

PLF UPDATES

Farewell Carol

After five years at the helm of the Professional Liability Fund, Carol Bernick has decided to return to her former firm, Davis Wright Tremaine. There, she will focus on mentoring and career development of the firm's attorneys, especially women and lawyers of color. Carol's time at the PLF will be remembered as a period of revitalization, transition, and preparation for the future.

Carol has had an oversized impact on all aspects of the PLF given the time she served as CEO. While preserving the high standards in claims handling and personal and practice management assistance services that Oregon lawyers have come to expect from the PLF, she initiated a variety of needed internal system improvements and reforms. These ranged from rewriting the PLF coverage plans, streamlining claims administration, and implementing online assessment payments to overhauling the Excess Program's underwriting system. Her tenure has been marked by strong financial performance of the PLF as well – so much so, the PLF assessment was reduced for the first time in more than 15 years.

Among PLF staff, Carol is known for her approachable, pragmatic, and decisive leadership style. She fostered an open and collaborative workplace by supporting PLF staff and trusting in their ability to innovate and excel, while enhancing the lives of PLF staff through a new wellness program and her own guidance and mentoring. Her vision for the role of the PLF and values of professionalism, equity, and inclusion led to more opportunities for women and minorities to do defense work for the PLF and the adoption of a new mental health and substance use CLE requirement. Her belief in the mission of the PLF and standards of excellence has made her a leader in the legal profession both in Oregon and across the country.

Carol will be missed, but we wish her well as she moves on to the next phase of her career.

2019 Legislation Alerts

This issue of *inBrief* focuses on some of the significant changes made by the 2019 Oregon Legislature. Bills are listed by area of law. Some bills pertain to more than one practice area, so

practitioners are encouraged to read through all the sections. See the Table of Contents.

The new legislation takes effect January 1, 2020, unless otherwise noted.



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2020 PLF Assessment

The PLF assessment will remain at \$3,300 for the plan year 2020.

As in prior years, the actuaries predict that a \$3,300 assessment in 2020 will provide sufficient income during the year to cover the costs of claims and operating expenses. The cost-of-claims figure is based on predictions of the number of cases and projected cost of those cases.

WHY WAIT?

File your PLF assessment or exemption:

- Due by January 10, 2020.
- Please update your contact information with the OSB.

If you have any questions about the PLF's basic assessment for 2020, please call Jeff Crawford or Emilee Preble at the PLF at 503.639.6911 or 1.800.452.1639.

ABA TECHSHOW February 26 – 29, 2020

Register with PLF Discount Code

The ABA TECHSHOW Conference and EXPO is where lawyers, legal professionals, and technology all come together. For three days, attendees learn about the most useful and practical technologies available. The variety of CLE programming offers a great deal of education in just a short amount of time.

But there's more to ABA TECHSHOW than the educational programs; attendees get access to the EXPO Hall, where legal technology vendors are eager to demonstrate their helpful products and services. Touch, talk, and test your way through more than 100 technology products.

Mark your calendars for February 26-29, 2020, at the Hyatt Regency Chicago for ABA TECHSHOW, the best conference for bringing lawyers and technology together.

SAVE ON REGISTRATION FEES

Use the Professional Liability Fund Program Promoter Code EP2008 to receive an exclusive discount on the standard registration rate.

Visit www.techshow.com for details.

Large group discounts are available. Contact Lyndsey Kent at Lyndsey.Kent@americanbar.org.

PLF Directors

The Oregon State Bar Board of Governors has appointed three new members to the PLF Board of Directors: Lawyer members Oren Haker of Portland and Steve Hill of Pendleton and public member Michael Batlan of Salem. They begin their terms January 1, 2020. They join current PLF board members Molly Jo Mullen (Chair, Portland), Megan I. Livermore (Vice Chair, Portland), Tom Newhouse (Secretary-Treasurer, Portland – Public Member),

Holly N. Mitchell (Portland), Susan Marmaduke (Portland), and Gina Johnnie (Salem).

We extend our warmest thanks to outgoing lawyer board members Saville W. Easley (Portland) and Rob Raschio (Canyon City). Both served five-year terms (2015-2019). We also extend our thanks to outgoing public board member Patrick Hocking (Medford), who served a one-year term (2019).

New CLEs Available

The following CLEs, presented or updated in 2019, are now available in multiple formats on the PLF website:

- Lawyer Well-Being: How Mental Health and Substance Use Can Affect Our Profession
- Cultivating Lawyer Wellbeing
- Mindful Parenting
- Unhealthy Behaviors and Substance Use in the Family
- Aging Parents and Family Members
- Disaster Planning
- Jump Start Your Well-Being
- Gender Identity and Inclusion
- Supporting Lawyer Well-Being: What Is Your Role
- 2019 Data Security/Data Breach: What Every Lawyer Needs to Know to Protect Client Information
- Increasing Access to Justice Through Trauma-Informed Lawyering
- Employment Law and Conscientious Communication
- Cultivating Lawyer Well-Being and Asking for Help
- At the Crossroads of Ethics and Practice Management
- 2019 Bridging the Disability Gap – Making Your Practice and Workplace More Accessible: Improving Your Communication with Clients and Colleagues

To order these or any other CLE programs, go to www.osbplf.org > *CLE* > *Past CLE*. If you have questions, call Julie Weber in PLF CLE Resources at 503.639.6911 or 1.800.452.1639.

Subscribe to the PLF's Blog: *inPractice* Practical Advice for Oregon Lawyers

If you are looking for practical advice that you can use in your law practice, visit the PLF's blog, *inPractice*, at www.osbplf.org, and click on Blog. To receive notifications of new posts, enter your email address and click subscribe.

Our three practice management attorneys, Sheila M. Blackford, Hong Dao, and Rachel Edwards, regularly post practice management tips and information. Periodically, *inPractice* also offers information about the PLF assessment, coverage tips, and malpractice traps. For additional practice management information, follow us on Twitter: [@OregonPLF](https://twitter.com/OregonPLF).

Be sure to check your spam filter to make sure you receive *inPractice* posts!



The Cost of Missing Deadlines

Did you know that the leading cause of claims at the PLF is missed deadlines, including missed statutes of limitations, missed contractual deadlines, and missed deadlines imposed by court rules? For claims closed between July 1, 2018, and October 1, 2019, the PLF paid almost \$3.5 million to plaintiffs

who had a malpractice claim caused by a missed deadline. That represents 34% of PLF money paid to claimants. If you want to improve your system for meeting deadlines, call the PLF and ask for a practice management attorney.



'Tis the Season for Excess

Whether you are renewing your firm's Excess Coverage with the PLF for 2019, or are considering Excess for the first time – now is a great time to apply for additional coverage. Though applications are accepted at any time throughout the year, now is the perfect time to apply for Excess Coverage beginning January 1, 2020.

The PLF offers excess coverage to Oregon law firms on an underwritten basis with limits ranging from \$700,000 to \$9.7M. Included automatically in PLF Excess Coverage is an endorsement providing law firms with additional coverage for cyber liability and breach response claims. These types of claims are excluded under the PLF Primary and Excess Plans, so the automatic Endorsement added to all Excess Plans is a great benefit to help protect your firm.

To apply, visit the PLF website and create an account on the Excess Portal. All applications are now online, so create an account to start the application process. Each application is reviewed, underwritten, and priced individually. Quotes are typically provided within 10 days application submission. For more information visit osbplf.org/excess-portal/



Avoid Administrative or Financial Suspension of Your Bar License

By Rachel Edwards

Over the past year, the bar has seen a high number of suspensions of active bar licenses for failure to complete regulatory requirements, such as payment of bar membership fees, PLF assessments, and IOLTA and MCLE reporting. It is surmised that reasons include:

1. Attorneys feel inundated by email and may not read all emails received;
2. Many email programs have adjusted their cybersecurity protocol by changing their filtering parameters, resulting in the automatic sending of more emails to spam or junk folders; and
3. Transitions between jobs and changing email addresses can lead to problems, as attorneys may receive notices at their old email address but never see them.

Avoid the hassle that comes with late fees, suspension, additional discipline for unauthorized practice and other rule violations, and the process of seeking reinstatement by following a few suggestions:

- **Keep the Bar (@osbar.org) and PLF (@osbplf.org) domain names on your “safe senders” list.** Bar and PLF regulatory notices are only sent by email. To ensure these emails aren’t moved to your spam or junk email folder, add both domain names to your “safe senders” list. The process differs depending on your email program. A quick Google search should provide the necessary information for each type of program. If your program doesn’t allow for “safe senders,” be sure to check your spam or junk folders regularly.
- **Calendar regulatory deadlines.** Annual regulatory notices are sent out beginning in November, and deadlines begin in January. Keep an eye out for the emails and calendar the due dates immediately, preferably as recurring events every year. And don’t wait until the last minute to complete the requirements.
- **Take extra precautions when transitioning between jobs or changing your email address.** Be sure to update your bar directory information immediately. That is the email address the bar and PLF will use for notices. This is especially important if you are making a change when a regulatory deadline is approaching.
- **Review your bar member dashboard and directory periodically.** The bar member dashboard —the home page you see when you log in with your bar number and password — lists your regulatory requirements. Check the dashboard periodically to be sure you are in compliance. Also check your bar member directory to verify that all contact information is accurate.

BAR AND PLF REGULATORY REQUIREMENTS FOR 2020

- **Bar membership fees**
 - a. **Deadline:** January 31
 - b. **Late fees:** \$100 for active members and \$50 for inactive, retired, and pro bono members added to the membership fee on February 1 for members who don’t pay before January 31.

- c. **Suspension:** If not paid by April 1, suspension begins April 2.
- **IOLTA annual reporting**
 - a. **Deadline:** January 31
 - b. **Suspension:** If not reported by April 1, suspension begins April 2.
- **MCLE reporting**
 - a. **Deadline:** All credits must be completed by midnight, December 31, of the reporting period. Your completed compliance report must be electronically certified and submitted no later than 5:00 p.m. on January 31.
 - b. **Suspension:** If you are sent a notice of noncompliance and the noncompliance is not cured by the deadline specified in the notice, the MCLE Program Manager shall recommend to the Supreme Court that you be suspended from membership in the Bar (see OSB MCLE Rules and Regulations, Rule 7).

