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2015 LEGISLATION ALERTS

This issue of *In Brief* focuses on some of the significant changes made by the 2015 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 on pages 7-10. The summaries of the bills are located online at www.osbplf.org. Under the Practice Management tab, select Publications, then *In Brief*.

The new legislation takes effect January 1, 2016, unless otherwise noted. In addition, the PLF published "2015 Oregon Legislative Session – 'Emergency Legislation'" in the September 2015 issue of *In Brief*, focusing on some of the bills that became effective last year.

Resources

The 2015 Oregon Revised Statutes are available for purchase from the Legislative Counsel office. To order, visit <http://apps.oregon.gov/ECommerce/LCC/?category=ORS>, call 503.986.1243, or email lc.estore@state.or.us.

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

The *2015 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 OSB online library, BarBooks, at www.osbar.org. BarBooks is made possible by the contribution of the PLF.

2016 PLF Assessment

The PLF assessment will remain at \$3,500 for the plan year 2016. This is the sixth consecutive year that the assessment has remained stable.

As in prior years, the actuaries predict that a \$3,500 assessment in 2016 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 the projected cost of those cases.

If you have any questions about the PLF's basic assessment for 2016, please call Jeff Crawford or Emilee Preble at the PLF at 503.639.6911 or 1.800.452.1639.

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The Case for Excess

As many Oregon lawyers are aware, Oregon is the only state that requires malpractice coverage for lawyers. Any Oregon lawyer engaged in the private practice of law, and whose principal office is in Oregon, must obtain malpractice coverage through the Professional Liability Fund (ORS 9.080). This coverage is individual to each lawyer and currently provides coverage limits of \$300,000 per claim/aggregate of claims, plus a \$50,000 claims expense allowance.

The PLF Primary Coverage Plan and limits of coverage are approved each year by the PLF Board of Directors and the OSB Board of Governors as the minimum malpractice coverage requirement for Oregon lawyers. Those \$300,000 limits have remained the same for nearly thirty years.¹ Naturally, the cost of claims has steadily increased over that period and so has the frequency of claims in excess of the mandatory limits. Claims have become more complex, and the value of matters handled by lawyers has increased. Certain areas of law – personal injury, business, real estate and estate planning – now present a much higher risk for excess claims.

What Is Excess Coverage?

Excess coverage is professional liability coverage that provides coverage limits above, or in excess of, the statutorily required coverage limits of \$300,000. Since it is not mandatory, excess coverage is underwritten – that is, law firms must submit an application for review in order to obtain a quote for coverage. Unlike the mandatory PLF coverage, which is individual to each attorney, excess coverage is purchased to cover law firms (including sole practitioner firms). The cost of excess coverage can vary depending on a variety of factors, including firm size, claims history, areas of practice, coverage limits, deductible amount, and so on.

Excess coverage can be obtained from the PLF or from insurers in the commercial market. The PLF created an excess program in 1992 to address the difficulty that solo, small, and midsized firms faced while trying to obtain reasonably priced coverage above the mandatory limits in the mid to late 1980s. After the PLF entered the excess market in 1992, the cost of excess coverage for Oregon law firms dropped by nearly 50%. The PLF's entry into

¹ Limits were increased from \$200,000 to \$300,000 in 1987. The claims expense allowance has changed some over time. For example, the limit was raised from \$25,000 to \$50,000 in 2005.

the market stabilized the cost of coverage for firms and provided a source of excess coverage for those firms overlooked by the commercial market – namely, small and solo firms. In 2015, the PLF covered approximately 700 law firms and 2,100 attorneys at excess levels between \$700,000 and \$9.7 million. Of those firms, 85% were firms with one to four attorneys.

Does My Firm Need Excess Coverage?

Likely, yes.

In addition to evaluating the risk exposure for legal work undertaken, it is important to consider to what extent personal assets are at risk in the event of a large claim. Many lawyers feel that the mandatory \$300,000 does not afford enough protection.

What Are the Benefits of Excess Coverage?

In addition to providing lawyers with coverage for large claims and protecting personal assets, excess coverage is a good idea for other reasons as well.

One of the consequences of holding the mandatory limits at \$300,000 is the ever more limited protection available when multiple lawyers and firms are implicated in a same or related claim. The availability of the \$50,000 expense allowance does give some relief in this situation, but all lawyers and law firms must ultimately share the same \$300,000 limits for the claim. Excess coverage addresses this problem by providing each firm with its own set of excess limits for such a claim.

Excess coverage can also provide coverage for activities excluded under the PLF Primary Coverage Plan. For example, claims resulting from cyber liability or a data

PLF Contribution to OSB BarBooks™

The OSB BarBooks™ online library is a membership service available free of charge to all members of the Oregon State Bar. The library contains all OSB Legal Publications in numerous practice areas, *The Ethical Oregon Lawyer*, *OSB Oregon Legislation Highlights*, and more. It also contains the *Oregon Statutory Time Limitations Handbook*, jointly published by the PLF and the OSB Legal Publications Department.

BarBooks™ is made possible by the contribution of the Professional Liability Fund. You can access BarBooks™ by logging in to www.osbar.org.

breach are excluded in the PLF Primary Coverage Plan, Section V.23. In contrast, the PLF Excess Plan provides coverage for these claims under a Cyber Liability and Data Breach Endorsement. The PLF added this endorsement to its excess coverage in 2013 to address the increasing vulnerability of law firms in protecting firm and client data.

The PLF Primary coverage also excludes defense against bar complaints made against a lawyer. PLF excess coverage also does not cover ethics complaints, but some commercial insurers do offer this coverage.

