion of the period established under ORS 114.555 if the affiant complies with the requirements established by the Department of Transportation for such purposes under ORS 803.094.

(f) May convey any real or personal property that is part of the estate before the completion of the period established under ORS 114.555, provided that each heir or devisee succeeding to the interest conveyed joins in the conveyance and that any proceeds of sale, net of the reasonable expenses of sale and any debt secured as of the date of the decedent's death by a duly perfected lien on the property, shall become a part of the estate subject to ORS 114.505 to 114.560. If the property is a manufactured structure as defined in ORS 446.561, the affiant must assign interest in the structure as provided in ORS 446.616. Any conveyance to a purchaser in good faith and for a valuable consideration made by the affiant and the heir or devisee succeeding to the interest conveyed, or made by the heir or devisee succeeding to the interest conveyed after completion of the period established under ORS 114.555, conveys the interest stated in the conveyance free of any interest of the claiming successors, and the purchaser has no duty with respect to application of the consideration paid for the conveyance.

(2) Any claiming successor to whom payment, delivery or transfer is made under ORS 114.505 to 114.560 as a person entitled thereto as disclosed in the affidavit is personally answerable and accountable:

(a) To the extent of the value of the property received, to creditors of the estate

to the extent such creditors are entitled to payment under subsection (1) of this section; and

(b) To any personal representative of the estate of the decedent thereafter appointed.

(3) The affiant shall cause to be recorded in the deed records of any county in which real property belonging to the decedent is situated an affiant or claiming successor's deed executed in the manner required by ORS chapter 93.

(4) For a manufactured structure as defined in ORS 446.561 belonging to a decedent and assessed as personal property, the affiant shall file with the Department of Consumer and Business Services the necessary information for recording the successor's interest in the manufactured structure on an ownership document. [1973 c.710 §7; 1979 c.340 §4; 1985 c.300 §5; 1989 c.148 §6; 1989 c.228 §5; 1991 c.191 §4; 2003 c.655 §61]

**114.550 Summary review of administration of estate; hearing.** The affiant or any claiming successor of the estate who has not been paid the full amount owed such claiming successor may, within two years after the filing of an affidavit under ORS 114.515, file with the probate court a petition for summary review of administration of the estate. A creditor may not file a petition under this section if the creditor received a copy of an affidavit filed under ORS 114.515 delivered or mailed to such creditor within 30 days after the date the affidavit was filed, the creditor was shown as a disputed creditor in the affidavit, and the creditor has not filed a petition for summary determination under ORS 114.540. The court shall hear the matter without a jury, after notice to the claiming successor and the affiant, and any interested person may be heard in the proceeding. Upon the hearing the court shall review administration of the estate in a summary manner and may order the affiant to sell property of the estate and pay creditors, to pay creditors of the estate from property of the estate or of the affiant, or to distribute property of the estate to the claiming successors, or may order any person who has received property of the estate to pay amounts owed to claiming successors of the estate in whole or in part. [1989 c.228 §8; 2003 c.196 §3]

**114.552 Filing fees.** (1) A person filing a petition for summary determination under ORS 114.540 or a petition for summary review of administration of estate under ORS 114.550, or any other appearance in a proceeding under ORS 114.505 to 114.560, must pay the filing fee established under ORS 21.135.

(2) If at any time after the filing of an affidavit under ORS 114.515 a petition for

appointment of a personal representative is filed for the same estate, the person filing the petition must pay the fees established under ORS 21.170. [2011 c.595 §25]

**114.555 Effect of failure to appoint personal representative.** If a personal representative is not appointed within four months after the filing of the affidavit authorized by ORS 114.515, the interest of the decedent in all of the property described in the affidavit is transferred to the person or persons shown by the affidavit to be entitled thereto, and any other claims against the property are barred, except:

(1) As provided in ORS 114.540, 114.545 and 114.550; and

(2) For the purposes of a surviving spouse's claim for an elective share in the manner provided by ORS 114.600 to 114.725. [1973 c.710 §5; 1977 c.239 §4; 1989 c.228 §10; 2009 c.574 §21]

