

OSB Professional Liability Fund presents

Avoiding Malpractice in Estate Planning and Administration

Friday, October 21
10:00 am – 11:00 am

MCLE ID 93113
1 General Credit

Speakers: Deanna Franco
Partner, Cosgrave Vergeer Kester LLP

John Berge
PLF Claims Attorney



CLE Materials

- Speaker Bios
- PowerPoint Slides
- PLF Resources
- Attachments
 - PLF Coverage Policy: Representation Section
 - Estate Planning Information Checklist
 - Probate Checklist

Speaker Biographies

Deanna Franco

Deanna Franco is a partner at Cosgrave Vergeer Kester LLP in Portland, where she concentrates her practice in the areas of estate planning, probate and trust administration, taxation, business succession planning, as well as guardianship and conservatorship matters. Mrs. Franco has been practicing law for over 21 years and is licensed to practice in Oregon and Washington, and currently serves a Pro Tem Judge for Washington County.

Mrs. Franco is a member of the Estate Planning, Elder Law, Tax and Business Law sections of the Oregon State Bar; the Real Property, Probate and Trust and Tax sections of the Washington State Bar, the Multnomah County Bar Association and the Estate Planning Council of Portland and has co-authored several articles featured in *The Accountant* a quarterly publication by the Oregon Society of Certified Public Accountant (OSCPA).

John Berge

John A. Berge attended Oregon State University, graduating in 1983 with a major in finance and a minor in computer science. He then attended law school at Willamette University, graduating cum laude in 1987. Before joining the PLF as a Claims Attorney in September 2014, John was a partner at Bryant, Lovlien & Jarvis, PC, and served on the Board of Directors of the PLF.

John was admitted to the Oregon State Bar in 1987 and the United States District Court (District of Oregon) in 1988. When in private practice, John specialized in civil practice, general civil litigation, and insurance defense.



Avoiding Malpractice in Estate Planning and Administration



Presented by:

Deanna Franco, Cosgrave Vergeer Kester LLP
John Berge, PLF Claims Attorney

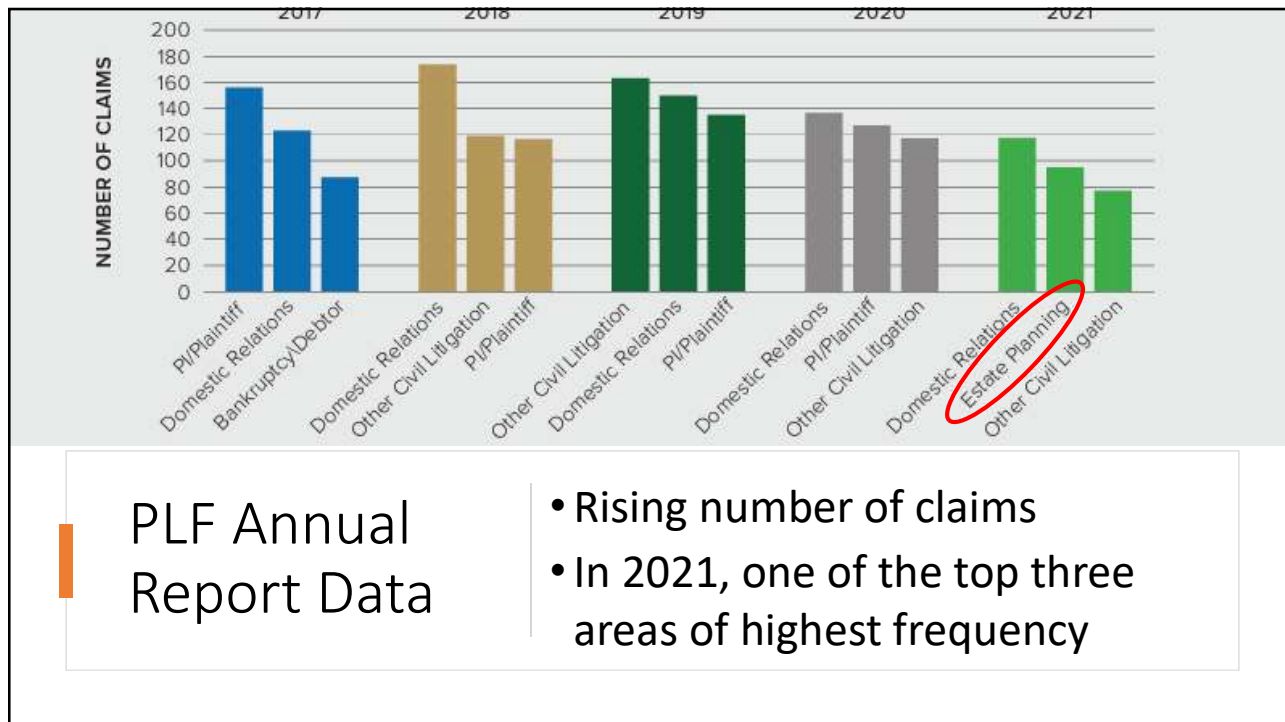
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Agenda

- Establishing the Attorney-Client Relationship
- Post-Death Issues
- After Termination of Representation

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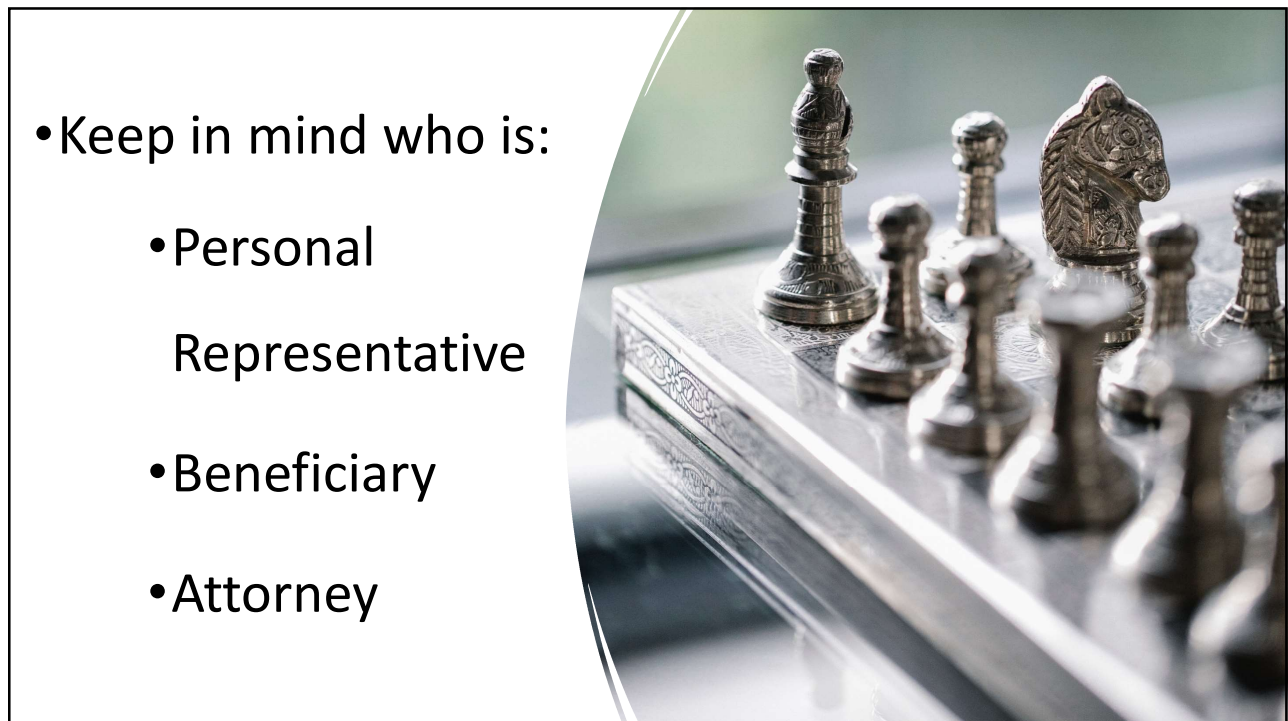
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Attorney-Client Relationship Ambiguities

- Know who your client is
- Distinguish your role

5



- Keep in mind who is:
 - Personal Representative
 - Beneficiary
 - Attorney

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Covered vs. Excluded

- Definition of covered activity
- Understand the legal services vs. business functions in each potential role