- **PLF assessment or request for exemption**
 - a. **Annual deadline:** January 10. If you fail to pay your PLF assessment or fail to file a proper exemption, you have 60 days before you are suspended (annual suspension date is March 16). Timing may vary depending on your payment schedule and other circumstances, such as resuming practice midyear.
 - b. **Late fees:** \$100 per month late payment charge if payment is not received at the PLF by the default date (annual default date is January 10). The default date may vary depending on your payment schedule and other circumstances.

Rachel Edwards is a Practice Management Attorney with the Professional Liability Fund.

Supervision and Forms-Driven Practice Areas

By Rachel Edwards

Some areas of law are more “forms-driven” than others, requiring completion of certain forms on behalf of your client as part of the provision of legal services. Examples include practice areas like bankruptcy, immigration, and Social Security disability. Be cautious when allowing staff or lawyers under your supervision to complete forms. A small mistake can have far-reaching implications. Whether you are supervising a lawyer or a nonlawyer staff member, you are responsible for that person’s conduct if you ordered or, with knowledge of the specific conduct, ratified the conduct involved, or knew of the conduct at a time when its consequences could have been avoided or mitigated but you failed to take reasonable remedial action. ORPCs 5.1 and 5.3. Reduce your risk of malpractice exposure by following a few simple steps:

1. **Always supervise and review completion of forms.** Even what appear to be simple forms can be complex. Mistakes can easily be made when filling out forms, especially in high-volume, forms-driven practices. Supervise and review all forms prior to completion.
2. **Maintain an updated client file and share new information with supervised lawyers or nonlawyer staff.** You may have information from the client or other sources that the supervised lawyer or nonlawyer staff has not yet received or did not have access to while completing forms. Ensure the client file is always up to date and accessible by those assisting. For example, information gathered from phone calls and in-person meetings may

be crucial, so be sure to maintain client files in which this information is immediately entered and shared with anyone assisting.

3. Verify use of the most updated forms.

Forms change periodically, especially in a constantly changing area of law such as immigration. Make it part of your routine to regularly verify that you are using the most updated forms.

See our *inPractice* blog for additional tips for lawyers acting as supervisors: <https://www.osbplf.org/inpractice/lawyers-as-supervisors/>.

[Practice Management](#) > [Forms](#) > [Category](#) > [Staff](#)

Rachel Edwards is a Practice Management Attorney with the Professional Liability Fund.



LAW UPDATES

2019 Legislation Alerts

This issue of *inBrief* focuses on some of the significant changes made by the 2019 Oregon Legislature. Bills are listed by area of law. Some bills pertain to more than one practice area, so

practitioners are encouraged to read through all the sections. See the Table of Contents.

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Resources



To view legislation online, visit www.oregonlegislature.gov.

The 2019 Oregon Legislation Highlights, published by the Oregon State Bar, is a comprehensive discussion of the new legislation.

It is available to download, free of charge, from the Legislative/Public Affairs home page. Go to www.osbar.org/pubaffairs and look for 2019 Oregon Legislation Highlights under Quick Links.

Business, Consumer, and Debtor-Creditor Law

RECORDING OF INSTRUMENT CONTAINING ELECTRONIC SIGNATURES

2019 Oregon Laws Ch. 402 (HB 2425)

HB 2425 amends ORS 93.804 to allow the county clerk to record an electronic instrument, and/or an instrument containing an electronic signature, by expanding the definition of an “Instrument” to include an “electronic record,” and the definitions of “original certification” and “original signature” to include an “electronic signature.”

***Practice Tip:** See ORS 84.004 (Oregon’s Uniform Electronic Transactions Act) for more on electronic records and signatures.*

SENIOR LIEN PAYOFFS

2019 Oregon Laws Ch. 140 (HB 2459)

HB 2459 amends ORS Chapter 105 by adding a provision under which the holder of a lien that is an encumbrance on real property (a term defined to mean the holder of a “claim, lien, charge or other liability...or a reservation of title...under a land sales contract”) may request an itemized payoff statement from the holder of another encumbrance against the same real property. The person who receives the request (generally a senior lienholder) may provide the statement without the permission of the obligor unless state or federal law requires such consent.

ADDITIONAL NOTICES IN FORECLOSURE AND EVICTION MATTERS

2019 Oregon Laws Ch. 405 (HB 2530)

HB 2530 amends the form of notice under ORS 86.756 (Notice of Default to grantor for residential trust deed foreclosure) and 105.113 (statutory form of summons in residential FED action) to require additional information regarding available services

for veterans of the armed forces. This includes contact information for each county’s veterans’ service officer or community action agency, and for the statewide “211” information system, which provides free information and referrals to benefits and social service organizations available to anyone (not just veterans) in need.

The additional information must also be included in a notice of termination of tenancy issued under any provision of ORS Chapter 90, and in any summons issued in any action brought under ORS 88.010 to foreclose a residential trust deed.

SALE OF REDEMPTION RIGHTS

2019 Oregon Laws Ch. 309 (SB 11)

SB 11 amends and supplements ORS 18.924 and 88.010, to address sales of statutory redemption rights and other interests in real property during foreclosure proceedings. Specifically, SB 11 requires a purchaser of rights in real property during a pending judicial foreclosure to provide a proscribed “notice in clear and conspicuous type” advising the seller that the transfer of an interest in real property during a foreclosure may include the transfer of redemption rights and the right to claim surplus funds arising from the foreclosure sale. The purchaser is further required to record an affidavit of compliance with the notice provision prior to, or concurrently with, recording the deed that transfers the interest in the foreclosure property.

SB 11 also amends ORS 18.924 to require that a sheriff’s notice of execution sale include a notice to the judgment debtor regarding the sale of redemption rights and the potential impact of selling any rights to a property in foreclosure on potential rights to claim surplus funds. SB 11 amends ORS 88.010 by adding a new provision requiring the inclusion of a statutory notice to lien debtors advising them to carefully consider offers to purchase “redemption rights” or “all rights under ORS chapter 18.” The new notice includes a

recommendation that the party speak with a lawyer or consumer rights nonprofit organization for assistance, and requires that the notice include the contact information for the OSB Lawyer Referral Service and for additional resources to be proscribed by rule by the Department of Consumer and Business Services.

SB 11 takes effect on January 1, 2020, and applies to transactions occurring and to notices given on or after the effective date.

EXEMPTION FROM GARNISHMENT

2019 Oregon Laws Ch. 263 (SB 519)

SB 519 amends ORS 18.385, 18.840, 18.845, and 18.896, to increase the minimum net disposable earnings payable to an individual that are exempt from garnishment. The exemption amounts are modified under SB 519 for weekly, bi-weekly, semi-monthly, and monthly payment periods, and the related statutory exemption forms (which must be served with a notice of garnishment) are adjusted accordingly.

The minimum net disposable income numbers were increased under SB 519 for the first time since 2011 to increase the minimum take-home pay for a garnished debtor by approximately 16.5% per pay period. Under current law on garnishments, at least 75% of disposable wages are exempt from garnishment, but additional amounts are exempt under ORS 18.385(2), if the net take home pay would be below the statutory minimum for the pay period.

The statute provides a floor for net take home pay that only can be crossed by federal tax claims and orders of a bankruptcy court.

CORRECTION OF DEFECTIVE CORPORATE ACTIONS

2019 Oregon Laws Ch. 325 (SB 359)

Numerous new provisions in SB 359 provide structure and procedures by which business corporations

and nonprofit corporations may validate, ratify, and approve defective corporate actions. “Defective corporate action” means an overissue of stock, or an action that is and would have been within the corporation’s power to take at the time of the validation and at the time the action was taken. The bill provides for filing Articles of Validation with Secretary of State under certain circumstances.

NONPROFIT CORPORATIONS CODE

2019 Oregon Laws Ch. 174 (SB 360)

For a detailed explanation of the bill and discussion of the purposes behind some of the changes, see the Report on the Nonprofit Organizations Law website: <https://nonprofitlaw.osbar.org/files/2019/05/SB360report.pdf>.

SB 360 took effect on May 24, 2019.

DATA BREACHES

2019 Oregon Laws Ch. 180 (SB 684)

SB 684 was the product of a work group formed after a major data breach in 2017 and makes a number of updates and modifications to Oregon’s Consumer Identity Theft Protection Act.

Among the bill’s major provisions is a new requirement that a vendor must notify a covered entity as soon as possible, but no more than 10 days after discovering a data breach. This requirement also applies to vendors who subcontract with other vendors. Further, the bill requires a vendor to notify the Attorney General if the breach involves personal information of more than 250 consumers, or if the vendor cannot determine the number of consumers involved.

Civil Procedure and Litigation

ACTIONS RELATING TO SEXUAL ASSAULT

2019 Oregon Laws Ch. 448 (HB 3293)

HB 3293 extends the statute of limitations on civil actions relating to sexual assault from the normal two years to five years from the date the person discovers, or should have discovered, the relationship between the sexual assault and the injury.

HB 3293 applies to actions commenced on or after September 29, 2019, including actions that would have been barred by the prior limitation period.

OREGON TORT CLAIMS ACT

2019 Oregon Laws Ch. 12 (SB 186)

SB 186 is one of several bills during 2019 that changed references to the Consumer Price Index to account for the Bureau of Labor Statistics discontinuing certain indexes. This bill changes the cost of living index used to make adjustments to the Oregon Tort Claims Act. Previously the statute referenced the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items. The new language references the Consumer Price Index for All Urban Consumers, West Region (All Items).

SB 186 took effect on March 27, 2019.