**114.560 Exclusive remedy.** The exclusive remedy of a person injured by the failure of the affiant or any claiming successor to comply with the requirements of ORS 114.505 to 114.560 shall be a summary determination under ORS 114.540, a summary review of administration under ORS 114.550, or appointment of a personal representative for the estate within the time allowed by ORS 114.555. [1989 c.228 §9]

### ELECTIVE SHARE FOR DECEDENTS WHO DIE ON OR AFTER JANUARY 1, 2011 (Generally)

**114.600 Elective share generally.** (1) If a decedent is domiciled in this state on the decedent's date of death, and the decedent is survived by a spouse, the surviving spouse of the decedent may elect to receive the elective share provided by ORS 114.600 to 114.725. An election under ORS 114.600 to 114.725 must be made before the death of the surviving spouse by the filing of a motion or petition in the manner described in ORS 114.610. If a motion or petition is filed within the time specified in ORS 114.610, and the surviving spouse dies before payment of the elective share, the personal representative for the estate of the surviving spouse may take all steps necessary to secure payment of the elective share under ORS 114.600 to 114.725.

(2) Any amounts received under ORS 114.015 are in addition to the elective share provided for in ORS 114.600 to 114.725.

(3) If a decedent dies while domiciled outside this state, any right of a surviving spouse of the decedent to take an elective share in property in this state is governed by

the law of the decedent's domicile at death. [2009 c.574 §2]

**Note:** Section 23, chapter 574, Oregon Laws 2009, provides:

**Sec. 23.** Sections 2 to 20 of this 2009 Act [114.600 to 114.725] and the amendments to ORS 114.555 by section 21 of this 2009 Act apply only to the surviving spouses of decedents who die on or after the effective date of this 2009 Act [January 1, 2011]. Notwithstanding the repeal of ORS 114.105, 114.115, 114.125, 114.135, 114.145, 114.155 and 114.165 by section 25 of this 2009 Act, the rights of a surviving spouse of a decedent who dies before the effective date of this 2009 Act shall continue to be governed by the law in effect immediately before the effective date of this 2009 Act. [2009 c.574 §23]

**114.605 Amount of elective share. (1)**

Except as otherwise provided in ORS 114.600 to 114.725, the amount of the elective share is a dollar amount determined by multiplying the augmented estate by the percentage provided in this section. All properties included in the augmented estate shall be determined as provided in ORS 114.600 to 114.725. A court of this state has authority to order distribution under ORS 114.600 to 114.725 of all properties included in the augmented estate under ORS 114.600 to 114.725.

(2) The elective share of a surviving spouse is determined by the length of time the spouse and decedent were married to each other, in accordance with the following schedule:

If the decedent and the spouse were married to each other:	The elective-share percentage is:
Less than 2 years	5% of the augmented estate
2 years but less than 3 years	7% of the augmented estate
3 years but less than 4 years	9% of the augmented estate
4 years but less than 5 years	11% of the augmented estate
5 years but less than 6 years	13% of the augmented estate
6 years but less than 7 years	15% of the augmented estate
7 years but less than 8 years	17% of the augmented estate
8 years but less than 9 years	19% of the augmented estate
9 years but less than 10 years	21% of the augmented estate
10 years but less than 11 years	23% of the augmented estate
11 years but less than 12 years	25% of the augmented estate

12 years but less than 13 years	27% of the augmented estate
13 years but less than 14 years	29% of the augmented estate
14 years but less than 15 years	31% of the augmented estate
15 years or more	33% of the augmented estate

[2009 c.574 §3]

**114.610 Manner of making election. (1)**

A surviving spouse may claim the elective share only by:

(a) Filing a petition for the appointment of a personal representative for the estate of the deceased spouse, and a motion for the exercise of the election as described in paragraph (b) of this subsection, within nine months after the spouse dies.

(b) Filing a motion for the exercise of the election in a probate proceeding commenced for the estate of the deceased spouse under ORS 113.035. The motion must be filed not later than nine months after the death of the decedent. A copy of the motion must be served on the personal representative, on all persons who would be entitled to receive information under ORS 113.145 and on all distributees and recipients of portions of the augmented estate known to the surviving spouse who can be located with reasonable efforts. A surviving spouse may withdraw a motion for an election filed under this subsection at any time before the court enters an order granting the motion.

(c) Filing a petition for the exercise of the election under ORS 114.720 (1) within nine months after the death of the decedent.