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Excluded Activities

- Special capacity services
(Plan Section III)
- Possible exclusions:
 - Investment
 - Law Practice Business
 - Family member and ownership
 - Contractual obligation
 - Escrow/Holding/Estate Accts



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Estate Planning Hazard Zones

- Information Gathering
- Undue Influence/
Testamentary Capacity
- Transferring Assets

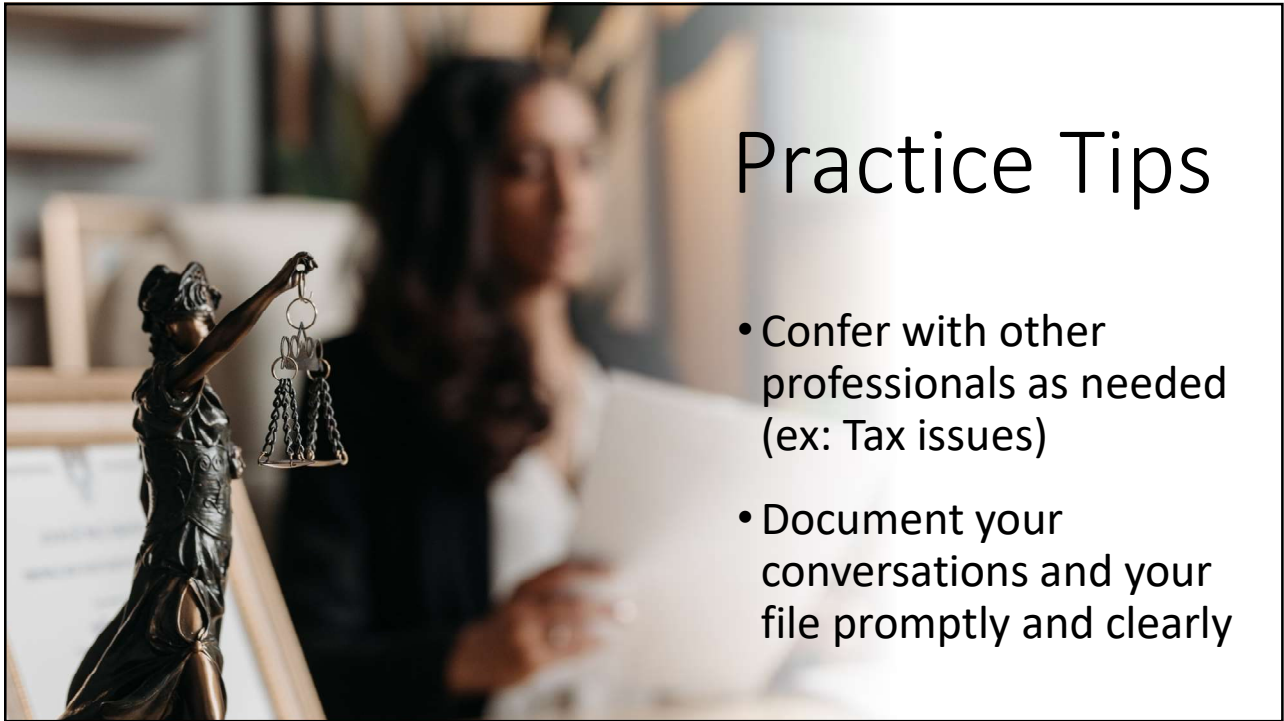
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Estate Planning Hazard Zones

- Naming Drafting Atty as
Fiduciary
- Omitting a Beneficiary
- Amending Documents
- Specialty Trusts/Areas



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Practice Tips

- Confer with other professionals as needed (ex: Tax issues)
- Document your conversations and your file promptly and clearly

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- Use checklists!
 - Develop your own
 - PLF form: Estate Planning Information Checklist

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Alternate trustee: _____
 Do alternates take over if one or both of _____
 primary trust _____
 Other special provisions _____

7. Tangible personal property _____

8. Special needs provisions
 If "yes" explain: _____

9. Provisions for incapacity
 If "yes" explain: _____

10. Does client have any special interests? _____

11. Specific Bequests
 If "yes" explain: _____

12. Provisions for incapacity
 If "yes" explain: _____

ESTATE PLANNING DOCUMENTS

1. Type of Will:
 Simple Will _____
 Will with Testamentary Trust _____
 Joint Living Trust _____
 Separate Living Trust _____
 Separate Living Trust with Testamentary Trust _____

2. Tax Planning:
 (a) Marital Deduction _____
 1. Marital Deduction _____
 2. Credit Shelter Trust _____

LIABILITY FUND (Rev. 12/2012)

ESTATE PLANNING INFORMATION CHECKLIST

DATE: _____
 FILE NO.: _____

Name of client(s): _____
 Other person(s) at interview: _____

I. REPRESENTATION INFORMATION

Fee agreement and engagement letter sent? _____
 Fee estimate given: _____
 Time estimate given: _____

Joint representation consent received? Yes N/A
 Prenuptial agreement in effect? Yes N/A
 Is client a member of an Oregon registered domestic partnership? Yes N/A

II. REVIEW CONFIDENTIAL FAMILY INFORMATION SHEET

Additional information or comments: _____

III. ESTATE PLAN

A. CLIENT'S GOALS/BASIC INFORMATION:

1. What are client's greatest concerns about spouse, children or estate? _____

2. General plan of disposition: (1) Spouse/Partner; (2) children; (3) grandchildren; (4) Other _____
 If "other" explain: _____

3. Guardian for minor children: _____
 Alternate guardian: _____
 If co-guardians, if one can't act, does the other one act alone or go to alternate guardian(s)? _____

4. (a) Pot trust for children? Yes () No ()
 (1) Advancements for starting a business, buying a home, or graduate school? Yes () No ()
 (2) Age until division into separate trust: _____
 (3) When distributed after division: _____

(b) Separate trusts for children initially? Yes () No ()
 (1) Age for distribution: _____

Estate Planning Information Checklist

- Key Representation Information
- Client Goals
- Children Trust Details
- Tax Planning Trust Details
- Special Trusts or Provisions
- Retirement and Funeral Plans
- Property and Life Insurance Information

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POST-DEATH ISSUES



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Incomplete Documents

Client died before signing,
or otherwise unable to
sign, drafted documents

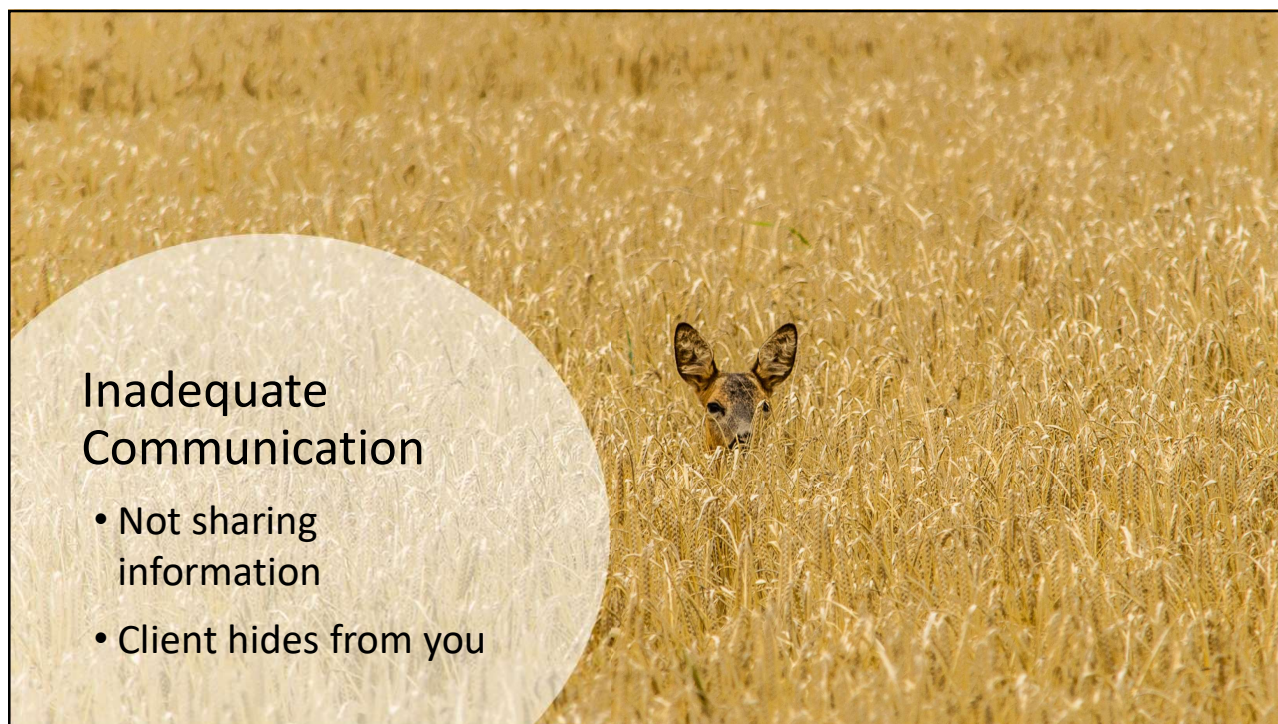
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Common Probate Errors