PIP BENEFITS

2019 Oregon Laws Ch. 460 (SB 421)

Current Oregon law allows a provider of personal injury protection insurance to be reimbursed for payments made by the insurer on behalf of a person. The amount of the recovery is limited to the total amount of benefits paid that exceed the damages suffered by the person. A person is not required to reimburse an insurer for more than the amount paid in benefit.

SB 421 prohibits an insurer from receiving reimbursement unless the person receives full compensation for their injuries from an action or settlement, and the reimbursement is paid from the excess amount of recovery. The measure prohibits

an insurer from denying a person benefits due to a potential action or settlement and prohibits the insurer from being named on a check or payment from a settlement. SB 421 also makes any contract or plan policy in violation of the measure void and unenforceable. Finally, the measure provides a method for determining the amount of a lien an insurer has against an injured person's recovery amount, which is a proportional amount not more than 100 percent of expenses, costs, and attorney fees the insured person incurred in connection with the recovery. The amount must be a ratio of the amount of the lien before the reduction to the amount of the recovery.

SB 421 took effect September 29, 2019, but many of the operative provisions do not go into effect until January 1, 2020.

CHANGES TO THE OREGON RULES OF CIVIL PROCEDURE BY ORCP CHAPTER

Summons ORCP 7

This significant change to Rule 7 relates to service by alternative means [ORCP 7 D (6)], often referred to as service by publication or service by posting.

The Council's rewrite of subsection 7 D(6) authorizes, if approved by the court, service of the summons and complaint by the methods provided in the previous version of the rule and, also, by e-mail, text message, facsimile transmission, or posting to a social media account.

In addition to providing guidance as to the content of an affidavit or declaration seeking an order to allow alternative service by electronic means, subparagraphs 7 D(6)(b)(i) and 7 D(6)(b)(ii) of the amendment provide direction on the content and placement of the information to make it more likely that the recipient will be notified that he or she is being sued. Finally, paragraph 7 D(6)(b) requires that the certificate of service in cases of alternative service by electronic means must be amended if, subsequent to that service,

“it becomes evident that the intended recipient did not personally receive the electronic transmission.”

Practice Tip: *Alternative service by electronic means would foreclose establishing ORCP 4 personal jurisdiction based on the defendant’s presence at a CIVIL PROCEDURE AND LITIGATION 4-5 geographical location at the time of service. See, Pennoyer v. Neff, 95 US 714, 24 LEd 565 (1877).*

Practice Tip: *An additional requirement is made applicable to all methods of alternative service. If the plaintiff has knowledge of or can ascertain a current or last-known address for the defendant, the alternative service by mail method must also be used, e.g., the summons and complaint must be mailed to the defendant by both first class mail and by certified mail or another mailing that requests a return receipt.*

The amendment’s subsection 7 D(6) as a whole provides practical measures for providing notice of the filing of actions to defendants while satisfying defendants’ constitutional rights to receiving notice:

- Alternative service is only available when the primary forms of service enumerated in subsection 7 D(2) through subsection 7 D(5) are not possible;
- Alternative service is directed by a judge; Safeguards for service by electronic means are written into the amendment; and
- Judge members on the Council are currently using text messages and other forms of electronic communication to communicate future proceedings in cases, e.g., notifying criminal defendants of upcoming hearings.

The amendment, in new paragraph 7 D(6)(d), affords any defendant served by any of the alternative service methods the same opportunity to seek leave to defend after default and after entry of judgment.

TIME FOR FILING PLEADINGS OR MOTIONS

ORCP 15

The amendment to Rule 15 specifies the deadline for an answer to a cross-claim as 30 days from the date of service.

Rule 7 C(2)’s deadline for responding when the summons is served by publication is restated in section 15 A.

An answer to a cross-claim or motion directed against a cross-claim is required within 30 days of service of the cross-claim. The same is true for a reply to (or a motion responsive to) a counterclaim.

The section’s last amendment [the 1994 promulgation] intended to clarify that replies to counterclaims were due within 30 days, not 10 days as the then-existing section seemed to specify. However, the 10-day deadline remained in the section for “any other motion or responsive pleading.” In light of Rule 13, that would by default apply only to a “reply to assert any affirmative allegations in avoidance of any defenses asserted in an answer,” i.e., a reply to an affirmative defense. A reply to an affirmative defense is not automatically appropriate in every case and the Council was persuaded that the deadline for responding to all pleadings should be uniform – 30 days. Accordingly, the last sentence of section 15 A referring to a 10-day deadline for “any other motion or responsive pleading” is deleted.

Practice Tip: *Motions or pleadings responsive to pleadings are due 30 days following service.*

Practice Tip: *It should be noted that Rule 15 D does not entitle the movant to seek enlargement of the time for numerous “substantive” motions available to the parties throughout the ORCP. The time for a party to exercise some rights, e.g., motions for judgment notwithstanding the verdict under Rule 63 and motions for a new trial under Rule 64 cannot be enlarged. Before relying on Rule 15 D to obtain more time in which to exercise a right or remedy, counsel must consult case law surrounding the specific right or remedy to determine whether any timeline that is involved is inflexible.*

COUNTERCLAIMS, CROSS-CLAIMS, AND THIRD-PARTY CLAIMS

ORCP 22

The amendment to subsection 22 B(3) makes clear that, if a cross-claim seeks relief against another defendant, it must be served on that defendant, even though that party is in default for the party’s failure to appear and defend.

SUBPOENA

ORCP 55

Amendments were made to Rule 55 to improve clarity and not to change the rights, obligations, and procedures contained in the previous version of the rule. One correction was made in paragraph 55 C(3) (a) and paragraph 55 D(6)(a) to make clear that, in accord with ORCP 9 A, copies of subpoenas need not be served on parties who are in default.

CHANGES TO THE UNIFORM TRIAL COURT RULES

The 2019 Uniform Trial Court Rules (UTCRC) took effect on August 1, 2019. You can find the complete rules: <http://www.courts.oregon.gov/programs/utcr/Pages/currentrules.aspx>.

Some important changes of special note are included

below. As always, attorneys should consult the full text of the rule if any of these changes appear relevant to your cases.

- 2.010 – Form of Documents
 - Subsection 7 of this rule was amended to remove the Certificate of Document Preparation requirement.
- 2.100, 2.110 – Protected Personal Information, Not Contact Information, Requirements And Procedures To Segregate When Submitting
 - This change removes references to an “affidavit” and uses the term “request” in order to align the wording in the rule with the titles of the forms used for this purpose.
- 2.130 – Confidential Personal Information In Family Law And Certain Protective Order Proceedings
 - The change conforms the wording in 2.130 to Forms 2.130.1 and 2.130.2.
- 5.150 – Streamlined Civil Jury Cases
 - The purpose of this proposal is to amend the expedited trial rule to encourage utilization of the streamlined civil jury trial process.
- 5.180 – Consumer Debt Collection
 - Among other changes, the new rule contains pleading requirements that are specific to debt-buyer collection actions.
- 6.050, 6.120, 11.110, 11.120, 21.020, 21.070 – Submission Of Trial Memoranda And Trial Exhibits
 - The rule requires each judicial district to establish a process by SLR or presiding judge order for the submission of exhibits in juvenile proceedings. The UTCRC committee discussed the possibility of implementing one statewide rule but determined that courts need flexibility according to their budget and staffing availability. Therefore, the rule allows counties to choose whether to require attorneys in juvenile cases to electronically file exhibits, or to require court staff to scan the exhibits and return the hardcopies to litigants.
- 8.010 – Actions For Dissolution Of Marriage,

Separate Maintenance And Annulment, And Child Support

- The purpose of this proposal is to allow the use of a declaration as an alternative to an affidavit for filings in certain family law proceedings.
- 8.040 – Prejudgment Relief Under ORS 107.095(1)
 - This proposal allows a party seeking prejudgment relief under ORS 107.095(1) to file a declaration as an alternative to an affidavit. The proposal amends the rule to no longer require a party filing a motion seeking temporary support to file a USD with the motion if the same party

is simultaneously filing a pleading under UTCR 8.010(4) that attaches a USD, or filed such a pleading within the prior 30 days and the circumstances have not changed.

- 10.020, 20.170, 21.020 – Preparation And Delivery Of DMV Records On Review
 - This change requires the DMV to electronically file the record when a final order of suspension is appealed to a circuit court.
- 21.070 – Special Filing Requirements – Extreme Risk Protection Orders
 - This change adds extreme risk protection order (ERPO) petitions to the list of documents that must be conventionally filed.

Construction Law

CLAIMS FOR UNPAID WAGES

2019 Oregon Laws Ch. 444 (HB 3193)

HB 3193 requires the Bureau of Labor and Industries (“BOLI”) to notify the Construction Contractors Board (“CCB”) within 30 days of the receipt of any valid wage claim against a contractor for a construction debt. If the contractor or business fails to pay the wages due within 60 days, the Commissioner will notify the CCB. Under the bill, the CCB may use notification of a final order in determining whether to revoke, suspend, or refuse to issue a license, or other relief.

HB 3193 applies to wages owed for labor performed after January 1, 2020.

DEFINITION OF SUBSTANTIAL COMPLETION

2019 Oregon Laws Ch. 327 (SB 369)

Actions relating to the construction, alteration, or repair of improvements to real property generally must be commenced within 10 years of the “substantial completion” of the project.

SB 369 adds the date when a public body issues a certificate of occupancy or the date when the owner uses or occupies the improvement for its intended purpose as possible triggers of substantial completion of a construction, alteration, or repair of improvement to real property.

SB 369 applies causes of action arising on or after January 1, 2020.

Criminal Law

SERVICE MEMBERS AND THE CRIMINAL JUSTICE SYSTEM

2019 Oregon Laws Ch. 86 (HB 2462)

HB 2462 creates new criminal procedural protections for servicemembers facing criminal charges.