(2) If a court determines that the elective share is payable, the court shall determine the amount of the elective share and shall order its payment pursuant to the priorities established under ORS 114.700. If it appears that property has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the property or who has possession thereof, whether as trustee or otherwise. [2009 c.574 §4]

**114.615 Payment of elective share. In**

determining whether any payment is required to a surviving spouse in satisfaction of the elective share provided for in ORS 114.605, the court shall consider the values of the decedent's probate estate, the decedent's nonprobate estate, the surviving spouse's estate, the decedent's probate transfers to the surviving spouse and the decedent's nonprobate transfers to the sur-

living spouse. If the court determines that the aggregate value of the surviving spouse's estate, the decedent's probate transfers to the surviving spouse and the decedent's nonprobate transfers to the surviving spouse do not satisfy the amount of the elective share, any additional amount required to satisfy the elective share shall be paid out of the decedent's probate estate and the decedent's nonprobate estate in the manner provided by ORS 114.700. [2009 c.574 §5]

**114.620 Waiver of right to elect and other rights.** (1) The right of election under ORS 114.600 to 114.725 may be waived, wholly or partially, before or after marriage by a written contract, agreement or waiver signed by the surviving spouse.

(2) Unless specifically provided otherwise, a written agreement that waives all rights in the property or estate of a present or prospective spouse, using the phrase "all rights" or other equivalent language, or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to an elective share under ORS 114.600 to 114.725 by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to each spouse from the other by intestate succession or by virtue of any will executed before the written agreement or property settlement. [2009 c.574 §6]

**Note:** Section 24, chapter 574, Oregon Laws 2009, provides:

**Sec. 24.** A written contract, agreement or waiver entered into before the effective date of this 2009 Act [January 1, 2011], whether prenuptial or post-nuptial, that waives in whole or in part the elective share of a surviving spouse is effective as a waiver under section 6 of this 2009 Act [114.620] unless a court determines that the contract, agreement or waiver is not enforceable under the standards of section 6 of this 2009 Act. Section 6 (2) of this 2009 Act applies to contracts, agreements or waivers entered into before, on or after the effective date of this 2009 Act. [2009 c.574 §24]

**114.625 Who may exercise right of election.** The elective share may be personally claimed by a surviving spouse, or may be claimed on the surviving spouse's behalf by a conservator, guardian or agent under the authority of a power of attorney. [2009 c.574 §7]

#### (Augmented Estate)

**114.630 Augmented estate.** (1) Except as otherwise provided in ORS 114.600 to 114.725, the augmented estate consists of all of the following property, whether real or personal, movable or immovable, or tangible or intangible, wherever situated:

(a) The decedent's probate estate as described in ORS 114.650.

(b) The decedent's nonprobate estate as described in ORS 114.660 and 114.665.

(c) The surviving spouse's estate, as described in ORS 114.675.

(2) The value attributable to any property included in the augmented estate under ORS 114.600 to 114.725 must be reduced by the amount of all enforceable claims against the property and all encumbrances on the property. Any exemption or deduction that is allowed for the purpose of determining estate or inheritance taxes on the augmented estate and that is attributable to the marriage of the decedent and the surviving spouse inures to the benefit of the surviving spouse as provided in ORS 116.343 (2).

(3) The value attributable to any property included in the augmented estate includes the present value of any present or future interest and the present value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal Social Security Act.

(4) The value attributable to property included in the augmented estate is equal to the value that would be used for purposes of federal estate and gift tax laws if the property had passed without consideration to an unrelated person on the date that the value of the property is determined for the purposes of ORS 114.600 to 114.725.