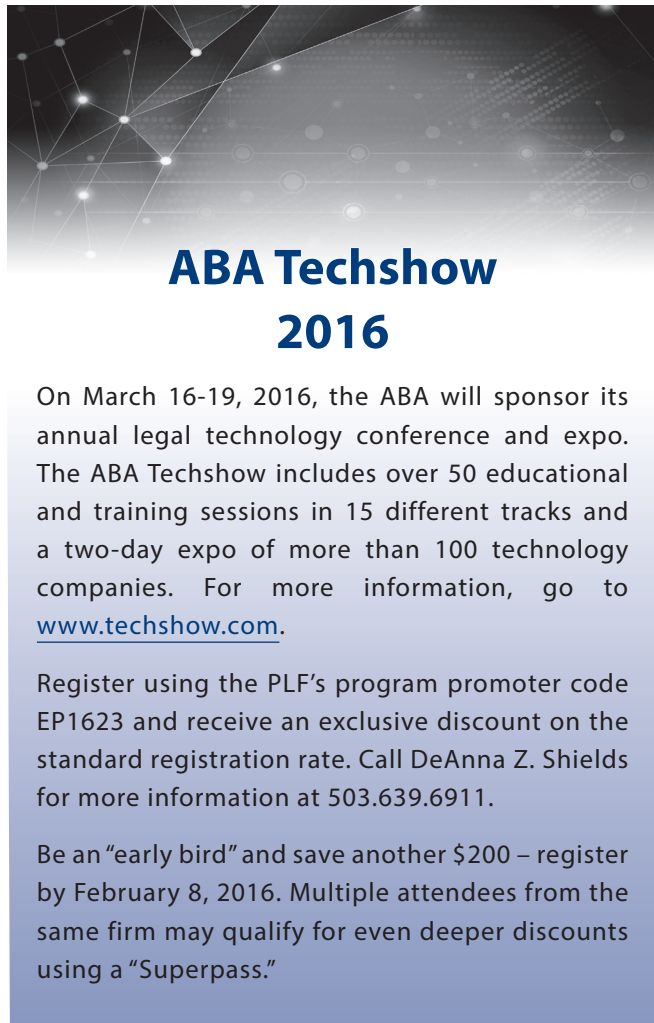
Conclusion

When assessing whether excess coverage is appropriate for your firm, consider these questions: Do your current malpractice coverage limits match the risk of exposure in your law practice? Are your personal assets protected in the event of an excess claim? If the answer to either of those questions is “maybe” or “no,” then obtaining excess coverage should be a priority.

The PLF generally recommends that law firms have excess coverage as protection against larger claims – whether that excess coverage is through the PLF or a commercial carrier.

If you have questions about PLF excess coverage, call Jeff Crawford or Emilee Preble at 503.639.6911, or 1.800.452.1639.

EMILEE PREBLE
PLF LEAD UNDERWRITER



ABA Techshow 2016

On March 16-19, 2016, the ABA will sponsor its annual legal technology conference and expo. The ABA Techshow includes over 50 educational and training sessions in 15 different tracks and a two-day expo of more than 100 technology companies. For more information, go to www.techshow.com.

Register using the PLF’s program promoter code EP1623 and receive an exclusive discount on the standard registration rate. Call DeAnna Z. Shields for more information at 503.639.6911.

Be an “early bird” and save another \$200 – register by February 8, 2016. Multiple attendees from the same firm may qualify for even deeper discounts using a “Superpass.”



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Changes to 2016 PLF Primary Claims Made Plan

A number of changes were made to the 2016 PLF Primary Claims Made Plan. The majority were ministerial – simplifying terms, removing outdated language, and streamlining plan commentary. More significant changes were made to Exclusions 2, 4, 8, 10, and 11.

Exclusion 2 – Wrongful Conduct Exclusion

Exclusion 2 is now broken into subsections that more specifically describe the activities to be excluded. These changes are meant to explain existing policy and practice rather than to create new exclusions. Excluded from coverage are claims for actual or alleged criminal, dishonest, knowingly wrongful, fraudulent, and malicious acts or conduct, as well as intentional violations of the Oregon Rules of Professional Conduct. Also now specifically excluded from coverage are claims arising out of non-payment of a valid and enforceable lien if actual notice of such lien was provided to you, or anyone in your office, prior to payment of the funds to a person or entity other than the rightful lien-holder.

Exclusion 4 – Punitive Damages and Cost Award Exclusions

Exclusion 4 now specifies that claims arising from false or unwarranted certification in a pleading, or for monetary sanctions for improper conduct, are excluded from coverage. These changes are meant to define existing policy and practice rather than to create new exclusions.

Exclusion 8 – ORPC 1.8 Exclusion (Business Transactions with Clients)

When Oregon lawyers engage in a business transaction with a client, they have an ethical duty to make certain disclosures to the client pursuant to ORPC 1.0(g) and 1.8(a). In prior plan years, covered parties were required to make the appropriate disclosures and provide the PLF with copies of such disclosure letters or risk exclusion of coverage. The reporting requirement to the PLF has been removed. You are no longer required to provide the PLF with copies of disclosure and consent letters when engaging in business transactions with clients. Caveat: Your ethical duty of disclosure and consent is unchanged. For the convenience of practitioners, a sample disclosure and consent letter for engaging in business transactions with clients is available on the PLF website at www.osbplf.org. Under Practice Management, select Forms, then search for the Disclosure of Potential Malpractice category.

Although the reporting requirement to the PLF was eliminated, Exclusion 8 still stands. The Plan excludes from coverage any claim arising from a business transaction subject to ORPC 1.8(a) in which you participate with a client, unless any required written disclosure has

been properly executed in compliance with the rule and fully executed by you and the client before the business transaction giving rise to the claim.

Exclusion 10 – Law Practice Business Activities or Benefits Exclusion

Exclusion 10 was changed to further distinguish covered activities – the practice of law – from activities that relate to the business of practicing law, which are excluded from coverage.

Exclusion 10 is now broken out into more specific subsections. Excluded from coverage are claims for amounts paid, incurred, or charged as fees, costs, or disbursements, including amounts claimed as restitution, forfeiture, financial loss, or set-off. Also excluded from coverage are claims arising from or related to the negotiation, securing, or collection of fees, costs, or disbursements, and claims for damages or the recovery of funds or property that will benefit you. These changes are meant to clarify existing policy and practice rather than to create new exclusions.

If the PLF defends a claim that includes any claim within the scope of this exclusion, the PLF can settle or attempt to dismiss the other claims not falling within this exclusion and can withdraw from defense following the settlement or dismissal of those claims. In essence, the PLF has no obligation to defend claims that are entirely excluded under Exclusion 10. This amendment represents a change in PLF policy.

Exclusion 10 does not apply to claims based on your malpractice regarding your client's right or ability to recover fees, costs, or expenses; the PLF will defend those claims.

Exclusion 11 – Family Member and Ownership Exclusion

Exclusion 11 was amended to prevent coverage through vicarious liability for otherwise excluded claims. Now excluded from coverage are any claims against you arising out of another lawyer having provided legal services or representation to his or her own spouse, parent, child, stepchild, sibling, or member of his or her household, or on behalf of a business entity in which any of them individually or collectively, have a controlling interest. The other exclusion for claims based on your legal work for your own family members or their business interests remains unchanged.