HB 2462 requires courts to inform defendants at arraignment on a criminal charge that a defendant's status as a servicemember may make the defendant eligible for treatment programs, specialty courts, or mitigated sentencing. The bill also prohibits the defendant's status as a servicemember from being used as an aggravating factor in sentencing.

Practice Tip: *HB 2462 provides a definition of "servicemember" that is more expansive than the definition of "servicemember" found in ORS 135.881. Practitioners may want to discuss with their clients whether their own service qualifies.*

IMMIGRATION CONSEQUENCES OF CRIMINAL CONVICTION

2019 Oregon Laws Ch. 437 (HB 2932)

ORS 135.385 requires courts to advise criminal defendants of the rights that they waive before accepting a guilty plea or a plea of no contest. HB 2932 amends ORS 135.385 and requires courts to provide defendants with additional time to consider the decision to enter a guilty or no contest plea after informing the defendant of the potential immigration consequences to criminal convictions. It adds to the required notice of immigration consequences that a criminal conviction may result in removal proceedings for non-citizens of the United States. Finally, HB 2932 prohibits courts from inquiring into a defendant's immigration status at the time of a plea or at any time during a criminal proceeding.

HB 2932 took effect on June 20, 2019.

DISCLOSURE OF JUVENILE RECORDS

2019 Oregon Laws Ch. 48 (HB 2042)

HB 2042 makes permanent an existing law allowing the Oregon Youth Authority and county juvenile departments to disclose reports and other materials relating to a child, ward, youth, or youth offender to the Department of Corrections for specified purposes.

HB 2042 removes the sunset and makes the law permanent.

HB 2042 took effect on May 2, 2019.

CUSTODIAL INTERVIEWS OF MINORS

2019 Oregon Laws Ch. 216 (HB 3261)

ORS 133.400 requires that custodial interrogations conducted in a law enforcement facility in connection with an aggravated murder investigation be electronically recorded. It also requires the electronic recording of custodial interrogations of minors conducted in a law enforcement facility in connection with felony investigations.

HB 3261 expands ORS 133.400 and requires the electronic recording of all custodial interviews of minors conducted by a peace officer, a school resource officer, or a special campus security officer, inside a law enforcement facility or outside of a law enforcement facility if the officer is equipped with a body camera, and if the interview is in connection with an investigation into a felony or a misdemeanor.

OMNIBUS JUVENILE JUSTICE BILL

2019 Oregon Laws Ch. 634 (SB 1008)

SB 1008 is an omnibus juvenile justice bill that makes several substantive changes to juvenile delinquency and criminal proceedings.

Section 1 of the bill amends ORS 137.071, which specifies what must be included in a criminal judgment. The bill adds a requirement that the court, if it sentences the defendant to a term of

incarceration, indicate in the judgment the age of the defendant at the time of committing the offense, if the physical custody of the defendant will be determined based on the age of the defendant at the time of committing the offense.

SB 1008 took effect on September 29, 2019. However, it applies to sentences imposed on or after January 1, 2020.

EXTENDS DEADLINE TO APPEAL CIVIL COMMITMENT CASES

2019 Oregon Laws Ch. 400 (HB 2400)

HB 2400 amends ORS 19.255, which governs the deadline for filing a notice of appeal. A notice of appeal must be filed within 30 days of the entry of judgment. However, Oregon law allows for a late appeal in criminal, delinquency, dependency, and post-conviction relief cases when the failure to timely file an appeal is not attributable to the person appealing. HB 2400 amends ORS 19.255 by extending the deadline to appeal civil commitment cases when the person establishes, by clear and convincing evidence, that the failure to timely file a notice of appeal is not attributable to the person, and there is a colorable claim of error.

HB 2400 took effect June 17, 2019.

FAPA ORDER REQUIRED FINDINGS

2019 Oregon Laws Ch. 144 (HB 3117)

HB 3117 eliminates the imminent danger requirement of ORS 107.710 and 107.718 when a court is considering continuing an existing FAPA order. It also requires the court to find that the respondent represents a credible threat to the physical safety of the petitioner or the petitioner's child.

HB 3117 took effect May 22, 2019.

CLIENT CONFIDENTIALITY

2019 Oregon Laws Ch. 169 (HB 3249)

HB 3249 establishes that clients have the right to communicate privately with their lawyers and representatives of their lawyers. It also prohibits the admission of any evidence that is derived from a confidential communication between a client and the client's lawyer or a representative of the lawyer, if the confidential communication was obtained or disclosed without the consent of the client.

Domestic Relations

DETAILED PARENTING PLANS

2019 Oregon Laws Ch. 288 (SB 318)

SB 318 clarifies that courts continue to have the discretionary authority to order equal parenting time. The only new requirement imposed on courts by the passage of SB 318 is that if a parent requests that the court order equal parenting time and the court declines to so order, the denial must be supported by written findings in the judgment that equal parenting time is not in the best interests of the child or endangers the safety of the parties.

NOTIFICATION REQUIRED BY PARENTING PLANS

2019 Oregon Laws Ch. 289 (SB 356)

SB 356 authorizes a judge to require a parent with legal custody to notify the other parent of specific child-related matters and to provide an opportunity for comment. In practice, many judges, attorneys, and mediators regularly include these sorts of required notice provisions in their judgments and parenting plans. However, SB 356 now codifies that authority for judges.

OPTIONAL ALTERNATIVE DISPUTE RESOLUTION PROCESS

2019 Oregon Laws Ch. 293 (SB 385)

SB 385 provides authority to the presiding judge in each judicial district to establish a procedure in custody and parenting time modification and enforcement proceedings for an informal, non-recorded conference with a trained mediator, attorney, or court staff to identify problems, suggest trial solutions, report back progress, and if necessary, report a recommendation to the judge.

This informal process is intended to be a step following mediation, if mediation is unsuccessful and is an option for courts rather than a requirement.

CONVICTION FOR MURDER OR ATTEMPTED MURDER

2019 Oregon Laws Ch. 354 (SB 1011)

SB 1011 makes an obligee's conviction for the attempted murder or conspiracy to commit the murder of the obligor a sufficient change in circumstances for reconsideration of support provisions in a judgment.

The court retains discretion in any such filed modification proceeding to determine whether it is appropriate to modify or terminate an ongoing award of spousal support in the aftermath of a conviction for attempted murder or conspiracy to commit murder.

FAPA ORDERS

2019 Oregon Laws Ch. 144 (HB 3117)

HB 3117 amends ORS 107.716 to make clear that at a contested hearing on the FAPA order, a petitioner need not prove imminent danger as of the date of the hearing. At the hearing, the court must find that:

- Qualifying abuse has occurred within 180 days preceding the filing of the petition;
- The petitioner reasonably fears for the petitioner's physical safety; and
- The respondent represents a credible threat to the physical safety of the petitioner or the petitioner's child.

This change to the FAPA statute removes the need for a petitioner to prove that the petitioner remains in imminent danger of further abuse at the time of the contested hearing.

HB 3117 took effect on July 1, 2019.

SEXUAL ASSAULT PROTECTION ORDERS

2019 Oregon Laws Ch. 353 (SB 995)

Oregon law provides for Sexual Assault Protection Orders (SAPO) in certain cases where a person was subjected to unwanted sexual abuse by another person and the relationship between the two people does not meet the definition of family member or intimate partner under the Family Abuse Prevention Act, and who is not covered by any other form of protection order.

Changes to the SAPO requirements and protections brought about by Senate Bill 995 include:

PRIOR LAW:	SB 995:
A petitioner must seek relief within six months of the alleged assault. Failure to do so makes a petitioner ineligible for relief.	No time restriction for requesting relief.
Length of SAPO is 1 year unless terminated earlier by the court.	Length of SAPO is five years, except if: <ul style="list-style-type: none"> • Petitioner is under 18 years of age at the time of entry, SAPO continues either five years or until Petitioner turns 19, whichever is later; or • SAPO <i>shall</i> be permanent if the respondent is convicted of a sexual assault crime (ORS 163.355 to 163.445) against the petitioner; or • SAPO may be permanent if the court finds it is objectively reasonable for a person in the petitioner’s situation to fear for the person’s physical safety and that the passage of time or a change in circumstances would not dissipate that fear (i.e., serious indicators of lethality); or • Circuit court still has authority to renew, modify, or terminate SAPOs.
Personal service of SAPO required on the respondent.	The court may order service by an alternative method in accordance with ORCP 7 D(6)(a) upon a showing by the petitioner of due diligence in attempting to effect personal service.

Elder Law

GUARDIAN AUTHORITY TO LIMIT ACCESS TO PROTECTED PERSONS

2019 Oregon Laws Ch. 198 (HB 2601)

HB 2601 places some limits on a guardian's authority to limit protected person's preferred associations with third parties. The changes made by this bill include, but are not limited to:

- Prohibiting a guardian from limiting "a protected person's preferred associations" unless specifically allowed by a court or if "necessary to avoid unreasonable harm to the protected person's health, safety or well-being." The bill provides no definition of "preferred associations," but does state that, for protected persons who cannot communicate, "preferred associations" will be presumed based on prior relationships.
- Creating a motion process to challenge restrictions on association with a mandatory hearing, which can result in removal as guardian and an award of attorney fees and costs associated with the motion if a guardian is found to have unreasonably limited association.
- Requiring the guardian to do a number of things.
- Adding an item to the annual guardian's report regarding any limitations on association.

Practice Tip: Given the extensive nature of these changes, attorneys should review the statute in detail, update the letter sent to newly appointed or prospective guardians regarding their duties as guardian, update guardian report forms, and send a letter to all existing guardian clients to advise them of these changes before they go into effect on January 1, 2020.

NOTICE OF APPOINTMENT OF GUARDIANS

2019 Oregon Laws Ch. 77 (SB 376)

SB 376 adds a notice requirement after the appointment of a guardian similar to the notice of appointment of a personal representative. After a guardian is appointed, the guardian must send notice to the entities listed in ORS 125.060 (3) (and therefore ORS 125.060 (8)) and file proof of service within 30 days of appointment.