(5) In no event may the value of property be included in the augmented estate more than once. [2009 c.574 §8; 2011 c.305 §4]

**Note:** Section 7, chapter 305, Oregon Laws 2011, provides:

**Sec. 7.** The amendments to ORS 114.630, 114.635, 114.660, 114.665, 114.675 and 114.700 by sections 1 to 6 of this 2011 Act apply to the surviving spouses of all decedents who die on or after the effective date of this 2011 Act [June 9, 2011]. [2011 c.305 §7]

**114.635 Exclusions from augmented estate.** The augmented estate does not include:

(1) Any value attributable to future enhanced earning capacity of either spouse;

(2) Any property that is irrevocably transferred before the death of the decedent spouse;

(3) Any property that is transferred on or after the date of the death of the decedent spouse with the written joinder or written consent of the surviving spouse;

(4) Any property that is community property under ORS 112.705 to 112.775 or under the laws of the jurisdiction where the property is located; or

(5) Any property that is held by either spouse solely in a fiduciary capacity. [2009 c.574 §9; 2011 c.305 §1]

**Note:** See note under 114.630.

**(Decedent's Probate Estate)**

**114.650 Decedent's probate estate.** For purposes of ORS 114.600 to 114.725, a decedent's probate estate is the value of all estate property that is subject to probate and that is available for distribution after payment of claims and expenses of administration. A decedent's probate estate includes all property that could be administered under a small estate affidavit pursuant to ORS 114.505 to 114.560. A decedent's probate estate does not include any property that constitutes a probate transfer to the decedent's surviving spouse under ORS 114.685. [2009 c.574 §10]

**(Decedent's Nonprobate Estate)**

**114.660 Decedent's nonprobate estate.** For purposes of ORS 114.600 to 114.725, a decedent's nonprobate estate consists of the property described in ORS 114.665 that is not included in the decedent's probate estate and that does not constitute a transfer to the decedent's surviving spouse. The value of the decedent's nonprobate estate is reduced by all debts and liabilities of the decedent that are not paid in probate, and by all costs of administering the decedent's nonprobate estate that are incurred for the purpose of settling claims against the nonprobate estate and distributing the nonprobate estate property to the persons entitled to that property. [2009 c.574 §11; 2011 c.305 §2]

**Note:** See note under 114.630.

**114.665 Decedent's nonprobate estate; property owned immediately before death.** (1) A decedent's nonprobate estate includes the decedent's fractional interest in property held by the decedent in any form of survivorship tenancy immediately before the death of the decedent. The amount included in the decedent's nonprobate estate under the provisions of this subsection is the value of the decedent's fractional interest, to the extent the fractional interest passes by right of survivorship at the decedent's death to a surviving tenant other than the decedent's surviving spouse.

(2) A decedent's nonprobate estate includes the decedent's ownership interest in property or accounts held immediately before death under a payable on death designation or deed, under a transfer on death registration or in co-ownership registration with a right of survivorship. The amount included in the decedent's nonprobate estate under the provisions of this subsection is the value of the decedent's ownership interest, to the extent the decedent's ownership interest passed at the decedent's death to any person other than the decedent's estate or surviving spouse or for the benefit of any person other

than the decedent's estate or surviving spouse.

(3) A decedent's nonprobate estate includes any property owned by the decedent immediately before death for which the decedent had the power to designate a beneficiary, but only to the extent that the decedent could have designated the decedent, or the spouse of the decedent, as the beneficiary.

(4) A decedent's nonprobate estate includes any property that immediately before death the decedent could have acquired by the exercise of a revocation, without regard to whether the revocation was required to be made by the decedent alone or in conjunction with other persons.

(5) A decedent's nonprobate estate does not include the present value of any life insurance policy payable on the death of the decedent. [2009 c.574 §12; 2011 c.305 §3]

**Note:** See note under 114.630.

**(Surviving Spouse's Estate)**

**114.675 Surviving spouse's estate.** (1) For purposes of ORS 114.600 to 114.725, a surviving spouse's estate is:

(a) The decedent's probate transfers to the spouse, as described in ORS 114.685.

(b) The decedent's nonprobate transfers to the spouse, as described in ORS 114.690.

(c) All other property of the spouse, as determined on the date of the decedent's death.

(d) Any property that would have been included under paragraph (a), (b) or (c) of this subsection except for the exercise of a disclaimer by the spouse after the death of the decedent.

(2)(a) For the purpose of establishing the value of the surviving spouse's estate under this section, the estate includes 100 percent of the corpus of any trust or portion of a trust from which all income must be distributed to or for the benefit of the surviving spouse during the life of the surviving spouse, and for which the surviving spouse has a general power of appointment that the surviving spouse, acting alone, may exercise, during the surviving spouse's lifetime or at death of the surviving spouse, to or for the benefit of the surviving spouse or the surviving spouse's estate.