A complete copy of the 2016 PLF Primary Claims Made Plan may be found on the PLF website at www.osbplf.org.

If you have questions about the PLF Primary Claims Made Plan or changes in coverage, call Jeff Crawford or Emilee Preble at 503.639.6911 or 1.800.452.1639.

Oregon eCourt Updates

Oregon eCourt Traps

We occasionally remind practitioners about traps for the unwary while practicing in eCourt. The following pitfalls are not new changes to eCourt but pose potential stumbling blocks for lawyers.

Created Date = Entry Date:

The “Created Date” of an event is the entry date for purposes of ORS 7.020(2). Don’t be fooled by the date appearing in the “Date Column” in the Oregon eCourt Case Information system Register of Actions. Look for the Created Date and time stamp in the description of the specific court event. Calculate deadlines from this date.

See the login page for the OECI system: <https://publicaccess.courts.oregon.gov/PublicAccessLogin/Login.aspx?ReturnUrl=%2fPublicAccessLogin%2fdefault.aspx>. This landing page explains the meanings of all the headings and fields used in the OECI Register of Actions, including the meaning of “Created Date.”

eService Is a Separate Step:

A filer can submit documents electronically without receiving service electronically. To receive service electronically, you must take the separate step of ensuring you are on the Case Service Contact List for each matter that is eFiled. Refer to UTCR 2.010(8) and (9) for definitions of Service Contacts and Other Service Contacts, and to UTCR 2.100(2) and (3) regarding entry of contact information and selecting service contacts. You cannot add yourself to a Case Service Contact List if you have never filed into the case. The opposing party cannot select you as a Service Contact if you have not added yourself.

Once you have eFiled into a case, it is mandatory to enter your contact information in the Case Service Contact List to ensure that you will receive notification of the e-service of any documents by others in the case. See UTCR 21.100(2). eService is covered in the Odyssey eFile & Serve live training sessions. There are sessions coming up in each of the next few successive months: <https://attendee.gotowebinar.com/rt/5137499234222282242>.

Provided the filer properly chooses his or her service contacts at the time of eFiling, service is completed automatically. UTCR 21.100(4) states: “When the court accepts an electronic document for filing under UTCR 21.060(1) (a), the electronic filing system sends an email to the email address of each person whom the filer selected as a service contact. Transmission of the email by the electronic filing system to the selected service contacts in the action constitutes

service.” UTCR 21.100(5) states: “Electronic service is complete when the electronic filing system sends the email to the selected service contacts in the action.”

BEVERLY MICHAELIS
PLF PRACTICE MANAGEMENT ADVISOR

Changes to Oregon eCourt

Practitioners should be aware of the following recent changes to eCourt.

Court Signature Lines

After November 13, 2015, all documents (e.g., proposed orders, judgments, writs) submitted to the court for signature must comply with UTCR 21.040(3). This includes having a blank space of not less than 1.5 inches and a blank signature line following the last line of text to allow space for judicial signature. There should be no title or name listed underneath the line, such as “Circuit Court Judge.”

If you use templates to create documents for judicial signature, be sure to update them accordingly. Allow the appropriate amount of space before the signature line and remove any name/title information from below the signature line.

Example:

Petitioner’s motion for a stay is granted. The proceedings in this action are held in abeyance pending further notification from petitioner of completion of the conditions set out in this order.

(at least 1.5 inches of blank space following the last line of text)

Electronic Notices of Signed Orders

Beginning November 16, 2015, all Oregon circuit courts using the Oregon eCourt system will notify attorneys by email when orders are entered on their cases. When the court enters an order in the register of actions, the case management system will generate and email a notice to all attorneys on the case. The email will be sent to the email address where the attorney already receives notices of hearings and trials. The system will send the email from Court_Notifications@ojd.state.or.us. Make sure this email address is whitelisted in your email settings.

BEVERLY MICHAELIS
PLF PRACTICE MANAGEMENT ADVISOR

DANIEL PARR, JD
OREGON JUDICIAL DEPARTMENT
OFFICE OF EDUCATION, TRAINING, AND OUTREACH

PLF Coverage for Marijuana-Related Claims

As a result of recent legislation, Oregon law now allows businesses to engage in some forms of growing and selling marijuana. In response to the legalization of recreational marijuana and the resulting growing demand for legal services, Oregon has amended its Rules of Professional Conduct, following other states that have done the same. ORPC 1.2(c) is the ethical rule prohibiting a lawyer from assisting a client in conduct that the lawyer knows is illegal or fraudulent. In 2015, ORPC 1.2(d) was added: “Notwithstanding paragraph (c), a lawyer may counsel and assist a client regarding Oregon’s marijuana-related laws. In the event Oregon law conflicts with federal or tribal law, the lawyer shall also advise the client regarding related federal and tribal law and policy.”

Some practitioners have asked whether the PLF will cover lawyers who advise clients regarding business transactions involving the legal sale of marijuana and related activities in Oregon, or whether there is any jeopardy to PLF coverage when a lawyer does legal work related to the sale or distribution of marijuana.

The PLF does not provide coverage for any provision of legal services that assist the client to engage in illegal activity, regardless of the nature of the activity. PLF Claims Made Plan Section V.2. (Wrongful Conduct Exclusion). Notwithstanding this exclusion, generally speaking, if a

covered party is accused of negligence in providing legal services for a client, the PLF will typically defend such a claim. The mere fact that the negligence claim arose out of the providing of legal services involving legal marijuana-related transactions or activities would not, by itself, be a basis to exclude coverage.

Although legal in Oregon, marijuana is still a Schedule I controlled substance under the federal Controlled Substances Act (CSA). In 2013, the Department of Justice issued a memorandum known as the “Cole Memo,” which outlines eight priorities that drive federal marijuana enforcement policy: (1) No distribution to minors; (2) No revenue to criminals; (3) No diversion of marijuana to “anti-” states; (4) No state-authorized marijuana activity as a pretext to traffic or other illegal drugs; (5) No violence and use of firearms; (6) No drugged-driving or other adverse public health consequences; (7) No growing on federal lands; and (8) No possession or use on federal property. Currently, the DOJ will not enforce the CSA with regard to states that comply with these priorities. However, practitioners should be aware that the federal enforcement policy could change at any time.