SB 376 also adds requirements related to the annual guardian's report. If a guardian indicates a guardianship should not continue or does not provide "adequate information in the report supporting the continuing need for the guardianship," the court shall order the guardian to provide supplemental information or move to terminate the guardianship. If the guardian fails to provide information or file the motion to terminate within 30 days, such failure is made grounds for removal of the guardian, and the court is required to hold a show cause hearing. The court is required to send notice of any order issued under these new provisions.

Practice Tip: These changes likely mean attorneys should be advising guardian clients to provide greater detail in annual reports indicating why a guardianship should continue. It is unclear exactly what information will be required and attorneys would be well advised to reach out to their local probate departments for guidance on how each county intends to implement this provision as there is no standard articulated in the bill.

DECEDENTS WHO HAD BEEN ABUSED OR

NEGLECTED BY A PARENT OR STEPPARENT

2019 Oregon Laws Ch. 461 (SB 474)

SB 474 makes a number of changes including preventing parents who are found to have abused or neglected their children from receiving damages from a wrongful death action.

Practice Tip: *Elder law attorneys who deal with probate administrations, especially those with wrongful death and/or personal injury claims, need to be aware of this change in parent and stepparent forfeiture timelines. The changes related to intestate estates are effective in estates commenced prior to the effective date of the statute if the estate is pending on the effective date. This means that attorneys representing personal representatives need to assess their open intestate estates to ensure these rules do not apply and attorneys representing heirs or potential heirs need to reevaluate whether forfeiture rules apply.*

SB 474 took effect on June 20, 2019.

ABUSE OF “ELDERLY PERSONS”

2019 Oregon Laws Ch. 93 (SB 729)

The current definition of “elderly person” in ORS 124.005, which provides definitions for restraining orders based on abuse of elderly persons and persons with disabilities, has an exclusion for persons who are covered by the long-term care resident abuse reporting requirements in ORS 441.640-441.665. SB 729 removes that exception, making all persons 65 years old or older “elderly persons” for purposes of ORS 124.005 -124.040. This bill allows persons age 65 or older who are residents in long-term care settings to access the same restraining order protections available to all other persons age 65 or older.

BISHOP V. WATERS FIX

2019 Oregon Laws Ch. 345 (SB 783)

SB 783 changes the prior requirement to notify the Attorney General of an elder abuse proceeding to clarify that failure to provide such notice is not a jurisdictional defect.

Practice Tip: *The current (before January 1, 2020) service requirement in ORS 124.100 (6) has been interpreted by the Oregon Court of Appeals as being a jurisdictional issue, requiring dismissal of claims where notice was not served on the Attorney General within 30 days of commencing the action. Bishop v. Waters, 280 Or App 537, 548-549 (2016).*

SB 783 expressly states “Failure to mail a copy of the complaint or pleading is not a jurisdictional defect and may be cured at any time prior to the entry of judgment.” The bill further prohibits the court from entering judgment until proof of mailing to the Attorney General is filed. The bill does not apply to actions initiated before the effective date, regardless of whether a judgment has been entered or not.

SENIOR PROPERTY TAX DEFERRAL PROGRAM

2019 Oregon Laws Ch. 488 (HB 2460)

HB 2460 generally provides that a transferee of tax-deferred homestead is only liable for amounts of outstanding deferred property taxes if the transferee is using homestead more than 90 days following taxpayer’s death and is a potential recipient of homestead.

Practice Tip: *The OSB Elder Law Section put this bill forward during the 2019 legislative session. This is a fix for situations where a property involved in the senior tax deferral program is underwater at the death of the owner. Prior to passage of this law, the letter of the statute seemed to suggest an*

heir was jointly and severally liable for the deferred property tax debt, even if that heir took no beneficial interest in the property or any other property of the estate. The Oregon Department of Revenue issued a number of tax demands to heirs under these circumstances. The bill ensures that an heir is only jointly and severally liable if they occupy, lease, or use the property for more than 90 days after the death of the deferral program participant, receive the property from the estate, or receive the property by gift or assignment from an insolvent owner.

HB 2460 took effect on September 29, 2019.

REVERSE MORTGAGES

2019 Oregon Laws Ch. 591 (HB 2587)

HB 2587 does two basic things. First, it switches the prohibition on pledging a property with outstanding debt under the program as security for a reverse mortgage to a prohibition on accessing the program if there is an existing reverse mortgage. Second, the bill exempts reverse mortgages executed on or after July 1, 2011 (i.e., after the previous exemption expired) and before January 1, 2017, provided the equity in the homestead is 40% or more. The January 1, 2017, date is based on a change in federal standards for reverse mortgages that went into effect on or after that date and requires an analysis of the borrower's ability/willingness to pay taxes and requires a life-expectancy set-aside for those taxes if there are concerns. This federal change makes it extremely unlikely that any senior with a reverse mortgage executed on or after January 1, 2017, would qualify for the program.

Practice Tip: *These changes are important to keep in mind for estate planning and Medicaid planning, as both a reverse mortgage and the senior property tax deferral program can both be useful tools in those processes.*

HB 2587 took effect on September 29, 2019.

NONCHARITABLE BUSINESS PURPOSE TRUSTS

2019 Oregon Laws Ch. 162 (HB 2598)

HB 2598 permits the creation of certain noncharitable business purpose trusts. This bill came forward to address concerns of owners of purpose-driven businesses who want to ensure the purpose of their business carries on after they retire or die. This bill creates a new type of trust called a stewardship trust with several specific traits, including the new positions of "trust enforcer" and "trust stewardship committee."

Practice Tip: *This could be a powerful new estate/succession planning tool for business owners with a passion for serving their communities who want to ensure that service lives on. However, attorneys will need to be very careful and specific in drafting to ensure that all of the statutory requirements are properly embodied in the trust to ensure it is able to take advantage of the new provisions. Additionally, attorneys representing a settlor, or any fiduciary involved in a stewardship trust, should send a detailed letter to their client(s) outlining their duties under the trust. Attorneys also need to be very careful in representing parties related to a stewardship trust to avoid conflicts of interest that might arise from serving more than one party. As this is a brand new type of trust in Oregon, it will be important for attorneys to look to other states, such as Delaware, where similar trusts have been attempted and to share with each other as appropriate documents are developed.*

NO-ASSET PROBATES

2019 Oregon Laws Ch. 414 (HB 3006)

HB 3006 establishes procedures for probate in cases where there are no assets in the probate estate, but a personal representative (PR) is needed to pursue a wrongful death claim, obtain medical records, or deal with other affairs of the decedent. The bill waives or defers many requirements of the probate process that don't make sense in the absence of assets.

See the Estate Planning section for more information.

REVISIONS TO SMALL ESTATE STATUTES

2019 Oregon Laws Ch. 165 (HB 3007)

HB 3007 modifies the process for use of the small estate affidavit (affidavit) in probate proceedings involving estates with less than \$75,000 in personal property and \$200,000 in real property.

See the Estate Planning Section for more information.

PERSONAL INJURY AND WRONGFUL DEATH PROBATES

2019 Oregon Laws Ch. 166 (HB 3008)

HB 3008 addresses the probate process for cases where there is a personal injury (PI) or wrongful death (WD) claim attached to the decedent.

See the Estate Planning section for more information.

UNIFORM PRUDENT INVESTOR ACT

2019 Oregon Laws Ch. 546 (SB 361)

SB 361 was proposed to address concerns over comments promulgated with the Uniform Prudent Investor Act and at the legislative hearings when Oregon adopted its prudent investor act that created an ambiguity regarding whether environmental, social, and governance factors can be considered by trustees when investing.

The bill clarifies that trustees can consider any factors the trust directs them to consider regarding how to invest, "including whether to engage in one or more sustainable or socially responsible investment strategies

in addition to or in place of other investment strategies, with or without regard to investment performance." The bill also added two new circumstances to be considered when selecting investments. First, "the intent, desire and personal values of the settlor, including the settlor's desire to engage in sustainable or socially responsible investment strategies that align with the settlor's social, environmental, governance or other values or beliefs to the extent known by the trustee." Second, "the needs of the beneficiaries, including but not limited to the beneficiaries' personal values and desire that the trustee engage in sustainable or socially responsible investing strategies that align with the beneficiaries' social, environmental, governance or other values or beliefs, as well as the financial needs of the beneficiaries."

UNCLAIMED PROPERTY

2019 Oregon Laws Ch. 678 (SB 454)

SB 454 transfers the administration of Uniform Disposition of Unclaimed Property Act, unclaimed estates and escheating funds from Department of State Lands to State Treasurer.

Practice Tip: *Elder law attorneys need to watch for upcoming administrative rules and policies related to this change in administration of the unclaimed property act to ensure they are following correct procedures for checking for unclaimed property and retrieving any such property as appropriate for clients and estates.*

SB 454 took effect on September 29, 2019. Operative dates start phasing in July 1, 2021.

Estate Planning and Probate

NO-ASSET PROBATES

2019 Oregon Laws Ch. 414 (HB 3006)

HB 3006 was intended to codify and make uniform the probate procedures applicable to no-asset probates. These include probates that have been opened solely to facilitate the prosecution of a wrongful death action, or to deal with other litigation that needs a personal representative to be appointed, or to facilitate the exercise of a testamentary power of appointment by a decedent who left no probate assets.

Under the revised statute, the requirement to post a bond is waived, as are the requirements to publish notice to interested persons and to search for claimants and creditors. Each of these waivers requires that the probate petition state that no probate assets are known to the petitioner, and that no probate assets have come into the knowledge or possession of the personal representative. This legislation is intended to allow the filing of a no-asset probate even if the decedent owned a small amount of tangible personal property.