(b) For the purpose of establishing the value of the surviving spouse's estate under this section, the estate includes 100 percent of the corpus of a trust or portion of a trust created by the decedent spouse, if all income from the trust or portion of a trust must be distributed to or for the benefit of the surviving spouse during the life of the surviving

spouse and the trust principal may be accessed only by the trustee or the spouse and only for the purpose of providing for the health, education, support or maintenance of the spouse.

(c) For the purpose of establishing the value of the surviving spouse's estate under this section, the estate includes 50 percent of the corpus of a trust or portion of a trust created by the decedent spouse if all income from the trust or portion of a trust must be distributed to or for the benefit of the surviving spouse during the life of the surviving spouse and neither the trustee nor the spouse has the power to distribute trust principal to or for the benefit of the surviving spouse or any other person during the spouse's lifetime.

(d) For the purposes of this section, all amounts distributed to a surviving spouse from a unitrust that meets the requirements of ORS 129.225 (4) shall be considered income.

(e) The value of the surviving spouse's beneficial interest in a trust other than a trust described in paragraphs (a) to (d) of this subsection shall be determined under the provisions of ORS 114.630 (3) and (4). [2009 c.574 §13; 2011 c.305 §5]

**Note:** See note under 114.630.

#### **(Decedent's Probate Transfers to Spouse)**

**114.685 Decedent's probate transfers to surviving spouse.** The decedent's probate transfers to the decedent's surviving spouse include all estate property that is subject to probate, that passes to the surviving spouse by testate or intestate succession, and that is available for distribution to the surviving spouse after payment of claims and expenses of administration. [2009 c.574 §14]

#### **(Decedent's Nonprobate Transfers to Spouse)**

**114.690 Decedent's nonprobate transfers to surviving spouse.** (1) Except as provided in subsection (2) of this section, the decedent's nonprobate transfers to the decedent's surviving spouse include all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death, including:

(a) The decedent's fractional interest in property held in any form of survivorship tenancy, as described in ORS 114.665 (1), to the extent that the decedent's fractional interest passed to the surviving spouse as surviving tenant;

(b) The decedent's ownership interest in property or accounts held in co-ownership

registration with the right of survivorship, to the extent that the decedent's ownership interest passed to the surviving spouse as surviving co-owner;

(c) Insurance proceeds payable to the surviving spouse by reason of the death of the decedent; and

(d) All other property that would have been included in the decedent's nonprobate estate under ORS 114.660 and 114.665 had it passed to or for the benefit of a person other than the decedent's spouse.

(2) The decedent's nonprobate transfers to the decedent's surviving spouse do not include any property passing to the surviving spouse under the federal Social Security Act. [2009 c.574 §15]

#### **(Payment of Elective Share)**

**114.700 Priority of sources from which elective share payable.** (1) The surviving spouse's estate, as described in ORS 114.675, shall be applied first to satisfy the dollar amount of the elective share and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others.

(2) If after application of the surviving spouse's estate under subsection (1) of this section the elective share amount is not fully satisfied, the following amounts shall be applied to the extent necessary to satisfy the balance of the elective share amount:

(a) Amounts included in the decedent's probate estate.

(b) Amounts included in the decedent's nonprobate estate under ORS 114.600 to 114.725.

(3) Unless otherwise provided by a will, trust or other instrument executed by the decedent spouse:

(a) Amounts applied against the unsatisfied balance of an elective share amount under subsection (2) of this section shall be collected from both the probate and nonprobate estates of the decedent in a manner that ensures that the probate and nonprobate estates bear proportionate liability for the amounts necessary to pay the elective share amount.

(b) Amounts applied against the unsatisfied balance of an elective share amount under subsection (2) of this section out of the probate estate of the decedent must be apportioned among all recipients of the decedent's probate estate in a manner that ensures that each recipient bears liability for a portion of the payment that is proportionate to the recipient's interest in the decedent's probate estate.

(c) Amounts applied against the unsatisfied balance of an elective share amount under subsection (2) of this section out of the nonprobate estate of the decedent must be apportioned among all recipients of the decedent's nonprobate estate in a manner that ensures that each recipient bears liability for a portion of the payment that is proportionate to the recipient's interest in the decedent's nonprobate estate.