Given the emerging nature of retail marijuana businesses, we recommend that lawyers write a letter to clients making them aware of the limitations on operating a marijuana business. The letter should advise the client of federal and tribal law and policy, as well as advise them that their retail marijuana activities must comport with Oregon law. It would also be good practice to have the client sign the letter acknowledging receipt and understanding.

As with every coverage determination, the facts of each situation are different, so this should not be interpreted as any representation that defense or coverage would be available under the facts of a specific situation. As this area of the law develops, the PLF may reassess its coverage determinations. Given the evolving nature of this area of the law and the federal prosecutorial discretion, covered parties should take all the circumstances into account in deciding whether to advise clients regarding the legal sale of marijuana and related activities in Oregon.

If you have particular questions regarding coverage, please call Jeff Crawford or Emilee Preble at the PLF at 503.639.6911 or 1.800.452.1639.

PLF Directors

The Oregon State Bar Board of Governors has appointed two new members to the PLF Board of Directors: Attorney Molly Jo Mullen and Public Member Tom Newhouse, both from Portland, begin their terms in 2016. They join current PLF board members Julia I. Manela (Eugene), Robert D. Newell (Chair, Portland), Teresa A. Statler (Vice Chair, Portland), Tim Martinez (Secretary-Treasurer, Public Member, Salem), Dennis H. Black (Medford), Saville W. Easley (Portland), and Robert S. Raschio (Canyon City).

We extend our warmest thanks to outgoing board members Valeri D. Saiki and former PLF CEO Ira R. Zarov for their years of excellent service.

2015 LEGISLATION ALERTS

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BUSINESS LAW

COOPERATIVES

ORS 62.015, 62.265, 62.435

2015 OREGON LAWS CH. 113 (SB 35)

Senate Bill 35 adds new language to ORS Chapter 62 on the notice requirements of cooperatives and modifies language in ORS 62.015, ORS 62.265, and ORS 62.435. The measure specifies that notification of elections and voting may be provided electronically and clarifies that notice is considered effective when it is received, five days after deposit in the mail, or on the date shown on the return receipt, if used. The bylaws or articles of incorporation may provide for an alternative effective date. Senate Bill 35 allows for a simple majority of a cooperative's members voting in support of a merger or sale of assets to signify support of the merger on behalf of the cooperative. The measure maintains the ability for a telecommunications cooperative board of directors to require a higher vote threshold, if desired.

Effective date: January 1, 2016. The amendments apply to notices that are communicated on or after the effective date.

ABOLISHING CORPORATIONS SOLE

ORS 65.057, 65.067

2015 OREGON LAWS CH. 278 (SB 77)

Senate Bill 77 removed the corporate sole as a form of business entity for new corporations. Corporate soles in existence prior to the effective date are permitted to continue operations, subject to the requirements of ORS Chapter 65.

Corporate soles are nonprofit entities, often established by a religious organization. A single person is appointed the sole financial officer rather than a board of directors. The corporate sole entity has been identified as a potential avenue for tax evasion; of the 270 active corporate sole organizations filed with the Oregon Secretary of State, 65% have been filed by the same parent organization.

Effective date: June 8, 2015.

BUSINESS ENTITIES MUST APPEAR THROUGH COUNSEL

ORS 9.320

2015 OREGON LAWS CH. 7 (HB 2328)

Prior to House Bill 2328, ORS 9.320 stated that persons are permitted to appear in court without an attorney, except that "the state or a corporation" must appear through an attorney. Courts have generally held that LLCs, partnerships, trusts, and other business entities must also appear through an attorney. HB 2328 clarifies this by replacing "corporation" with "party that is not a natural person."

Effective date: March 12, 2015.

CONVERTING BUSINESS ENTITIES; SHAREHOLDERS' RIGHTS

ORS CH. 60, 62, 63, 65, 67, 70

2015 OREGON LAWS CH. 28 (HB 2330)

House Bill 2330 deals with procedures when business entities convert from one form to another or merge. House Bill 2330 also addresses dissenting shareholder rights.

HB 2330 allows converting business entities to file written declaration stating the location where a plan of conversion is on file. The declaration must also state that the converting entity will provide any owner with a copy of the plan upon request and without cost in lieu of submitting plans to the Secretary of State (SOS).

Additionally, the articles of incorporation for a business entity may include an option to take action on less than unanimous written consent of all shareholders. A member who does not consent to the action has the same rights as those who oppose the action at a meeting. However, there was no method for notice to be delivered to members who are dissenting via writing. HB 2330 allows written notice of dissenters' rights be delivered to all shareholders entitled to such notice, and specifies procedures for providing such notice.

Effective date: January 1, 2016. The amendments apply to filings with the Secretary of State that occur, and corporate actions that are proposed to occur, on or after the effective date.

CIVIL PROCEDURE

USE OF FORMS IN FILINGS UTCR 1.160, UTCR 15

UTCR 1.160 rule is amended to require a judicial district to accept a filing that is substantially in the form of documents made available on the Oregon Judicial Department website, so long as the filing is otherwise in accordance with law.

The proposal is intended to allow the Oregon Judicial Department to better manage printable forms and, if applicable, interactive electronic forms. The proposal facilitates moving existing small claims forms from the UTCR to the Oregon Judicial Department website.

UTCR 15 was changed in several places to delete forms that were contained in the rules and instead direct the reader to the Oregon Judicial Department website to find the forms.

Effective date: August 15, 2015.

eFILING REQUIREMENTS UTCR 21

Numerous changes were made to UTCR 21 in order to facilitate the ongoing implementation of the Oregon eCourt Program. These changes were adopted out of cycle and most went into effect on September 29, 2014. Mandatory eFiling under UTCR 21.140 went into effect on December 1, 2014. Some highlights are presented below, but practitioners should consult the current UTCRs in order to familiarize themselves with all current eFiling requirements.

UTCR 21.040 was amended in several respects, including requiring that a single electronic filing be submitted as a single PDF file rather than as several individual electronic documents.

UTCR 21.070 was updated to add additional documents that must be filed conventionally rather than electronically. Chief among these are the filing of a petition or motion for waiver of mandatory eFiling rules and any filings required by Supplemental Local Rule to be filed conventionally.

UTCR 20.080 was updated with language addressing filing requirements when the eFiling system is temporarily unavailable, or if a technical problem prevents the system from receiving a document. In general, this rule will allow the court to permit a later filing date of a document to relate back to the date the filer attempted to file the document electronically. This

rule change is intended to address bone fide problems with the eFiling system, not problems with the filer's computer equipment, and the rule states that technical problems on the filer's end will generally not excuse an untimely filing.