A parcel of real estate subject to foreclosure with no equity in the property is not considered to be a non-asset. If a claim is presented to a no-asset estate, the personal representative is under no obligation to disallow the claim until such time that the personal representative files an amended or supplemental inventory showing that assets have come into the possession of the estate, and such an inventory is required if such assets are found. The bill also permits abbreviated accountings and prompt closure of the estate if the personal representative represents to the court that the purpose of the appointment has been satisfied. If assets are later found, the bill provides procedures for notifying the court and satisfying the procedural requirements that were waived when the estate was thought to be without assets.

HB 3006 is effective as to probates filed on or after January 1, 2020, and to accountings required to be filed on or after that date.

REVISIONS TO SMALL ESTATE STATUTES

2019 Oregon Laws Ch. 165 (HB 3007)

This bill significantly modifies the small estate procedures of ORS Chapter 114, but it does not increase the monetary limits on small estates. However, the date for valuing the assets of a small estate is now permitted to be either the date of death, or (if more than one year has elapsed), within 45 days before filing the affidavit.

The qualifications for serving as a claiming successor are made uniform with the qualifications for serving as a personal representative. The bill provides detailed procedures for filing an amended small estate affidavit. The bill also requires that the affidavit begin with a bold-faced warning to persons holding assets (such as banks and other financial institutions) that they are obligated to surrender the assets, or be subject to a court order and possibly attorney fees. If the decedent was incarcerated in Oregon within the last 15 years, a copy of the affidavit must be mailed to the Oregon Department of Corrections. The bill also contains provisions for dealing with a safe deposit box in the context of a small estate affidavit, and also for dealing with claims.

Practice Tip: *HB 3007 prohibits the claiming successor from commingling estate assets with the personal assets of the claiming successor, or entering into self-dealing transactions. This means that one or more separate bank accounts may need to be established and an EIN might need to be obtained. Obtaining an EIN is relatively easy if the application (Form SS-4) treats the small estate in a manner similar to a probate estate. Because of the above-described changes, small estate affidavit forms previously used under old law will need to be revised.*

HB 3007 applies to deaths on or after January 1, 2020, and to certain deeds executed after January 1, 2020.

PERSONAL INJURY AND WRONGFUL DEATH PROBATES

2019 Oregon Laws Ch. 166 (HB 3008)

HB 3008 requires personal representatives to receive court approval before settling a personal injury suit, not just a wrongful death suit.

Practice Tip: *A personal injury suit is one which alleges injuries sustained before death. Therefore, the associated damages become part of the probate estate, are subject to the claims of creditors, and are distributable to the beneficiaries of the estate (either through intestacy or under the provisions of a will). On the other hand, a wrongful death suit results in damages that are not part of the probate estate, are not subject to the claims of creditors, and are distributed to a statutory list of parties. (See ORS Chapter 30.)*

One of the purposes of this legislation is to clarify the treatment of personal injury suits and wrongful death suits, because often the two are difficult to tell apart. Similar to HB 3006, this bill waives requirements for the publication of notice, the filing of a bond, proof of search for creditors, the filing of an inventory, and the filing of a detailed accounting for no-asset wrongful death probates.

The bill requires that wrongful death proceeds must be placed in an attorney trust account, and it permits the calculation of the personal representative's fee based on the amount recovered in a wrongful death suit. The bill also clarifies that a personal representative can commence the probate in the county where a personal injury suit or a wrongful death suit could be maintained, in addition to the other eligible venues (e.g. where the decedent lived, where the decedent owned property, or where the decedent died).

PERS DEATH BENEFIT FOR SURVIVING SPOUSES

2019 Oregon Laws Ch. 487 (HB 2417)

This legislation changes the PERS death benefit available to surviving spouses of public employees, but requires an election to be made within 60 days following the date of death.

HB 2417 applies to deaths occurring on or after January 1, 2020.

SENIOR DEFERRED PROPERTY TAXES FOLLOWING DEATH

2019 Oregon Laws Ch. 488 (HB 2460)

This legislation limits the types of beneficiaries who might be liable for the decedent's property taxes deferred under the senior citizen property tax program authorized by ORS Chapter 311.

Previously, family members who received nothing from the estate might be held responsible for the deferred property taxes.

HB 2460 took effect on September 29, 2019. The amendments to ORS 311.695 in the bill apply to all transfers occurring on or after that date, as well as some transfers that occurred before that date. Please consult the text of the bill for a fuller description of applicability.

STEWARDSHIP TRUSTS

2019 Oregon Laws Ch. 162 (HB 2598)

HB 2598 creates a new type of trust within ORS Chapter 130 (the Oregon version of the Uniform Trust Code) that is not charitable in nature and has no beneficiaries, but can hold a business interest (such as shares in a corporation or units in a partnership) and maintain control over the business in order to perpetuate the goals of the settlor. Typically, the settlor of such a trust would be the founder and/or owner of the business.

The legislation allows the trust to be operated by a trustee, and be overseen by a stewardship committee and a trust enforcer. The drafters intend

that all of the tax consequences of the business will be borne by the business, not by the trust. Distributions from the business can be made to various stakeholders, including employees, customers, investors, and the community, but because no distributions are made to the trust, the trust bears no income tax consequences.

SOCIAL CONTACTS OF PROTECTED PERSONS

2019 Oregon Laws Ch. 198 (HB 2601)

HB 2601 is designed to limit the ability of a guardian to restrict the protected person's access to friends and other social contacts. It also requires the guardian to promote the self-determination of the protected person and to maintain a personal acquaintance with the protected person through regular visitation. The statutory form of a guardian's report is modified by this new bill.

SOCIAL AND ENVIRONMENTAL INVESTING

2019 Oregon Laws Ch. 546 (SB 361)

This legislation permits trustees to consider the personal desires of the settlor regarding social and environmental investments, and to consider the views of the beneficiaries on those subjects and the financial needs of the beneficiaries.

Health Law

NOTICE OF GUARDIAN APPOINTMENT

2019 Oregon Laws Ch. 77 (SB 376)

SB 376 requires notice of the guardian appointment to be sent by the newly appointed guardian to a list of interested persons, including the protected person. It also requires the guardian to initiate termination of the guardianship when no longer needed.

PRIOR AUTHORIZATIONS

2019 Oregon Laws Ch. 284 (SB 249)

NOTICE OF GUARDIANSHIP

2019 Oregon Laws Ch. 77 (SB 376)

SB 376 requires guardians to give notice of the authority granted to the guardian and of the right to seek removal of the guardian. The notice must be given to the same persons who received notice of the guardianship petition. The legislation also authorizes the court to act if the annual report does not justify the continuation of the guardianship.

DECEDENTS WHO HAD BEEN ABUSED OR NEGLECTED BY A PARENT OR STEPPARENT

2019 Oregon Laws Ch. 461 (SB 474)

This legislation limits the rights of parents and/or stepparents to inherit from a child who had been abused or neglected. The forfeiture relates to an intestate share, wrongful death proceeds, and shares passing by way of a transfer on death deed, but not a share under a will.

SB 249 prohibits specified unfair claim settlement practices by health insurers making prior authorization determinations. Specifically, the bill prohibits health insurers from engaging in a pattern or practice of refusing to approve requests for prior authorization of covered items without just cause, and modifies the deadline for insurers to respond to requests for prior authorization to request additional information if needed. Under the bill, the definition of "adverse benefit determination" is modified to include both the whole or a partial denial of requests for prior authorization.

Housing and Real Property

RECORDING ELECTRONIC DOCUMENTS

2019 Oregon Laws Ch. 402 (HB 2425)

HB 2425 allows the county clerk to record electronic documents and documents bearing an electronic signature. The bill provides that the county clerk may charge for electronic delivery of record or file images.

LIEN INFORMATION STATEMENTS

2019 Oregon Laws Ch. 140 (HB 2459)

HB 2459 provides that a person holding an encumbrance against real property may request an itemized statement of the amount necessary to pay off another encumbrance from the person that holds the other encumbrance on the same property. The person that receives a request may provide the itemized statement without permission from the obligor unless federal or state law requires obligor's consent. "Encumbrance" is defined as "claim, lien, charge or other liability that is attached to and is binding upon real property in this state as security for payment of a monetary obligation." No required time for response is provided. No remedy for failure to respond is provided.

LIABILITY OF TRANSFEREE FOR DEFERRED HOMESTEAD PROPERTY TAXES

2019 Oregon Laws Ch. 488 (HB 2460)

HB 2460 provides that the transferee of a tax-deferred homestead property is liable to Department of Revenue for amounts of outstanding deferred property taxes only if transferee is using the homestead more than 90 days following the death of the qualifying taxpayer, and if the transferee is a potential recipient of the homestead property under intestate succession, by devise, from the estate of the deceased taxpayer, or by gift or assignment from the insolvent taxpayer.

HB 2460 took effect on September 29, 2019.

HOMESTEAD PROPERTY TAX DEFERRAL PROGRAM

2019 Oregon Laws Ch. 591 (HB 2587)

Prior to passage of this bill, the statute prohibited the owner of homestead tax-deferred property from pledging said property as security for a reverse mortgage. This bill amends ORS 311.700 to provide that real property that secures a reverse mortgage is not eligible for homestead tax deferral. This prohibition does not apply to property securing a reverse mortgage obligation entered on or after July 1, 2011, and before January 1, 2017, provided the taxpayer has 40% or more equity in the homestead property at the time of filing the deferral claim.

HB 2587 took effect on September 29, 2019.

RIGHTS OF REDEMPTION

2019 Oregon Laws Ch. 309 (SB 11)

SB 11 requires a purchaser of residential real property after a foreclosure complaint has been filed and before the end of redemption period to provide notice to the seller regarding the seller's relinquishment of rights and interests in connection with conveyance of the real property, including redemption rights and rights to surplus funds. The purchaser must record an affidavit confirming compliance with the new notice requirements, and the affidavit may be attached to the deed transferring the real property.

New provisions in the bill require the sheriff's notice of execution sale to the judgment debtor to include a new provision regarding transfer of the property by debtor, offers to sell redemption rights and rights to surplus funds. The new provisions require a foreclosure complaint in an action to foreclose residential trust deed to include the new statutory warning regarding offers to purchase property, redemption rights and rights to surplus funds. The complaint also must include contact information for Division of Consumer and Business

Services, OSB Lawyer Referral, and other legal assistance programs.