(4) All apportionments under this section between the probate and nonprobate estates of the decedent and among the recipients of those estates shall be based on the assets of each estate that are subject to distribution by the court under the provisions of ORS 114.600 to 114.725.

(5) In any proceeding described in ORS 114.610, the court may allocate the cost of storing and maintaining property included in the augmented estate pending distribution of the property. [2009 c.574 §16; 2011 c.305 §6]

**Note:** See note under 114.630.

**114.705 Liability of recipients of decedent's nonprobate estate.** (1) The following recipients of the decedent's nonprobate estate are the only persons who may be required to make a proportional contribution toward the satisfaction of the surviving spouse's elective share under the provisions of ORS 114.600 to 114.725:

(a) An original recipient of all or part of the decedent's nonprobate estate.

(b) A person who has received all or part of the decedent's nonprobate estate for less than fair consideration from an original recipient of the property, to the extent the person has the property or proceeds of the property.

(2) A recipient of all or part of the decedent's nonprobate estate who is required to make a proportional contribution toward the satisfaction of the surviving spouse's elective share may elect to make the contribution by returning property determined to be adequate to satisfy the recipient's obligation or by paying money equal to the value of that property. [2009 c.574 §17]

**114.710 Protective order.** (1) If a surviving spouse has filed a motion or petition described in ORS 114.610, the surviving spouse or any person who has received any part of the decedent's probate or nonprobate estate may request, at any time after the filing, that the court issue a protective order. The protective order shall prohibit or impose conditions on the transfer of property included in the augmented estate. The protective order may be served on any person holding property included in the augmented estate.

(2) Upon the filing of a motion or petition under ORS 114.610, any person who has received any part of the decedent's probate or nonprobate estate and who is required to make a contribution toward the satisfaction of the elective share may file a motion or petition with the court requesting a determination of the amount of the person's proportionate contribution toward the satisfaction of the elective share. Upon that determination being made, the person may deposit with the court the amount so determined in the form of money or a bond or other security. The deposit discharges the person from all claims relating to the satisfaction of the elective share. In lieu of deposit with the court under this subsection the court may require that the money or security be deposited with a person designated by the court.

(3) If a surviving spouse has filed a motion or petition described in ORS 114.610, and a notice of pendency of action under ORS 93.740 is recorded, a temporary restraining order is issued under ORCP 79, or provisional process is issued under ORCP 83, an owner of the property that is subject to the notice, order or process may seek relief from the notice, order or process by providing a bond or other security to the court in such amount as the court may determine adequate to satisfy the person's proportionate contribution toward the satisfaction of the elective share. [2009 c.574 §18]

#### (Procedure)

**114.720 Proceedings to claim elective share.** (1) A surviving spouse may claim the elective share by filing a petition for the exercise of the election in a circuit court within the time allowed by ORS 114.610 (1)(c). Venue for the proceeding is as provided in ORS 113.015. A copy of the petition must be served on all persons who would be entitled to receive information under ORS 113.145 and on all distributees and recipients of portions of the augmented estate known to the surviving spouse who can be located with reasonable efforts. The fee for filing a petition under this subsection shall be the amount prescribed in ORS 21.170, based on the value of the nonprobate estate. The Oregon Rules of Civil Procedure apply to proceedings under this section. Any party to a proceeding under this section may request that the pleadings and records in the proceeding be sealed.

(2) A surviving spouse may withdraw a petition filed under this section at any time before entry of a judgment on the petition.

(3) If a probate proceeding is commenced for the estate of the deceased spouse under ORS 113.035 either before or after a petition is filed under this section, the court shall

consolidate the proceedings under this section with the probate proceedings. [2009 c.574 §19; 2011 c.595 §125]

**114.725 Effect of separation.** If the decedent and the surviving spouse were living apart at the time of the decedent's death, whether or not there was a judgment of legal separation, the court may deny any right to an elective share or may reduce the elective share to such amount as the court determines reasonable and proper. In deciding if

all or part of the elective share should be denied, the court shall consider whether the marriage was a first or subsequent marriage for either or both of the spouses, the contribution of the surviving spouse to the property of the decedent in the form of services or transfers of property, the length and cause of the separation and any other relevant circumstances. [2009 c.574 §20]

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