UTCR 21.140 provides that an active member of the Oregon State Bar, with some exceptions, must file documents electronically using the eFiling system instead of filing documents conventionally.

Some specific documents are exempted from the rule, and UTCR 21.140(3) provides for a waiver process in order to be exempted from eFiling a document. Some counties have exempted certain documents from eFiling by Supplemental Local Rule, and practitioners should familiarize themselves with the rule in their practice area.

This rule only applies in those counties that have implemented the new eCourt eFiling system. However, it is anticipated that all Oregon counties will have eFiling available by mid-2016 and that mandatory eFiling will be the default rule statewide at that time.

Effective date: December 1, 2014.

ORCP CHANGES PROMULGATED BY THE COUNCIL ON COURT PROCEDURES DECLARATION UNDER PENALTY OF PERJURY IN LIEU OF AFFIDAVIT ORCP 1

The amendment reorganizes section E and now provides practitioners with the different placement (after the declarant's signature) and the required language for foreign declarations.

Effective date: January 1, 2016.

SUMMONS ORCP 7

Rule 7 is amended in four respects that may affect lawyers and litigants. First, at paragraph C(3)(b), the "notice" language for that variety of a summons used to join a party to respond to a counterclaim under Rule 22 D(1) has been amended to also encompass joining a party to respond to a Rule 22 D(1) cross-claim. Second, service on individuals is amended in subparagraph D(3)(a)(i) to make clear that service may be had on the defendant or on a person authorized to receive service. Third, references to

CIVIL PROCEDURE *continued*

Rule 27 (guardians ad litem) for service of the summons on minors or incapacitated persons in subparagraphs D(3)(a)(ii) and D(3)(a)(iii) are amended to direct practitioners to the correct section of the concurrently amended Rule 27. Fourth, the certificate of service provisions at subparagraphs F(2)(a)(i) and F(2)(a)(ii) are amended to now require a listing of the specific documents that were served on the defendant.

Effective date: January 1, 2016.

SERVICE AND FILING OF PLEADINGS ORCP 9

Rule 9 is amended in five significant respects. First, the rule defines and authorizes electronic service (see UTCR, chapter 21) in recognition of the county-by-county implementation of eCourt. Related amendments replace the term “papers” with “documents.” Second, language relating to facsimile service has been amended to reflect more accurately the changes in facsimile technology, and it is made clear that an automatically generated “out of office” message will not be sufficient to support a certificate of service. Third, in section E, the description of the information that must be included on pleadings and documents to be filed with the court (a caption and the name and contact information of the attorney or the litigant who authored the document) is clarified and made more consistent with UTCR 2.010(7) and (11). Fourth, any attorney who has consented to service by email is now required (in section E) to notify other parties in writing of any changes to the attorney’s email address. Fifth, service of any pleading or document (other than a summons) by email is treated (in section G and in Rule 10 B) in the same manner as service by facsimile service or by the postal service; the recipient is entitled to three additional days to respond to the document.

Effective date: January 1, 2016.

MINOR OR INCAPACITATED PARTIES ORCP 27

Rule 27 relating to the appointment of guardians ad litem is substantially rewritten and reorganized, and includes several new sections. Three significant changes are incorporated into the amended rule:

- (1) Absent a waiver authorized by the court, notice of the request for appointment of a guardian ad litem must be provided to the party for whom the guardian ad litem is sought and to other persons or entities (taken largely from ORS 125.060), with the opportunity for objections to be filed and a hearing to be held;

- (2) A new section C authorizes the discretionary appointment of a guardian ad litem for a party who is disabled but for whom the appointment of a guardian ad litem is not required; and
- (3) Direction is provided in section I on the procedures necessary to obtain court approval of any settlement that will involve the receipt of money or property by the party for whom the guardian ad litem was obtained.

Section E’s requirement of providing notice to the party and to other listed persons or entities can be waived or modified by the court under section H for good cause shown. The notice and related procedures specified in sections D through G are not applicable when the appointment is made on the court’s own motion or pursuant to a statute that provides for a different procedure.

The reorganization of Rule 27 includes changes to section A and section B to make those sections applicable to minors, incapacitated persons, or financially incapable parties; previously, section A pertained to minors and section B pertained to incapacitated and financially incapable persons. The requirement that the court appoint a suitable person (in sections A and B) is now found in section D. The procedures in the former subsections A(1) and A(2) applicable for minors who are plaintiffs or defendants of various ages are now found in subsections B(1) and B(2). The procedures applicable for parties who are incapacitated or financially incapable, formerly found in subsections B(1) and B(2), are now found in subsections B(3) and B(4).

The list of those persons who may apply for appointment of a guardian ad litem in subsections B(1) and B(2) now includes other interested persons, consistent with case law. The terms “plaintiff” and “defendant” are amended to include their equitable counterparts “petitioner” and “respondent” for clarity.

Section D requires the filing of a motion supported by one or more affidavits or declarations that will provide the court with a factual basis to determine whether the appointment is appropriate. Section E identifies persons or entities, taken from ORS 125.060, in addition to the party for whom the appointment is sought, to be served with notice of the motion. Unless the court waives or modifies the required notices, service must occur within seven days of the filing of the motion for the appointment of a guardian ad litem. Section F describes the content of the notice, including a description of the procedure for filing any objection to the appointment within 14 days from the date of the notice. Section G specifies that a hearing on any

CIVIL PROCEDURE continued

objection shall be held as soon as practicable. Section H authorizes the court to waive or to modify the requirements and procedures for providing notice. Section I outlines the procedures for obtaining court approval when a proposed settlement will result in the receipt of money or property by the person for whom the guardian ad litem was appointed.

Practice Tip #1: Practitioners seeking the appointment of a guardian ad litem are now required to support their motion with one or more affidavits or declarations that contain facts sufficient to prove by a preponderance of the evidence that the party on whose behalf the motion is filed is a minor or is incapacitated or financially incapable (when appointment is mandatory), or that the party is disabled (when the appointment is discretionary).

Practice Tip #2: The amendment is in response to reported abuses of the guardian ad litem process, providing procedures to ensure that the person for whom the appointment is sought, and other persons or entities that may have an interest in the person or in the object of the civil action, will be apprised of the request for the appointment. The amendment is designed to allow an action that is on the cusp of being time-barred to be filed without a delay due to the need to have a guardian ad litem appointed. Practitioners should identify the persons and entities identified in Section E to arrange for service of the required notice within seven days. Alternatively, if good cause can be demonstrated why some of the listed persons or entities cannot or should not be served within seven days, or should never be served, practitioners should have a motion and an affidavit or declaration prepared and promptly seek a waiver or modification of the rule's notice requirements.