ACTIONS ARISING OUT OF CONSTRUCTION, ALTERATION, OR REPAIR

2019 Oregon Laws Ch. 327 (SB 369)

SB 369 modifies the definition of “substantial completion” for purposes of the statute of limitations applicable to actions arising out of construction, alteration or repair of improvement to real property.

RESIDENTIAL RENTAL APPLICANT SCREENING CHARGES

2019 Oregon Laws Ch. 251 (SB 484)

SB 484 limits a landlord to one applicant screening charge per 60-day period, for each applicant who applies to rent multiple dwelling units owned or managed by the landlord. The bill further requires the landlord to refund the screening charge if a vacancy is filled before screening or if no screening occurs.

RESIDENTIAL TENANCIES

2019 Oregon Laws Ch. 1 (SB 608)

SB 608 included several changes to ORS Chapter 90, with the purpose to enhance rights to tenants in Oregon, due to a recent history of limited rental availability, coupled with a growing trend of uncommonly large increases in residential rents throughout Oregon.

Section 1 of the bill included several changes to ORS 90.427, which deals with the termination of periodic tenancies, both tenancies for fixed terms and month-to-month tenancies. The most significant change is the partial elimination of the ability to terminate a tenancy with no cause. Generally speaking, in a month-to-month tenancy, the landlord may still evict for no reason, using a 30-day notice. However, once the tenant has remained in occupancy for longer than one year, then the ability to remove the tenant for no reason is generally nonexistent.

There are a few specific exceptions to this. For example, a landlord could evict if the landlord intends to demolish the unit or convert it to non-residential use. Another situation is the landlord’s intent to undertake repairs or renovations to the unit. However, this scenario requires that the premises is unsafe or unfit for occupancy, or will be during the repairs or renovations. An additional permitted situation is the landlord’s, or a member of the landlord’s immediate family’s, intent to occupy the unit as their primary residence. Finally, the landlord could evict based on a situation where the landlord has accepted an offer to buy the property, the property is the only one that is in the purchase-sale transaction, and the buyer intends to occupy the unit as the buyer’s primary residence. This also requires that the landlord furnish the written real estate purchase-sale agreement to the tenant. Under any situation explained in this paragraph, the landlord can deliver to tenant a 90-day notice to vacate, must include one of the reasons just described, and must provide proof of the reason(s) described. Note that, in any type of eviction situation explained in this paragraph, if the landlord owns more than four residential dwelling units, the landlord is also required to pay one month’s rent to the tenant.

In a scenario where the tenancy is in a dwelling that is also occupied by the landlord, or that is on the same property as the landlord’s primary residence, assuming more than two dwelling units on the property the landlord may evict with a 60-day notice. A 30-day notice is possible if the property is sold in a transaction in which no other property is being purchased, the buyer intends to reside in the property, and the landlord delivers to the tenant written proof of the purchase/sale transaction.

Note that even in a tenancy that is not month-to-month, i.e., a fixed-term lease, section 1 of SB 608 provides that fixed-term tenancies are also subject to the prohibition on no-cause evictions after one year of occupancy. A penalty for violations of some of the above provisions amounts to three months’ rent plus actual damages.

Section 2 of the Bill includes changes to the manner

in which rent may be increased. The purpose of this is to regulate potentially excessive rent increases.

The bill amends ORS 90.323 to prohibit any rent increases during the first year of the tenancy. It further affixes a rent cap of 7% plus the consumer price index (which provides a running average change). There is an exception, which provides that the landlord is not subject to those regulations if the certificate of occupancy for the dwelling was issued less than 15 years from date of notice of increase, or if the landlord is providing reduced rent to the tenant as part of a federal, state, or local program or subsidy. Any rent increase requires a 90-day written notice. The 90-day notice has specific provisions on what information to include.

If the tenancy is terminated without cause during the first year of tenancy, a landlord may not reset the rent in the subsequent tenancy in excess of the previous rent plus 7% and the consumer price index adjustment. Any damages for violations of the rent increase provisions may result in a penalty of three months' rent plus actual damages.

Section 3 of the bill also enacted virtually identical provisions relating to rent increases in ORS 90.600, which addresses spaces rented for manufactured homes or floating homes.

Section 6 of the bill also made a few changes to ORS 90.100. This statute defines various terms frequently cited within ORS Chapter 90. Noteworthy are the references to the changes in ORS 90.427 (explained above), as well as a change in the model Forcible Entry and Detainer Complaint set forth in the bill. The section in the model complaint form that is essentially a checklist of what type of notice is at issue has been updated to the correct subsections in a notice subject to ORS 90.427. Also, a new line item has been inserted into the model complaint form, which is the 90-day notice provision, the basis for which is explained above.

Section 11 of the Bill specifies that the amendments to ORS 90.427 apply to fixed-term tenancies entered into or renewed on or after the effective date of the 2019 Act (which was on February 28, 2019),

and terminations of month-to-month tenancies occurring on or after the 30th day after the effective date. This could be relevant in a scenario where a fixed-term lease (say, a one-year term) had been entered into by the parties prior to the effective date of the act, but does not expire until after the effective date. Those cases can be dealt with per the statutes in place prior to the effective date. This, of course, makes a significant difference on whether and under what circumstances a “no-cause” eviction notice may apply.

Section 12 of the Bill specifies that, as to the “rent-cap” statutes explained above, those provisions apply to rent increase notices delivered on or after the effective date.

SB 608 took effect on February 28, 2019.

LANDLORD SCREENING

2019 Oregon Laws Ch. 268 (SB 970)

SB 970 creates a number of new restrictions applicable to landlords. Under the bill, a residential landlord may not consider medical marijuana use, a prior drug conviction based solely on the use or possession of marijuana, the possession of a medical marijuana card, or an applicant's status as a medical marijuana patient when evaluating a rental applicant.

Additionally, a landlord may not prohibit a tenant from engaging a real estate broker or licensed manufactured structure dealer to facilitate the sale or sublease of tenant's manufactured or floating home under ORS 90.555, and a landlord of a manufactured or floating home facility must provide the applicant, purchaser or tenant with a copy of an informational handout in a form prescribed by Housing and Community Services Department. A facility landlord may not prohibit facility tenant from subleasing while the facility tenant actively markets for sale the tenant's manufactured or floating home if landlord has a policy of renting manufactured or floating homes that are listed for sale by the landlord.

Judicial Administration

FILING FEE INCREASES

2019 Oregon Laws Ch. 605 (HB 3447)

HB 3447 increases court filing fees. Most fees increased 6% as of October 1, 2019.

HB 3447 took effect on July 23, 2019.

Labor and Employment

PAID FAMILY LEAVE

2019 Oregon Laws Ch. 700 (HB 2005)

HB 2005 will provide 12 weeks of paid leave to just about every employee in the state, to be funded by a new payroll tax paid by both workers and employers with 25 or more employees.

Under the bill, this paid time off is available for new parents and for those who need to care for an ill family member who has a serious health condition or for the employee's own serious health condition. It will also provide the same paid leave for victims of domestic violence, harassment, stalking, or sexual assault.

Almost all workers in the state, including part-time workers, will receive paid leave once the law goes into effect. The only requirement to be eligible for leave is that the employee has earned at least \$1,000 in wages during the previous year.

Weekly benefits will be capped at the generous rate of \$1,215, which means that many lower-income workers will see no financial impact on their livelihoods if they miss work for qualifying reasons.

The new law will provide a job guarantee for workers taking leave. It will be a violation of the law for an employer to permanently replace the worker during their absence, as they must be restored to their position upon their return.

Employers will be required to restore the employee to the same former position if it exists, even if they filled it with another employee during the absence. Employers with fewer than 25 employees can provide a returning employee with a different position with similar job duties and pay. If, for large employers, the position no longer exists, the large employer will be required to restore the returning worker to any available equivalent position with equivalent levels of pay, benefits, and other terms and conditions of employment.

The bill requires that the leave must be taken concurrently with Oregon Family Leave Act (OFLA) and federal Family and Medical Leave Act (FMLA) leave, meaning that workers cannot stack their paid and unpaid leave periods one after the other.

HB 2005 took effect on September 29, 2019, for administrative purpose. However, most operative provisions of the bill do not go into effect until January 1, 2022.

OREGON PUBLIC WORKERS PROTECTION ACT

2019 Oregon Laws Ch. 429 (HB 2016)

The legislature passed HB 2016 to address collective bargaining for public employees.

Specifically, the new law requires public employers

to provide reasonable paid time off upon request from a public employee who is a designated representative engaging in certain union activities. The bill also permits a public employer to deduct union fees from an employee's pay. Finally, in response to the *Janus v. AFSCME* Supreme Court decision, the law also makes it easier for employees to opt in to union membership.

EMPLOYER ACCOMMODATION FOR PREGNANCY ACT

2019 Oregon Laws Ch. 139 (HB 2341)

HB 2341 provides that Oregon employers with at least six employees will be required to provide reasonable accommodations to employees for pregnancy-related conditions. The bill states that longer breaks, more frequent breaks, assistance with certain physical tasks, modifications of schedules, and obtaining certain equipment are all reasonable accommodations.

The bill also prevents employers from requiring an employee to take protective leave when a reasonable accommodation is available.

HB 2341 requires employers to post notices related to the protections and provided to employees through this law. The Bureau of Labor and Industries (BOLI) will create materials for employers to use (such as posted notices) to comply with these notification requirements.

UPDATES TO THE EMPLOYMENT DISCRIMINATION STATUTES

2019 Oregon Laws Ch. 71 (HB 2589)

This bill specifies that sexual orientation is not a physical or mental impairment for purposes of employment discrimination statutes. It also removes a provision that stated a failure to provide reasonable accommodation for an individual with disability arising out of transsexualism is not an unlawful employment practice.