- Disclaimers
- Intestate Succession
- Joint or A/B or bypass trust division (1st and 2nd death issues)



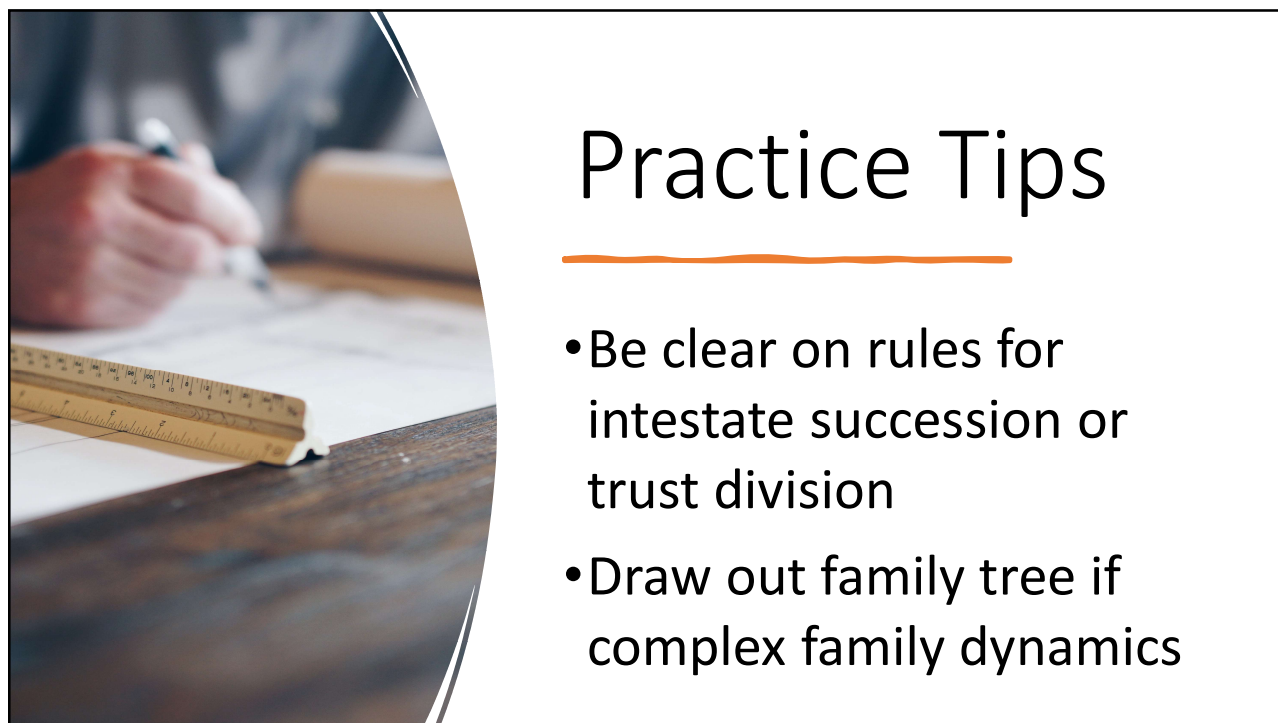
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Inadequate Communication

- Not sharing information
- Client hides from you

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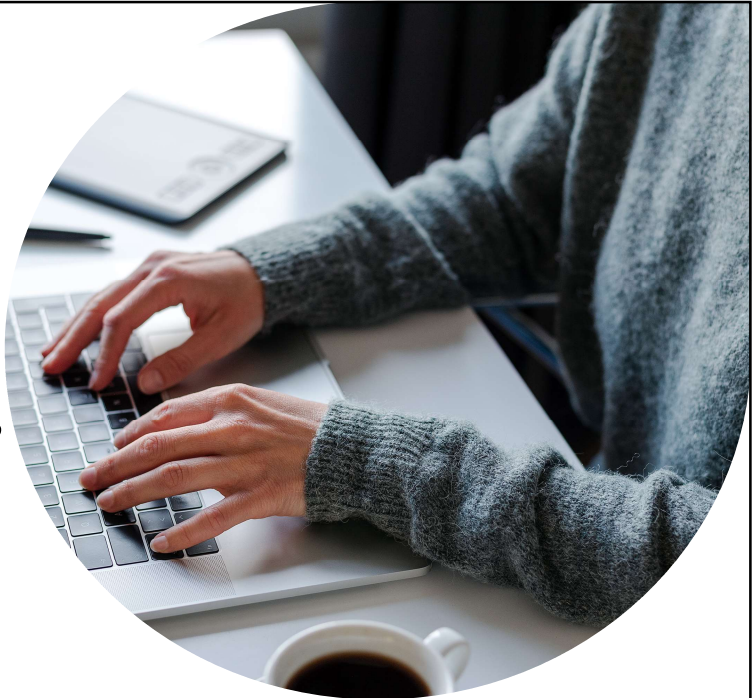


Practice Tips

- Be clear on rules for intestate succession or trust division
- Draw out family tree if complex family dynamics

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- Clarify communication expectations at outset
- Document attempts at communication
- PLF form: Probate Checklist



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Probate Checklist

- Statutory Authority
- Suggested Tickle Dates
- Actual Tickle Dates
- Due Date
- Date Accomplished

Certified copy of de
Notice to interested after apmnt) (ORS 113.035) Newspaper Date of mailing to Date of first public Affidavit received File Affidavit of pu
Information to devit interested persons appointment) (ORS 113.035) Date mailed or deliv File affidavit of ma
Mail copy of Inform to the Oregon Heal Human Services to Office, Department Box 14021, Salem, combined copy ma 0020) File affidavit of ma
Explanatory letter t request for SSN's t
Forward mail to pe attorney
Notify county asse for tax statements
Federal tax ID (EIN (IRS Form SS-4)

PROBATE CHECKLIST

(Use this checklist in conjunction with the Probate Time Limitations - Critical Tickler Dates practice aid.)

***WARNING: BE SURE TO TRANSFER THESE DATES TO YOUR CALENDAR**

Estate of: _____	Attorney: _____
Probate No. and County: _____	Matter No.: _____
Date of Death: _____	Date of Appt. of PR: _____
SSN: _____	Fed Tax ID (EIN): _____

ACTION	SUGGESTED TICKLER DATE	TICKLER DATE*	DUE DATE*	DATE ACCOMPLISHED
Conflict check	Before petition is filed			
Engagement letter and fee agreement signed	1 week after date of apmnt			
Duties of personal representative delivered	1 week after date of apmnt			
Bond required? (ORS 113.105) Amount \$ _____ Agency _____	Before Limited Judgment is filed			
Fiduciary class required? (Check with local court rules.) Must register within 15 days of apmnt.	As soon as possible after date of apmnt			
Petition and Order for appointment of PR (ORS 113.035) Filing Fee \$ _____ Date of filing _____ Date order signed _____	As soon as possible - or within 1 month after death			
Does jurisdiction issue electronic court notices? If yes, set spam or junk email filters to allow receipt of e-notices at the Internet Service Provider (ISP) level and in the settings of your specific email program. You may also wish to create an agent or rule in your email program to duplicate and forward copies of court notices from the attorney-of-record to appropriate staff. Some electronic case filing systems generate e-notices only to the attorney-of-record. Staff email addresses or firm addresses (ex: doct@in@ohmelawfirm.com) might not be permitted.	Same day petition is filed			
Letters of administration/testamentary obtained Fee: \$ _____	Request when filing petition			

PROFESSIONAL LIABILITY FUND (Rev. 12/2021)

Probate Checklist - Page 1

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AFTER TERMINATION OF REPRESENTATION



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Post-Representation

- Client file
- PLF file retention guidelines
- Holding original wills

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The PLF can help!