Effective date: January 1, 2016.

FAILURE TO MAKE DISCOVERY; SANCTIONS ORCP 46

Subsection A(2) now specifies that the items sought to be discovered are to be identified rather than "set out" at the beginning of a motion seeking discovery. Numerous other amendments of prior words and punctuation are intended to improve clarity, consistency, and readability but should not affect practice.

Effective date: January 1, 2016.

DISMISSAL OF ACTIONS; COMPROMISE ORCP 54

Amendments of prior words and punctuation are intended to improve clarity, consistency, and readability but should not affect practice.

Effective date: January 1, 2016.

SUBPOENA ORCP 55

Section C is rewritten and reorganized to provide better clarity. See especially subparagraph C(2)(a)(i) describing what information must be added by the attorney or party requesting issuance of the subpoena when the subpoena is issued in blank. The numerous other amendments of prior words and punctuation are intended to improve clarity, consistency, and readability but should not affect practice.

Effective date: January 1, 2016.

JUDGMENTS ORCP 67

Minor amendments of words and punctuation are made to improve clarity, consistency, and readability but should not affect practice.

Effective date: January 1, 2016.

TAXATION OF ATTORNEY FEES AND COSTS AND DISBURSEMENTS ORCP 68

Rule 68 is amended in three significant respects:

- (1) A new subparagraph [C(4)(d)(ii)] authorizes the court to exercise discretion to expand the 14-day period for filing and serving statements of attorney fees and objections thereto, and the seven-day period for filing and serving a response to any objection, and the court may in its discretion allow filing or service of those documents after the specified time has expired;
- (2) A new subparagraph [C(5)(b)(ii)] authorizes the court to exercise discretion to award attorney fees or costs and disbursements in the form of a limited judgment after the entry of a limited judgment that affects fewer than all of the parties or fewer than all of the claims or defenses in a case; and
- (3) A new subsection [C(7)] is added to provide a procedure for a party to seek a supplemental

CIVIL PROCEDURE continued

judgment for attorney fees or costs and disbursements for those additional attorney fees and costs and disbursements incurred in collecting or enforcing the underlying judgment.

Other changes for clarification or consistency include a change to the title of the rule to more readily identify the rule as the procedure for drafting statements of attorney fees and the related objections and responses, but should not affect practice.

Practice Tip: Despite the amendment [at subparagraph C(4)(d)(ii)] to liberalize the 14-day deadline for filing and serving statements of attorney fees and objections thereto, and the seven-day deadline for filing a response to an objection, the careful practitioner will abide by the stated deadlines. It has become somewhat time-honored that a statement of attorney fees that is not filed or served within 14 days will be denied. The new subparagraph authorizes the court to exercise discretion, as Rule 15 D authorizes for pleadings or motions. However, seeking the court's discretion to authorize an untimely statement of attorney fees, or an objection or a response, carries significant risk, especially if the reason for the late filing or service is not strong.

Effective date: January 1, 2016.

JUDGMENTS BY CONFESSION ORCP 73

Minor amendments of words and punctuation are made to improve clarity, consistency, and readability but should not affect practice.

Effective date: January 1, 2016.

CLASS ACTIONS ORCP 32

2015 OREGON LAWS CH. 2 (HB 2700)

In House Bill 2700, the former subsections F(2) through (4) are deleted and subsections F(5) through (7) are re-designated. The deleted subsections eliminate the previous requirement that class members wishing to be awarded individual monetary relief opt in (except as provided in the former subparagraph F(2)(iii) for limited situations) by filing claim forms to share in the recovery.

An amendment to section L requires that the judgment generally describe the members of the class and specifically identify any persons who requested to be excluded from the class and who are not bound by the class.

A new section O authorizes the court to approve a process for the payment of damages as a part of a settlement or a judgment. That process may include the use of claim forms.

Effective date: March 4, 2015. The change from class members opting in to the opt-out procedures more commonly found in other jurisdictions will apply only to judgments entered on or after that date.

TIME ORCP 10

2015 OREGON LAWS CH. 212 (HB 2911)

In House Bill 2911, the Legislature deleted section B relating to terms of court, and the former section C is now section B. Rule 10 is amended in section B (previously section C) to afford recipients of documents that are served by email three additional days to respond. The same three-day extension is afforded for documents that are received via the court's new electronic service. Section B now consolidates in one place the three-day extension for responding to pleadings, motions, and other documents (other than a summons), whether served by regular postal mail, email, facsimile transmission, or the new electronic service. HB 2911 incorporated changes to Rule 10 promulgated by the Council on Court Procedures.

Effective date: June 2, 2015.

DECLARATIONS UNDER PENALTY OF PERJURY ORS CH. 46, 107, 109, 124, 153, 163, 419B

2015 OREGON LAWS CH. 121 (SB 375)

Senate Bill 375 amends 25 statutes that currently allow the use of affidavits and authorizes the use of a declaration under penalty of perjury, usually in the form required by ORCP 1 E. The amended statutes include ORS 46.425 (small claims); ORS 107.095, 107.097, 107.138, 107.139, 107.434, 107.437, and 107.840 (dissolution of marriage); ORS 107.705, 107.710, 107.720, 107.725, and 107.730 (family abuse restraining orders); ORS 109.767 (jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act); ORS 124.005, 124.010, 124.020, and 124.030 (Elderly Persons and Persons with Disabilities Abuse Prevention Act); ORS 153.080 (affidavits in trials of violations); ORS 163.741 (stalking); ORS 163.760, 163.763, 163.773, and 163.775 (sexual abuse restraining orders); and ORS 419B.367 (juvenile guardian's reports).

CIVIL PROCEDURE continued

ORS 419B.367 deletes “verified” and uses the declarative language from Rule 1 E without referencing the rule. ORS 107.710 through 107.728; ORS 124.010 and 124.030; and ORS 163.760 through 163.775 simply refer to a “declaration under penalty of perjury.” The amendment to ORS 107.730 deletes a redundant “affidavit.”

Effective date: May 20, 2015. The amendments became operative on September 1, 2015.