HB 2589 took effect May 6, 2019.

NURSING MOTHER LAW

2019 Oregon Laws Ch. 118 (HB 2593)

Under this new law, all Oregon employers are required to provide employees with lactation breaks. Smaller employers with 10 or fewer employees may qualify for an exception under the new law if they can show undue hardship.

Practice Tip: *Employers with fewer than 25 employees should likely update their employee handbook, as these breaks were not previously required. The new policies should address:*

1. How often the employee is allowed to take a lactation break (likely as often as needed);
2. The timing of those lactation breaks; and
3. The location provided for these private lactation breaks.

HB 2593 took effect on September 29, 2019.

RESTRICTIVE COVENANTS

2019 Oregon Laws Ch. 121 (HB 2992)

HB 2992 adds an additional requirement for Oregon noncompetition agreements. The bill requires employers to provide a signed, written copy of the terms of any noncompetition agreement to the employee within 30 days after the date of the termination of the employee's employment.

UNION'S FEES

2019 Oregon Laws Ch. 439 (HB 3009)

HB 3009 makes clear that a union can continue to charge police officers, sheriffs, and deputy sheriff's reasonable fees for representing them in matters unrelated to collective bargaining if the employee is not a member of the union and if the employee has not entered into a fair-share agreement with the union. This legislation was passed to address

concerns following the *Janus v. AFSCME* Supreme Court decision.

HB 3009 took effect on June 20, 2019.

PAY EQUITY CLARIFICATION

2019 Oregon Laws Ch. 617 (SB 123)

This bill clarifies that an employer may not be in violation of pay equity requirements when paying a different level of compensation to an employee with a compensable workers' compensation injury who is on light duty or modified work.

PUBLIC EMPLOYEES PROHIBITED FROM STRIKING

2019 Oregon Laws Ch. 242 (SB 272)

SB 272 expands the list of public employees who are prohibited from striking to include attorney generals.

IMMIGRANT NOTIFICATION REQUIREMENTS

2019 Oregon Laws Ch. 260 (SB 370)

SB 370 requires an employer to provide notice to employees of upcoming inspections by any federal agency of employer's records regarding identity and employment eligibility of employees within three business days of employer's receipt of notice of inspection from agency.

The bill also requires employers to make reasonable attempts to individually distribute required notification to employees, as well as to post notice in an accessible and conspicuous location. SB 370 directs the Bureau of Labor and Industries to create standardized notice templates for employers to be able to comply with this law.

SB 370 took effect on June 6, 2019.

OREGON WORKPLACE FAIRNESS ACT

2019 Oregon Laws Ch. 343 (SB 726)

SB 726 – The Oregon Workplace Fairness Act (OWFA) – requires employers to implement and distribute a written antidiscrimination and harassment policy. The OWFA outlines specific requirements that must be included in the policy. It also prohibits employers from requiring an employee – as part of a settlement of a discrimination or harassment claim – to agree to neither disclose the alleged unlawful conduct (including but not limited to sexual assault) nor disparage the employer or the alleged bad actor. These provisions are only allowed if the employee requests the provision and the employee is provided seven days to revoke the agreement after signing it.

Practice Tip: *Of particular importance to employers is the fact that, under the OWFA, employees will now have five years to file a complaint with BOLI or a court for claims of discrimination, harassment, or retaliation under Oregon laws. Although this does not affect the statute of limitations for federal claims, it is a significant expansion from the prior one-year statute of limitations on violations under Oregon laws.*

The restrictions on nondisclosure agreements and written policy requirements take effect October 1, 2020. The statute of limitations change applies to events that occur on or after the bill took effect on September 29, 2019.

Land Use

LUBA ATTORNEY FEES AND DEADLINE

2019 Oregon Laws Ch. 447 (HB 3272)

HB 3272 limits the extension that the Land Use Board of Appeals may provide a petitioner whose

record objection is denied for purposes of filing the petition for review to 14 days from later of original deadline or date of denial. The bill authorizes LUBA to award attorney fees for motions filed without merit.

Taxation

CORPORATE ACTIVITIES TAX

2019 Oregon Laws Ch. 122 (HB 3427)

HB 3427 is modified by HB 2164 (below) and, potentially, by SB 212. This bill implements the Corporate Activities Tax or “CAT”, Oregon’s new gross-receipts tax. In operative part, the bill states that “A corporate activity tax is imposed on each person with taxable commercial activity for the privilege of doing business in this state. The tax is imposed upon persons with substantial nexus with this state.”

HB 3427 took effect on September 29, 2019.

CORPORATE ACTIVITIES TAX

2019 Oregon Laws Ch. 579 (HB 2164)

HB 2164 made several modifications to HB 3427. These changes include updating the definition of “commercial activity” related to financial institutions. Additionally, the list of items that do not constitute “commercial activity” is expanded to include certain insurer income, certain hedging transactions, certain employee-related amounts if received by an employer, local taxes collected by a restaurant on sales of meals, tips collected by restaurants, as well as other technical fixes. The bill also decreases the commercial activity threshold to \$750,000.

HB 2164 took effect on September 29, 2019.

REFUNDS OF PERSONAL INCOME TAXES

2019 Oregon Laws Ch. 33 (HB 2235)

HB 2235 amends ORS 305.762 to allow refunds of personal income to be made by direct deposit into an account designated by taxpayer. The bill eliminates language that restricted such accounts to those at a bank or other financial institution.

HB 2235 took effect on September 29, 2019.

TRANSIENT LODGING TAXES

2019 Oregon Laws Ch. 498 (HB 3137)

HB 3137 provides that a transient lodging tax becomes due when the occupancy of transient lodging with respect to which the tax is imposed ends. The bill provides that the transient lodging tax to be remitted with a tax return is the amount of tax due with respect to all occupancy of transient lodging that ended during the reporting period to which the return relates.

TRANSIENT LODGING TAXES

2019 Oregon Laws Ch. 499 (HB 3138)

HB 3138 provides that the exemption from the transient lodging tax for a dwelling unit that is rented out for fewer than 30 days per year does not apply to a dwelling unit rented out as transient lodging using a platform provided by a transient lodging intermediary.

HOMESTEAD PROPERTY TAX DEFERRAL PROGRAM

2019 Oregon Laws Ch. 488 (HB 2460)

HB 2460 amends ORS 311.695 to provide that a transferee of a homestead is not liable for amounts of outstanding deferred property taxes due on the homestead if transferee receives no interest in real or personal property from the estate.

HB 2460 took effect on September 29, 2019.

HOMESTEAD PROPERTY TAX DEFERRAL PROGRAM

2019 Oregon Laws Ch. 591 (HB 2587)

HB 2587 amends ORS 311.700 to make an exception for certain homesteads from the prohibition on reverse mortgages for participation in homestead property deferral program for seniors and persons with disabilities.

HB 2587 took effect on September 29, 2019.

ELECTRONIC DELIVERY OF TAX DOCUMENTS

2019 Oregon Laws Ch. 360 (SB 80)

SB 80 permits property tax statements and some other documents to be delivered or made available by methods other than regular mail, such as by email. The bill also allows the Department of Revenue to give oil and gas production taxpayers notice of tax and delinquency charges by regular mail or by forms of delivery other than registered mail or certified mail with return receipt.

SB 80 took effect on September 29, 2019.

DELINQUENT TAX DEBTORS

2019 Oregon Laws Ch. 336 (SB 523)

SB 523 authorizes the Department of Revenue to post information online about delinquent tax debtors. The bill applies to all liquidated and delinquent tax debt owed to state on or after effective date of Act and to all tax periods for which tax debt is delinquent.

SB 523 took effect on September 29, 2019.



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LAW PRACTICE

CASES *of* NOTE

WORKERS' COMPENSATION: In the case of *Gadalean v. SAIF Corp.*, 364 Or 707 (April 18, 2019), the Oregon Supreme Court was presented with an issue of statutory construction to decide whether the definition of “worker” in ORS 656.005 in the Workers’ Compensation Law encompasses a claimant injured during a preemployment drive test that consisted of an actual delivery for an employer. The court held that because the claimant had been told by the employer that he was to perform the test and to do so without remuneration, the claimant did not qualify as a “worker” under ORS 656.005(3) for the purpose of the Workers’ Compensation Law.

RESTITUTION: In the case of *State v. Gutierrez-Medina*, 365 Or 79 (June 6, 2019), the Oregon Supreme Court allowed review to consider whether the trial court erred in refusing to apply the civil law defense of comparative fault to reduce the amount of economic damages that defendant would be required to pay as restitution. The court concluded that “defendant’s conviction for third-degree assault establishes a degree of culpability for which the defense of comparative fault would be unavailable in a civil action. Thus, the trial court correctly refused to reduce the amount of restitution by the victim’s alleged comparative fault.”

EMPLOYMENT LAW: In the case of *McLaughlin v. Wilson*, 365 Or 535 (September 12, 2019), the Oregon Supreme Court was asked to decide the scope of the antiretaliation provision in ORS 659A.030(1)(f). After looking at legislative history, the court concluded that the word “person” includes an “individual” such as defendant. “In addition, ‘otherwise discriminate against’ is not limited to acts that take place inside the workplace. The acts alleged by plaintiff in her complaint have a nexus to her prior employment and fall within its scope. The trial court therefore erred in dismissing plaintiff’s retaliation claim.”

BANKRUPTCY: In the case of *Concienne v. Asante*, 299 Or App 490 (September 18, 2019), the Oregon Court of Appeals was presented with the issue whether plaintiff’s bankruptcy estate was the owner of plaintiff’s medical malpractice claim because plaintiff was or reasonably should have been aware of the potential claim when he failed to list it as an asset in an earlier Chapter 7 bankruptcy proceeding. The court concluded as a matter of law, “plaintiff was or reasonably should have been aware of the claim when he failed to list it with the bankruptcy court and, therefore, the bankruptcy estate owns and controls the claim.”