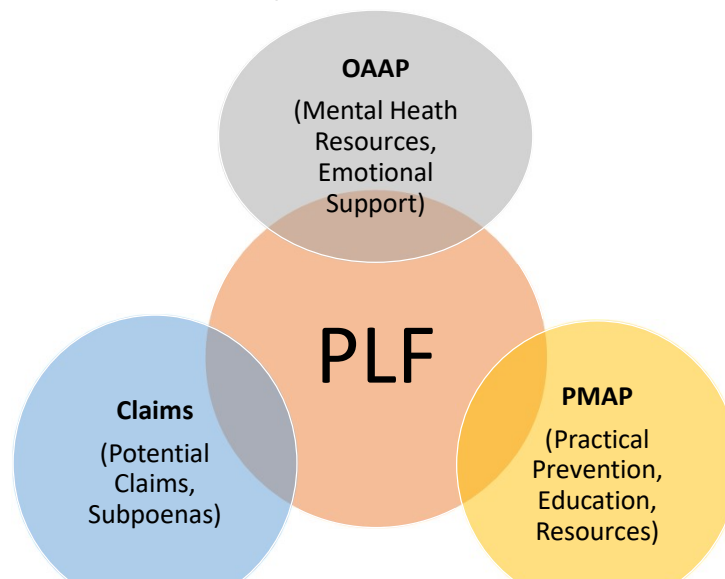
- File ownership questions
- Testimony from estate planner
- Tracking down old wills



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Professional Liability Fund

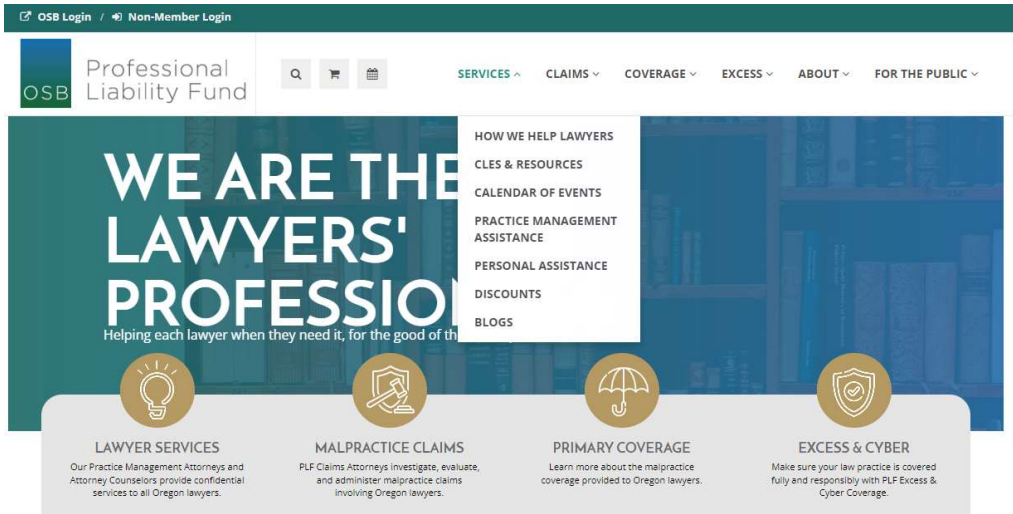
- Confidentiality: ORS 9.460(3)
- Navigate Claims, Potential Claims, and Subpoenas



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PLF Resources

www.osbplf.org > Services



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PLF Resources

www.osbplf.org > Services > CLEs & Resources > Forms

The screenshot shows the OSB Professional Liability Fund website. The main navigation menu includes 'SERVICES', 'CLAIMS', 'COVERAGE', 'EXCESS', and 'A'. The 'CLEs & Resources' page is displayed, with a dropdown menu open under 'SERVICES' showing 'CLEs & RESOURCES' circled in red. The page is divided into two sections: 'Estate Planning' and 'Probate'. The 'Estate Planning' section lists six forms: Confidential Family Information Sheet, Consent to Joint Representation Letter, Information Checklist, Letter Notifying Estate Planning Client of Tax Law Changes, Letter Transmitting Estate Planning Documents, and Transferring Real Property to Adult Children. The 'Probate' section lists three forms: Checklist, Quick Reference Form, and Time Limitations Critical Tickler Dates. The 'Tracking Chart' is also listed under 'Probate'.

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Contact Us

<https://www.osbplf.org>
503-639-6911 | 800-452-1639

PLF Practice Management Attorneys

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503-924-1774

Isaac Alley
Isaac@osbplf.org
503-924-4171

Free and confidential

A smartphone displaying icons for phone, email, and a pencil.

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PLF Resources

Go to <https://www.osbplf.org/services/resources/#forms> to download all forms, some available in Word format.

OSB Professional Liability Fund Coverage

Bylaws and Policy Manual (full):

https://assets.osbplf.org/images/board_of_directors/Resources/2022%2002%2018%20Website%20COMBINED%20Revised%20FINAL%20Bylaws%20and%20Policy%20Manual.pdf

Estate Planning Forms

1. Estate Planning Confidential Family Information Sheet:
https://assets.osbplf.org/forms/practice_forms/Estate%20Planning%20Confidential%20Family%20Information%20Sheet.docx
2. Estate Planning Consent to Joint Representation Letter:
https://assets.osbplf.org/forms/practice_forms/Estate%20Planning%20Consent%20to%20Joint%20Representation%20Notice.docx
3. Estate Planning Information Checklist:
https://assets.osbplf.org/forms/practice_forms/Estate%20Planning%20Information%20Checklist.docx
4. Letter Notifying Estate Planning Client of Tax Law Changes:
https://assets.osbplf.org/forms/practice_forms/Letter%20Notifying%20Estate%20Planning%20Client%20of%20Tax%20Law%20Changes.docx
5. Letter Transmitting Estate Planning Documents:
https://assets.osbplf.org/forms/practice_forms/Letter%20Transmitting%20Estate%20Planning%20Documents.docx
6. Transferring Real Property to Adult Children:
https://assets.osbplf.org/forms/practice_forms/Transferring%20Real%20Property%20to%20Adult%20Children.pdf

Probate Forms

1. Probate Checklist:
https://assets.osbplf.org/forms/practice_forms/Probate%20Checklist.pdf
2. Probate Quick Reference Form:
https://assets.osbplf.org/forms/practice_forms/Probate%20Quick%20Reference%20Form.pdf

3. Probate Time Limitations Critical Tickler Dates:
https://assets.osbplf.org/forms/practice_forms/Probate%20Time%20Limitations%20Critical%20Tickler%20Dates.pdf
4. Probate Tracking Chart:
https://assets.osbplf.org/forms/practice_forms/Probate%20Tracking%20Chart.pdf

File Management Forms

1. File Retention and Destruction Guidelines:
https://assets.osbplf.org/forms/practice_forms/File%20Retention%20and%20Destruction%20Guidelines.pdf
2. Production of Client File:
https://assets.osbplf.org/forms/practice_forms/Production%20of%20Client%20File.pdf
3. Checklist for Scanning Client Files:
https://assets.osbplf.org/forms/practice_forms/Checklist%20for%20Scanning%20Client%20Files.pdf

(B) The Chairperson may designate additional committees as appropriate, and will appoint the membership of each committee. Non-directors are eligible to serve on committees.

2.350 EXECUTIVE SESSION

Executive sessions may be called when permitted by Oregon law. All discussions regarding the handling of specific claims or other appropriate issues will be conducted in executive sessions for reasons of confidentiality pursuant to ORS 192.660 (2) (f) and (h).

2.400 INSURANCE COVERAGE

(A) The Professional Liability Fund will obtain blanket liability, fire and other similar types of insurance coverages. The PLF may obtain directors and officers liability coverage and errors and omissions coverage when, in the opinion of the board, it is prudent and economic to do so. Such coverage may be purchased in conjunction with the Oregon State Bar.