MINORITY TOLLING STATUTE

ORS 12.160

2015 OREGON LAWS CH. 510 (HB 2333)

House Bill 2333 clarifies that Oregon’s Minority Tolling Statute applies to claims brought under the Oregon Tort Claims Act. In 2007, HB 2366 amended the statute to bring the statutes of limitations (SOLs) for claims brought by parents of injured children in line with the SOLs for the claims of the children themselves. In so doing, the wording of the Minority Tolling Statute was subtly changed from referencing “actions mentioned in” to “actions that are subject to” various relevant statutes. This resulted in at least some courts concluding that the Minority Tolling Statute no longer applied to claims against the state because claims under the Tort Claims Act – having separate statutes of limitations – are not “subject to” the statutes listed.

HB 2333 corrects this unintended consequence by reverting to the pre-2007 phrasing of the statute.

Effective date: June 22, 2015. The amendment applies to all causes of action arising on or after January 1, 2008. If the amendment revives a claim that was barred under ORS 12.160 immediately before the effective date, the person asserting the claim must commence the cause of action within the time prescribed for commencing the action under ORS 12.160, as amended by this bill, or within one year after the effective date, whichever is later.

NOTICES OF APPEAL

ORS 19.260

2015 OREGON LAWS CH. 80 (HB 2336)

House Bill 2336 amends ORS 19.260 relating to the filing of notices of appeal to the Court of Appeals or to the Supreme Court to clarify when a notice of appeal, however delivered to the court, is deemed to be timely filed. HB 2336 more clearly authorizes delivery of notices of appeal by the U.S. Postal Service or by a commercial delivery service. Notices sent via the U.S. Postal Service no longer must be sent by registered or certified mail; whether entrusted to the U.S. Postal Service or to a commercial delivery service, the class of service selected by the party must be calculated to achieve delivery within three calendar days. If the notice of appeal is not received by the court by the required date, the party filing the notice of appeal must file a certificate of the date of mailing or dispatch.

Practice Tip: Clearly the appellant (or cross-appellant) will want to be able to provide the “record of the mailing or dispatch” which would be sufficient proof of the date of mailing or dispatch.

Service of copies of the notice of appeal on opposing parties, the transcript coordinator, and the trial court administrator by commercial delivery services is now authorized. First-class, certified, and registered mail are retained as appropriate service methods. An appellant is now required to certify the method of service as well as the date of service.

Effective date: May 18, 2015. The amendment applies only to notices of appeal filed on or after the effective date.

COMMERCIAL, CONSUMER, AND DEBTOR-CREDITOR

SEE ALSO FINANCIAL INSTITUTIONS, REAL PROPERTY

UNLICENSED CONSUMER FINANCE LOANS VOID

ORS 725.045, 725A.020

2015 OREGON LAWS CH. 490 (SB 278)

Senate Bill 278 amends ORS 725, which applies to certain consumer finance loans of \$50,000 or less, and ORS 725A, which applies to payday and title lenders. If a person makes a covered consumer finance loan, payday loan, or title loan without a license, the loan is void (rather than voidable) and the lender may not deposit the borrower's check or money order; withdraw money from the borrower's accounts; or otherwise collect principal, interest, or fees in connection with the loan. Under prior law, loans made without a license were merely voidable. The bill contains an exception for lenders that held a license that lapsed inadvertently or by mistake.

Effective date: June 18, 2015. The amendments apply only to loans made on or after the operative date of September 17, 2015.

CONDO AND HOA ASSESSMENTS DURING REDEMPTION PERIOD

ORS 18.966 TO 18.980, 94.712, 100.475

2015 OREGON LAWS CH. 120 (SB 367)

After a judicial foreclosure, the purchaser obtains possession of the property immediately, but the judgment debtor retains legal title until the six-month redemption period ends.

Senate Bill 367 amends ORS 94.712 and ORS 100.475 to clarify that the purchaser – more precisely, the certificate holder as defined in ORS 18.960 – is solely liable for all homeowner association or condominium assessments that come due during the redemption period. If the property is redeemed, SB 367 provides that the assessments paid by the purchaser or claimant are included, with interest, in the redemption amount.

Effective date: January 1, 2016. The amendments apply to properties sold at an execution sale conducted on or after the effective date.

MONEY JUDGMENTS IN FORECLOSURES

ORS 18.862, 18.936, 86.797, 88.010, 88.060

2015 OREGON LAWS CH. 291 (SB 368)

Senate Bill 368 amends a number of statutes, including ORS 88.010, ORS 18.862, and ORS 18.936, to eliminate the need to include a money judgment in a foreclosure action when such inclusion is inappropriate or contrary to other laws.

Previously, Oregon law had been interpreted to require a money award against the maker of the note or other person obligated on the debt when entering a judgment of foreclosure. SB 368 permits plaintiffs to elect to foreclose a mortgagee's interest in real or personal property without necessarily seeking entry of a money award, especially when to do so would be contrary to federal or other law.

The bill neither addresses nor has an effect on the current laws regarding an automatic stay in bankruptcy. In other words, a party bringing a foreclosure action – whether or not a money award is sought – in an open bankruptcy case would still violate the automatic stay unless an order granting relief had been entered, or unless the stay was terminated under the other circumstances described in Bankruptcy Code §362(c).

Effective date: June 8, 2015. The amendments apply to foreclosure suits that commence or are pending on or after the effective date.

DEBTOR NAMES ON FINANCING STATEMENTS

ORS 79.0502, 79.0503

2015 OREGON LAWS CH. 538 (SB 462)

Senate Bill 462 requires a financing statement to show the name of an individual debtor, as indicated on his or her unexpired driver license or identification card, for sufficiency of the name on the financing statement. This bill also provides a phase-in period for financing statements perfected under current law.

Sections 1 and 2 of this bill provide the requirements regarding what is now necessary to perfect a financing statement. Sections 3 through 11 provide requirements regarding the perfection of previously filed statements and the application to actions pending before the effective date of this act. Specifically, Section 4(2) provides that an individual has one year to satisfy the requirements of

COMMERCIAL, CONSUMER, AND DEBTOR-CREDITOR continued

this act if they were not satisfied in the previously filed financing statement.

In 2012, the Legislature adopted the Oregon Law Commission’s recommended “Option B,” which permits filing of a financing statement under the debtor’s “true name” (that is, basically any variant of the debtor’s name that he or she goes by). This recommendation, which came from the Uniform Law Commission, was one of two acceptable variations of this particular provision. “Option A” is represented by SB 462. Oregon was one of only a few states that initially passed Option B. The Legislature changed course this session and adopted Option A.