(B) In addition to normal and ordinary insurance coverages, the PLF may obtain certain forms of insurance coverage limiting the liability of the PLF under any one claim or any group of claims through reinsurance.

2.500 GIFTS

(A) The Chief Executive Officer or individual PLF staff member may not accept any gifts from a Defense Panel member.

(B) The Chief Executive Officer and PLF staff may not accept any gifts in violation of Oregon law. In the event there is any question, the Chief Executive Officer will determine if the gift is in violation of this policy and approve the receipt of any gifts not in violation of this policy.

(BOD 2/21/92; BOG 3/13/92; BOD 12/4/92; BOG 1/22/93; BOD 5/19/95; BOG 6/9/95; BOD 6/30/97; BOG 7/26/97; BOD 4/22/99; BOG 6/5/99; BOD 8/6/99; BOD 11/19/99; BOG 1/28/00; BOD 2/7/03; BOD 6/20/03; BOG 9/18/03; BOD 5/14/04; BOG 6/11/04; BOD 10/22/04; BOG 11/20/04; BOD 6/17/05; BOG 6/24/05; BOD 6/87/12; BOD 8/10/12; BOG 11/10/12; BOD 12/6/13; BOD 10/19/18; BOG 11/17/18; BOG 12/7/18; BOG 2/22/19; BOD 4/16/21; BOG 4/16/21)

CHAPTER 3 PRIMARY PLAN COVERAGE AND ASSESSMENT

3.100 CLAIMS MADE PLAN AND RETROACTIVE DATE

(A) Primary coverage will be provided to active members of the Oregon State Bar engaged in the private practice of law whose principal offices are in Oregon in accordance with the applicable Primary Coverage Plan adopted by the Board of Directors in each year.

(B) Attorneys who have maintained continuous PLF coverage since July 1, 1978 will have no retroactive Date for their current primary coverage. Attorneys who have maintained continuous PLF primary coverage since a date after July 1, 1978 will have a Retroactive Date which is the date on which the attorney's PLF primary coverage first commenced.

(C) If an attorney terminates his or her PLF primary coverage, the attorney will receive a new Retroactive Date upon returning to PLF primary coverage which is the date on which the attorney's new period of PLF primary coverage commenced.

3.130 SPECIAL COVERAGE SITUATIONS

Assistance for Impaired or Disabled Attorneys: An attorney who provides assistance to impaired or disabled attorneys at the request of the PLF or according to procedures recommended by the PLF will not be considered to be functioning as a "BUSINESS TRUSTEE" under Section III.C of the PLF Primary Coverage Plan.

(BOD 4/10/98; BOG 5/30/98)

3.150 EXEMPTIONS FROM PLF PARTICIPATION

(A) Principal Office Not In Oregon. Active members of the Oregon State Bar whose principal office is not in Oregon are not eligible to obtain primary coverage from the Professional Liability Fund, and are required to sign a request for exemption from PLF participation at least

annually. Attorneys in this category may be required to inform the PLF whether or not they engage in the private practice of law in Oregon, and if so, may be required to provide some or all of the following additional information to the PLF at least annually upon request: whether or not they maintain professional liability insurance which covers them for their private practice of law in Oregon, the name and address of the insurance carrier, the name of the insured, the coverage limits and deductible, the retroactive date of the insurance policy, the policy period, a copy of the declarations sheet, and a copy of the policy and any endorsements. Attorneys are required to respond to information requests within 30 days.

(B) Principal Office In Oregon. Active Attorneys not in private practice in the state of Oregon, either on a full-time or part-time basis with or without remuneration, are not subject to the annual assessment and must file a request for exemption based upon one of the following categories:

(1) employed exclusively as a government attorney or judge;

(2) employed exclusively by a corporation or business entity (including non-profit organizations but not including law entities);

(3) an employee or independent contractor with a legal aid or public defender office which provides professional liability coverage for the attorney through an Acceptable Alternative Insurer as defined at Subsection (D);

(4) employed in a non-law related field;

(5) retired;

(6) employed as a law clerk/supervised attorney not engaged in the private practice of law as defined in Subsection (G)(7) below;

(7) unemployed;

(8) any other category which does not constitute the private practice of law in Oregon, or any activity which would be excluded or otherwise not covered by the PLF Primary Coverage Plan.

(C) Attorneys temporarily admitted to perform legal services in Oregon pursuant to Oregon State Bar Rule for Admission 13.70 may claim an exemption from PLF coverage for any of the reasons set forth above in 3.150(B), or if they do not qualify for any such exemption, but maintaining coverage with an Acceptable Alternative Insurer. This exemption, regarding coverage through an Acceptable Alternative Insurer, however, is no longer available after the attorney is admitted as an active member of the Oregon State Bar. Upon being admitted as an active member, the attorney must then purchase the mandatory coverage provided by the PLF.

(D) (1) An "Acceptable Alternative Insurer" is defined as an insurer which meets both of the following qualifications:

(a) The insurer is (1) an admitted insurer in Oregon, (2) a surplus lines insurer which has complied with all applicable Oregon statutes and regulations of the Insurance Division of the State of Oregon, or (3) a risk retention group or purchasing group formed under federal statute and registered with the Insurance Division of the State of Oregon.

(b) With respect to the coverage required pursuant to Policy 3.150A(3), the insurer provides claims made professional malpractice insurance covering the activities of the exempt attorney with coverage limits of at least \$300,000 per claim/\$300,000 aggregate, regardless of the amount of any applicable deductible.

(c) With respect to the alternative coverage required for exemption

under Policy 3.150(C) regarding temporary admission to perform legal services in Oregon, any such coverage must be substantially equivalent to the mandatory coverage provided by the PLF, both in terms of applicable limits and scope of coverage, with the exception of any reasonable applicable deductible.

(2) Attorneys claiming exemption under any exemption category which requires the attorney to maintain professional liability coverage for the attorney through an Acceptable Alter-native Insurer must maintain the coverage at all times during the year while the exemption is in effect, and may be required to provide proof of such coverage upon request. Any attorney who fails to maintain such coverage will be referred to the Oregon State Bar for disciplinary action.

(E) Requests for exemption will be handled in accordance with procedures adopted by the Chief Executive Officer. Attorneys requesting exemption will be required to sign the following statement:

I hereby certify that I am exempt from the [year] assessment to the Professional Liability Fund for the following reason:

[List exemption categories]

I agree to notify the Professional Liability Fund immediately if I cease to be exempt at any time during [year].

(F) Exemptions from assessment must be applied for on an annual basis or when the attorney's status changes from private practice in accordance with the administrative procedures of the PLF. An exempt attorney must notify the PLF of any change to private practice status and pay the prorated assessment due at that time.

(G) Special policy consideration has been given by the PLF Board of Directors to exempt attorneys in the following situations:

(1) [Reserved.] Oregon State Bar.

(2) [Reserved.]

(3) Amicus Curiae: An attorney who has claimed exemption from the PLF may appear and file an amicus curiae brief on behalf of another without remuneration.

(4) Pro Bono Service: Attorneys who represent or perform services for clients on a pro bono basis are required to obtain PLF coverage. However, exempt attorneys may provide pro bono services through OSB-certified or other volunteer lawyer programs that provide professional liability coverage for the attorney through an Acceptable Alternative Insurer or the PLF's Pro Bono Plan as defined at Subsection (D).

(5) Family Practice: An exempt attorney may represent his or her spouse, parent, adoptive parent, parent-in-law, step-parent, grandparent, child, adopted child, step-child, grandchild, son-in-law, daughter-in-law, sibling, adopted sibling, half sibling, brother-in-law, sister-in-law, or any member of the attorney's household. An exempt attorney also may represent a business entity owned or controlled by one or more of these listed family members if the representation is excluded under the terms of the PLF Primary Coverage Plan.

(6) Student Legal Advisers and Attorneys With Law School Legal Clinics: Attorneys who serve as student legal advisers at any college or graduate school, and attorneys who supervise law students serving clients through any law school legal clinic, are permitted and required to claim exemption from PLF participation under Subsection (B)(1) or (B)(2) on account of such activities so long as (a) they are employees of the college, graduate school, law school, or legal clinic, (b) the services they provide to students or clients are within the scope of their employment, and (c) any claim for alleged malpractice against them would be insured or indemnified by their employer.

(7) Law Clerks/Supervised Attorneys (Including Retired and Active Pro Bono Attorneys):

An attorney may perform legal research and writing without obtaining PLF coverage provided:

(a) the attorney's work is reviewed and supervised by an attorney with PLF coverage (or an attorney who is permitted to engage in private practice while claiming exemption from the PLF);

(b) the attorney makes no strategy or case decisions;

(c) the attorney does not hold himself or herself out to any client as an attorney or represent any party;

(d) the attorney signs no pleadings or briefs;

(e) the attorney attends no depositions as the attorney of record;

(f) the attorney makes no court appearances as the attorney of record;

(g) the attorney does not use the title "attorney," "attorney at law," or "lawyer" on any correspondence or documents; and

(h) the attorney is not listed in the firm name or on the firm letterhead as an attorney or firm member (unless specified as law clerk or retired). If the attorney is retired, the attorney's name may be listed on the firm letterhead as "retired" or "of counsel (retired)," or similar designation that makes clear the lawyer is not engaged in the private practice of law.

(8) Arbitration and Mediation: An attorney may serve as an arbitrator without obtaining PLF coverage provided that the attorney's services are limited to serving as an arbitrator and do not include representing any of the parties in the arbitration. This exemption is available only if the attorney's practice is limited to serving as an arbitrator (or other exempt activity).

An attorney claiming exemption under this provision may not use the title "attorney," "attorney at law," "attorney/arbitrator," "lawyer," "legal services," or similar phrase on any stationary, cards, billing forms, or professional listings unless the title is followed by an asterisk or other mark and the phrase "*Not engaged in the private practice of law" appears on the same page. However, attorneys claiming exemption under this category may use the title "J.D." after their name.

An attorney may perform mediation services without obtaining PLF coverage providing that the attorney's practice is exclusively limited to mediation (or other exempt activity) and the attorney complies with RPC 2.4 relating to mediation. An attorney claiming exemption under this provision may not use the title "attorney," "attorney at law," "attorney/mediator," "lawyer," "legal services," or similar phrase on any stationary, cards, billing forms, or professional listings unless the title is followed by an asterisk or other mark and the phrase "*Not engaged in the private practice of law" appears on the same page. However, attorneys claiming exemption under this category may use the title "J.D." after their name.

(9) Non-Covered Activities: An attorney who is otherwise exempt from participation in the PLF may engage in law-related activities and represent a client without obtaining PLF coverage if all of the attorney's activities would be excluded or otherwise not covered by the PLF Primary Coverage Plan.

(10) Government Activity Exemption: An attorney who is otherwise exempt from participation in the PLF may act on behalf of a government entity as a public official, employee or in any other capacity that comes within the defense and indemnity requirements of ORS 30.285 and 30.287, or similar state or federal statute rules or case law.

(11) Active Pro Bono and Retired Status: Attorneys who maintain Active Pro Bono or Retired status with the Oregon State Bar are

limited by the OSB as to their permitted activities. Attorneys in these membership statuses are exempt from PLF participation by definition and will not receive an annual billing statement and request for exemption form.

(12) Employed Attorneys: Employed attorneys claiming exemption under subsections (B)(1) through (3) above may represent a third party in an attorney-client relationship so long as such representation is within the attorney's scope of employment. Examples include employment by an insurance company, labor organization, member association, or governmental entity which involves representation of the rights of insureds, union or association members, clients of the employer, or the employer itself. Employment by a placement, temporary or similar agency does not qualify for exemption under subsections B(1)-(3).

(H) "Private practice of law" shall be consistent with the coverage terms and definitions in the Primary Coverage Plan.

(I) All requests for exemption or failures to request an exemption are subject to verification by the attorney upon request by the Professional Liability Fund. Any misstatement may constitute a violation of RPC 8.4(a)(3) and may be the basis for disciplinary proceedings.

3.180 OUT-OF-STATE ATTORNEYS; PRINCIPAL OFFICE

(A) The provisions of ORS Ch. 9 concerning the location of the principal office of an active member of the Oregon State Bar are interpreted by the Professional Liability Fund as stated in this policy. This policy will apply to all active members of the Oregon State Bar.

(B) Definition of Office: As used in this policy, the term "office" will mean a location which is held out to the public by an attorney as an office where the attorney engages in the private practice of law. Indicia that a location is held out

to the public in this manner will include, but not be limited to, the following:

(1) Listing of the location on an attorney's letterhead, business cards, and billing forms as the attorney's office.

(2) Listing the location in local telephone directories, bar directories, the Martindale-Hubbell directory, and other directories as the attorney's office address.

(3) Exterior and interior signage indicating to the public that the location is an attorney's office.

(4) The existence of an office at the location which is dedicated solely to the attorney's use.

(5) Configuration of the location as an attorney's office, separation of the location from other offices of the attorney not used as an attorney's office, and separation of the location from the residence or personal living space of the attorney or another person.

(6) Maintenance of a telephone number for the location which is separate from the telephone number of any other office of the attorney and from the residence or personal living space of the attorney or another person.

(7) Holding of meetings with clients, potential clients, or other counsel at the location as part of the attorney's private practice of law.

(C) No Office: If an attorney has no office as defined in subsection (B) above, the attorney's principal office as defined by ORS Ch. 9 will be defined as the attorney's principal residence if the attorney is an active member of the bar association of the state of residence; otherwise, the attorney's principal office will be deemed to be in Oregon unless the attorney affirmatively demonstrates to the PLF that the attorney does

ESTATE PLANNING INFORMATION CHECKLIST

DATE: _____
FILE NO.: _____

Name of client(s): _____
Other person(s) at interview: _____

I. REPRESENTATION INFORMATION

Fee agreement and engagement letter sent? _____
Fee estimate given: _____
Time estimate given: _____

Joint representation consent received? () Yes () N/A
Prenuptial agreement in effect? () Yes () N/A
Is client a member of an Oregon registered domestic partnership? () Yes () N/A

II. REVIEW CONFIDENTIAL FAMILY INFORMATION SHEET

Additional information or comments: _____

III. ESTATE PLAN

A. CLIENT'S GOALS/BASIC INFORMATION:

1. What are client's greatest concerns about spouse, children or estate? _____

2. General plan of disposition: (1) Spouse/Partner; (2) children; (3) grandchildren; (4) Other
If "other" explain: _____

3. Guardian for minor children: _____
Alternate guardian: _____
If co-guardians, if one can't act, does the other one act alone or go to alternate guardian(s)? _____

4. (a) Pot trust for children? Yes () No ()
(1) Advancements for starting a business, buying a home, or graduate school? Yes () No ()
(2) Age until division into separate trust: _____
(3) When distributed after division: _____

(b) Separate trusts for children initially? Yes () No ()
(1) Age for distribution: _____

ESTATE PLANNING INFORMATION CHECKLIST

5. If child dies before distribution use right of representation? Yes () No ()
6. Trustee: _____
 Alternate trustee: _____
 Do alternates take over if one or both of primary trustees are unable? Yes () No ()
 Other special provisions for trustee: _____

7. Tangible personal property for personal use provisions:

8. Special needs for any person? Yes () No ()
 If "yes" explain: _____

9. Provisions for parents? Yes () No ()
 If "yes" explain: _____

10. Does client desire to make any charitable devises: Yes () No ()
11. Specific Bequests? Yes () No ()
 If "yes" explain: _____

12. Provisions for pets? Yes () No ()
 If "yes" explain: _____

IV. ESTATE PLANNING DOCUMENTS TO USE AND SPECIFIC PROVISIONS

1. Type:
 Simple Will () Will with Trust for Minors () Disclaimer Will ()
 Will with Tax Planning Trusts () Single Living Trust ()
 Joint Living Trust with No Tax Planning ()
 Joint Living Trust with Tax Planning () ILIT ()
 Separate Living Trusts for Spouses with No Tax Planning ()
 Separate Living Trusts for Spouses with Tax Planning ()
2. Tax Planning Trust or Will Provisions:
- | | | | |
|-----|-----------------------------|---------|--------|
| (a) | Marital devise outright? | Yes () | No () |
| | 1. Marital devise in trust? | Yes () | No () |
| | 2. Credit Shelter Trust? | Yes () | No () |

ESTATE PLANNING INFORMATION CHECKLIST

- 3. QTIP trust? Yes () No ()
- 4. Should there be a limited Power of Appointment? Yes () No ()
- 5. QDOT trust? Yes () No ()
- 6. Oregon Special Marital Property Trust needed? Yes () No ()
- 7. Should the Family Trust be sprinkling to spouse and descendants? Yes () No ()
- 8. Limited Power of Appointment for Family Trust? Yes () No ()
- 9. Who is presumed to survive?
 - (1) In [Spouse/Partner:] Will/Trust _____
 - (2) In [Spouse/Partner:] Will/Trust _____

3. Revocable Trust(s)
(a) Instructions for funding, etc. _____

(b) Assets to be left out of trust: _____

4. Who should receive estate if neither spouse/partner nor children (or other residuary devisees) survives? _____

5. Any person to be specifically disinherited? Yes () No ()

6. Cremation or other specific funeral arrangements: Yes () No ()

7. How should estate taxes be apportioned? _____

8. Other provisions: _____

V. BACKGROUND INFORMATION

A. FAMILY INFORMATION:

1. Are both spouses/partners U.S. Citizens? Yes () No ()
Name of noncitizen: _____
Country of citizenship: _____

2. Prenuptial or other agreement with spouse/partner? Yes () No ()

ESTATE PLANNING INFORMATION CHECKLIST

- | | | | |
|----|---|---------|--------|
| 3. | Prior marriage(s)? | Yes () | No () |
| | If "yes": | | |
| | (a) Are there children from prior marriage(s)? | Yes () | No () |
| | (b) Alimony payments being made? | Yes () | No () |
| | (c) Child support payments being made? | Yes () | No () |
| | (d) Requirements for life insurance for children or ex-spouse/ex-partner? | Yes () | No () |
| 4. | Any anticipated inheritances or trust distributions? | Yes () | No () |
| 5. | Is either spouse/partner a trustee of any trust? | Yes () | No () |

B. PROPERTY INFORMATION:

- | | | | |
|----|--|---------|--------|
| 1. | Is community property involved? | Yes () | No () |
| 2. | Joint property acquired before 1977? | Yes () | No () |
| 3. | Are there installment obligations due to client? | Yes () | No () |

C. BUSINESS INTERESTS:

What business interests does client have?

- | | | | |
|----|---|---------|--------|
| 1. | Corporation () | | |
| | (a) Is there a buy-sell agreement or are there transfer restrictions? | Yes () | No () |
| | (b) Is it a Sub "S" corporation? | Yes () | No () |
| 2. | Partnership () | | |
| | (a) Is there a partnership agreement? | Yes () | No () |
| | (b) Are there buy-sell provisions or transfer restrictions? | Yes () | No () |
| 3. | LLC () | | |
| | (a) Is there an operating agreement? | Yes () | No () |
| | (b) Are there buy-sell provisions or restrictions on transfer of interests? | Yes () | No () |
| 4. | Sole Proprietorship () | | |
| 5. | Other () | | |
| | Describe: _____ | | |
| | _____ | | |
| 6. | Any farmland, forestland, or commercial fishing business or property owned? | Yes () | No () |
| 7. | Additional Information: _____ | | |
| | _____ | | |

ESTATE PLANNING INFORMATION CHECKLIST

D. RETIREMENT PLANS:

- 1. Is client a participant in any retirement plan? Yes () No ()
If "yes" describe: _____

- 2. Value of benefits: _____
- 3. Who is designated primary beneficiary? _____
Address: _____

Relationship: _____
- 4. Who is contingent beneficiary? _____
Address: _____

Relationship: _____

E. LIQUIDITY PROBLEMS:

- 1. Are there any liquidity problems (immediate or anticipated)? Yes () No ()
If "yes" what solution is proposed? _____

F. GIFTS:

- Prior Gifts? Yes () No ()
- 1. Gift tax returns filed? Yes () No ()
- 2. List donees, dates and amounts of gifts: _____

G. FARM/SPECIAL USE VALUATION:

- 1. Is it used by client or member of client's family? Yes () No ()
- 2. If not, is rental cash or crop share? _____ Rent amount \$ _____
- 3. Average annual gross cash rental for comparable land: \$ _____
- 4. Average annual real property taxes for comparable land: \$ _____

ESTATE PLANNING INFORMATION CHECKLIST

5. Are there separate parcels in either spouse's name that if conveyed to a joint living trust would cause merger for land use? Yes () No ()

H. LIFE INSURANCE:

1. Owner: _____ Type: _____ Amount: _____
2. Primary beneficiary: _____
Address: _____
Relationship: _____
3. Contingent beneficiary: _____
Address: _____
Relationship: _____
4. Discuss ILIT? _____

VI. OTHER DOCUMENTS

- A. Durable Power of Attorney desired? Yes () No ()
From: _____ To: _____
Alternate: _____
From: _____ To: _____
Alternate: _____
Letter of Instruction for holding Power of Attorney desired? Yes () No ()
- B. Springing Power of Attorney desired? Yes () No ()
If yes, what conditions: _____

- C. Advance Directive desired? Yes () No ()
From: _____ To: _____
Address: _____ Phone: _____
Alternate: _____
Address of Alternate: _____
Phone of Alternate: _____
From: _____ To: _____
Address: _____ Phone: _____
Alternate: _____
Address of Alternate: _____
Phone of Alternate: _____
- D. Change Insurance Beneficiaries? Yes () No ()
1. Primary Beneficiary: _____
Address: _____

ESTATE PLANNING INFORMATION CHECKLIST

Relationship: _____

2. Secondary Beneficiary: _____
Address: _____

Relationship: _____

E. Change Retirement Plan Beneficiaries? Yes () No ()

1. Primary Beneficiary: _____

2. Secondary Beneficiary: _____

VII. MISCELLANEOUS

1. Is client interested in making lifetime gifts? Yes () No ()

2. Does client have long-term care insurance? Yes () No ()

3. Discuss life insurance _____

VIII. FEES/ESTATE PLANNING DATABASE

A. Estimate: _____

B. Fee Agreement signed? Yes () No ()

C. When to review Wills/Trust? _____ Years

D. Index Under _____

E. Other special instructions: _____

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PROBATE CHECKLIST

(Use this checklist in conjunction with the Probate Time Limitations - Critical Tickler Dates practice aid.)

***WARNING:** BE SURE TO TRANSFER THESE DATES TO YOUR CALENDAR

Estate of:	Attorney:
Probate No. and County:	Matter No.:
Date of Death:	Date of Appmt. of PR:
SSN:	Fed Tax ID (EIN):

ACTION	SUGGESTED TICKLER DATE	TICKLER DATE*	DUE DATE*	DATE ACCOMPLISHED
Conflict check	Before petition is filed			
Engagement letter and fee agreement signed	1 week after date of appmt			
Duties of personal representative delivered	1 week after date of appmt			
Bond required? (ORS 113.105) Amount \$ _____ Agency _____	Before Limited Judgment is filed			
Fiduciary class required? (Check with local court rules.) Must register within 15 days of appmt.	As soon as possible after date of appmt			
Petition and Order for appointment of PR (ORS 113.035) Filing Fee \$ _____ Date of filing _____ Date order signed _____	As soon as possible - or within 1 month after death.			
Does jurisdiction issue electronic court notices? If yes, set spam or junk email filters to allow receipt of e-notices at the Internet Service Provider (ISP) level <i>and</i> in the settings of your specific email program. You may also wish to create an agent or rule in your email program to duplicate and forward copies of court notices from the attorney-of-record to appropriate staff. Some electronic case filing systems generate e-notices only to the attorney-of-record. Staff email addresses or firm addresses (ex. docketing@johndoelawfirm.com) might not be permitted.	Same day petition is filed			
Letters of administration/testamentary obtained Fee: \$ _____	Request when filing petition			

PROBATE CHECKLIST

ACTION	SUGGESTED TICKLER DATE	TICKLER DATE*	DUE DATE*	DATE ACCOMPLISHED
Certified copy of death certificate obtained	1 wk after date of appointment			
Notice to interested persons (within 30 days after appmt) (ORS 113.155) Newspaper _____ Date of mailing to newspaper _____ Date of first publication _____ Affidavit received and checked _____ File Affidavit of publication _____	As soon as Limited Judgment is received			
Information to devisees, heirs and other interested persons (Due 30 days after appointment) (ORS 113.145) Date mailed or delivered _____ File affidavit of mailing _____	2 weeks after date of appmt			
Mail copy of Information and death certificate to the Oregon Health Authority and Dept. of Human Services to Estate Administration Office, Department of Human Services, PO Box 14021, Salem, OR 97309-5024. One combined copy may be used. (OAR 943-001-0020) File affidavit of mailing _____	2 weeks after date of appmt			
Explanatory letter to heirs and devisees w/ request for SSN's sent	2 weeks after date of appmt			
Forward mail to personal representative or attorney	As soon as Limited Judgment is received			
Notify county assessor(s) of mailing address for tax statements	2 weeks after date of appmt			
Federal tax ID (EIN) obtained (IRS Form SS-4)	As soon as Limited Judgment is received			
Notice of fiduciary relationship filed (IRS Form 56)	2 weeks after date of appmt			
SSN for decedent obtained (Applies only if decedent did not have valid SSN at time of death) (Rev. Ruling 64-113, 1964-1 CB 483)	1 month from date of appmt			

PROBATE CHECKLIST

ACTION	SUGGESTED TICKLER DATE	TICKLER DATE*	DUE DATE*	DATE ACCOMPLISHED
Estate bank account opened (be sure account is set up to preserve cancelled checks or follow local court rule)	As soon as EIN received			
Marshal assets of estate and obtain valuation	2 weeks after date of appmt			
Inventory (Due 90 days after appointment of PR) (ORS 113.165) Amount \$ _____ Extra filing fee required? _____	45 days after date of appmt			
Consider Petition for Spousal Support (ORS 114.015)	1 month from date of appmt			
Consider new Will for surviving spouse after inventory filed/tax liability determined	3 months after date of appmt			
Request IRS Form 712 for all policies of insurance – if estate tax return is required	Directly after proceeds are claimed			
Deadline to claim elective share - Within 9 months after death of decedent (ORS 114.610)	7 months after date of death			
Expiration of period to identify claimants (3 months from the date PR is appointed) (ORS 115.003)	3 months after date of appmt			
Notice to claimants (Must be given no later than 30 days after end of search) (ORS 115.003). Notice to the Dept. of Human Services must be mailed to Estate Administration Unit, PO Box 14021, Salem, OR 97309-5024. (OAR 461-135-0834)	3 months after date of appmt			
Affidavit of compliance re claimants filed (No later than 60 days after end of search) (ORS 115.003)	4 months after date of appmt			
Deadline for Will contest (Later of 4 months after: (i) publication of Notice; or (ii) mailing/ delivering of Information to heirs and devisees) (ORS 113.075)	4 months after date of appmt			
Fiscal year selected (Review issues when inventory has been filed and tax liability estimated. Elect on first Form 1041)	3 months after date of appmt			

PROBATE CHECKLIST

ACTION	SUGGESTED TICKLER DATE	TICKLER DATE*	DUE DATE*	DATE ACCOMPLISHED
Deadline for creditors to file claims (4 months after date of first publication of notice to interested persons or 45 days after notice required by ORS 115.003) (ORS 115.005)	4 months after 1st publication			
Review and make determination on all claims (ORS 115.135) (Claims not disallowed within 60 days after presentation are deemed allowed)	2 weeks from receipt of claim			
Determine estate tax alternative valuation (6 months after date of death) (IRC Sec. 2032)	6 months after date of death			
Determine if widow qualifies for veteran property tax exemption (Apply for each year on or before April 1) (ORS 307.260)	1 month after date of death			
File decedent's final individual income tax returns (April 15th of year following year of death) (IRC Sec. 6012(a)(1); 6012(b)(1); 6072(a))	March 15			
File decedent's final gift tax return (Form 709)	April 15 th of the year following death			
File disclaimer (No later than 9 months after date of death) (IRC Sec. 2518(b)(2)) (ORS 105.623 – 105.649)	6 months after date of death			
File Estate Tax Returns (Due 9 months after date of death if applicable) (IRC Sec. 6075(a)) (ORS 118.100) Federal Estate Tax Return (706) filed _____ Oregon Estate Tax Return (OR 706) filed _____ Federal closing letter requested _____ Oregon receipt received _____	7 months after date of death			
File fiduciary income tax returns (File by the 15 th day of the fourth month following close of fiscal year) (IRC Sec. 6012(a)(3), 6012(b)(1), 6072(a))	3 months after close of fiscal year			

PROBATE CHECKLIST

ACTION	SUGGESTED TICKLER DATE	TICKLER DATE*	DUE DATE*	DATE ACCOMPLISHED
Consider: IRS Form 5495 to limit liability of PR for taxes IRS Form 4810 requesting prompt assessment of decedent's income and gift tax returns, and fiduciary's income tax returns	After returns are filed			
Consider: 202_ Form OR-DECD-TAX requesting prompt assessment of individual and fiduciary income tax returns filed during the period of administration 202_ Form OR-DECD-TAX request release for PR from personal liability for decedent's individual returns	After return is filed			
Consider partial distribution (At least 4 months after date of first publication) (ORS 116.013) Petition filed _____ Order signed _____ Distribution accomplished _____ Receipts filed _____	6-9 months after death (if goal is to carry out income) any time after 4 months if not			
Consider partial award of PR fees and attorney fees (ORS 116.183) (check local rules regarding any limitations)	6-9 months after death			
First Accounting (Due 60 days after 1 year from the date of PR's appointment) (ORS 116.083) Filing fee \$ _____ First Accounting submitted _____	1 year anniversary v. of date of appmt			
Quarterly estimated tax payments (For any estate tax year ending 2 or more years after death/could apply as early as 1 year.) (15th day of 4th, 6th, 9th, & 13th months after end of tax year.) (IRC Sec. 6654(l)(1))	2 months after appmt			
Claim for refund of federal estate taxes (No later than 3 years from date return filed or 2 years from date the tax was paid. IRC Sec. 6511(a))	After return is filed			

PROBATE CHECKLIST

ACTION	SUGGESTED TICKLER DATE	TICKLER DATE*	DUE DATE*	DATE ACCOMPLISHED
Final accounting and petition for General Judgment of Distribution (ORS 116.083) Vouchers (if required by local court rules) Notice waived _____ Filing fee for Final Accounting \$ _____ If claims of the Oregon Health Authority or Dept. of Human Services have not been paid, provide notice pursuant to ORS 116.093. Copies must be mailed to Estate Administration Unit, PO Box 14021, Salem, OR 97309-5024. (OAR 461-135-0834) Final accounting/verified statement Attorney fee affidavit filed _____ Personal Representative's fees requested _____ Estimate of accounting fees for final fiduciary returns _____ Expiration of objection period _____ Judgment of Distribution submitted _____ Judgment of Distribution signed _____	10 months after appmt to determine if final or annual acctg.			
Administrative tasks to close estate Personal representative's deed _____ Assignments _____ Specific devises _____ Distribution _____ Special considerations _____ Trusts _____ Other _____	11 months after appmt			
Receipts submitted	2 weeks after mailing to beneficiaries			
Supplemental Final Accounting (If needed) Filing fee \$ _____ Supplemental Final Accounting submitted _____	Before submitting Supplemental Judgment			
Supplemental Judgment Submission Signed _____	When distribution receipts filed			

PROBATE CHECKLIST

ACTION	SUGGESTED TICKLER DATE	TICKLER DATE*	DUE DATE*	DATE ACCOMPLISHED
Bond released/agent notified of distribution and Supplemental Judgment	When Supplemental Judgment is signed			
Final vouchers retrieved from court if filed (Must be retained by PR for 1 year after date of final accounting) (ORS 116.083)	1 month after estate is closed			
Final fiduciary income tax returns filed (3 months and 15 days following the close of the estate) (IRC Sec. 6012(a)(3); 6012(b)(1); 6072(a))	1 month after estate is closed			
Consider filing termination of fiduciary relationship (IRS Form 56, Part II)	After final returns filed & any requested releases obtained			
Disengagement letter sent	After final returns filed and PR is discharged			

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