Effective date: June 22, 2015. The amendments become operative on January 1, 2016. The amendments apply to a transaction or lien that is within the scope of ORS 79.0502 or 79.0503, as amended by this bill, even if the transaction or lien was entered into or created before the operative date.

**EXPANDED IDENTITY THEFT PROTECTION
ORS 646.607, 646A.602, 646A.604,
646A.622**

2015 OREGON LAWS CH. 357 (SB 601)

Senate Bill 601 amends the Oregon Consumer Identity Theft Protection Act. It expands the definition of “personal information” to include certain biometric data, health insurance policy numbers, and health information. The bill also adds that persons who have had a breach of security must provide notice to the Attorney General if the breach affects more than 250 Oregonians. HIPAA-covered entities do not need to give notice of data breaches to Oregon consumers as long as they provide a copy of the notice sent under HIPAA to the Attorney General.

Enforcement of the Oregon Consumer Identity Theft Protection Act will also be covered under the Unlawful Trade Practices Act, ORS 646.607.

Effective date: January 1, 2016. The amendments apply to breaches of security that occur on or after the effective date.

**PHISHING VIOLATES THE UTPA
ORS 646.607**

2015 OREGON LAWS CH. 128 (HB 2377)

House Bill 2377 makes phishing a violation of the Unlawful Trade Practices Act (UTPA) under ORS 646.607. The bill provides that, unless for a lawful investigation,

a person may not use a website, email, text message, or other electronic means to induce another person to provide personal information by falsely representing who the person is.

Effective date: May 21, 2015. The amendments apply to solicitations or requests for, or inducements to provide, personal information that occur on or after the effective date.

**REQUIRED DISCLOSURES FOR REVERSE MORTGAGES
ORS 86A.196**

2015 OREGON LAWS CH. 87 (HB 2532)

House Bill 2532 amends ORS 86A.196 to require that every advertisement, solicitation, or communication intended to induce a person to apply for or enter into a reverse mortgage must contain a clear and conspicuous summary of the terms of the mortgage.

The requirements of HB 2532 apply to lenders and their agents and affiliates but do not apply to financial institutions as defined in ORS 706.008, licensees as defined in ORS 725.010, or mortgage bankers and mortgage brokers licensed under ORS 86A.106.

Effective date: May 18, 2015. The requirements apply only to reverse mortgage transactions that occur on or after the operative date of January 1, 2016.

**LENDER PAYOFF STATEMENTS
ORS 86.157**

2015 OREGON LAWS CH. 431 (HB 3244)

House Bill 3244 provides that a borrower may rely on a lender’s payoff statement for the purpose of establishing the amount a borrower must pay to satisfy the obligation under a real estate loan agreement unless the lender delivers an amended payoff statement. This bill also provides that a lender may recover the amount a borrower owes that did not appear on the payoff statement or amended payoff statement only as an unsecured debt or by foreclosing on other property securing the obligation.

Effective date: June 16, 2015. For additional information about this bill, please see Real Property.

CONSTRUCTION LAW

PLEADING REQUIREMENTS AGAINST DESIGN PROFESSIONALS

ORS 31.300

2015 OREGON LAWS CH. 610 (SB 383)

Under ORS 31.300, any claim brought against a “design professional” must include a certification that the attorney bringing the claim has consulted a design professional who possesses credentials similar to those of the defendant, and who is willing to testify to admissible facts and opinions sufficient to create a question of fact as to liability – essentially, that the defendant design professional’s conduct fell below the standard of care.

A “design professional” is clarified by Senate Bill 383 to include any professional licensed under ORS 671 (e.g., architects, landscape architects) or ORS 672 (e.g., engineers, land surveyors), or any similar design professional licensed in another state. The requirement that the certification be filed with or made part of the original pleading against the defendant design professional is omitted, although best practice would continue to be to plead compliance with the statute.

Effective date: January 1, 2016. The amendments apply to claims filed on or after the effective date.

EVIDENTIARY EXCLUSION FOR NATURAL DISASTER PREPAREDNESS

ORS 40.010 TO 40.585

2015 OREGON LAWS CH. 541 (SB 775)

Senate Bill 775 encourages private-sector investments in disaster preparedness by making pre-disaster measures taken to improve resilience inadmissible as evidence of negligence. Under the bill, evidence of measures taken or of vulnerability assessments conducted before a natural disaster occurs that were intended to minimize the impact of the natural disaster, or that were conducted in order to plan for the natural disaster, are not admissible in order to prove negligence or culpable conduct in connection with claims stemming from the disaster.

Effective date: June 23, 2015. The bill applies only to claims arising on or after the effective date.

CRIMINAL LAW

ENDANGERING A PERSON PROTECTED BY FAPA RESTRAINING ORDER

ORS 163.160 TO 163.208
2015 OREGON LAWS CH. 527 (SB 3)

Senate Bill 3 creates the crime of endangering a person protected by a Family Abuse Prevention Act (FAPA) order. The prohibited contact must be the type that recklessly places the protected party at substantial risk of physical injury, or attempts to place a protected party in fear of imminent physical injury. Therefore, if persons commit the crimes of recklessly endangering another person (ORS 163.195) or menacing (ORS 163.190) while violating the order, they commit the crime of endangering a person protected by a FAPA order. Such behavior elevates the level of offense to a Class C felony and is punishable by a maximum of five years incarceration, \$125,000 fine, or both.

Effective date: January 1, 2016. The bill applies only to conduct occurring on or after the effective date.

DEFENDANT RIGHT TO TESTIFY BEFORE GRAND JURY

ORS 132.320
2015 OREGON LAWS CH. 586 (SB 825)

Senate Bill 825 modifies ORS 132.320 and grants a defendant the right to testify before the grand jury when the defendant has been arraigned on a felony allegation and is represented by counsel. The defense attorney must notify the district attorney in writing of the defendant's request to testify before the grand jury. If notice is provided, the district attorney must notify the defense attorney of the date, time, and location of the grand jury proceeding.

SB 825 does not afford a defendant the right to appear and testify when the grand jury is meeting in secret, nor does it afford a defendant the right to offer additional evidence or witnesses, other than his or her own testimony.

Effective date: January 1, 2016. The amendments apply to criminal offenses committed on or after the effective date.

POST-CONVICTION RELIEF CLEANUP

2015 OREGON LAWS CH. 12 (HB 2380)

Currently, there is no mechanism in the law to allow for a settlement of post-conviction relief cases that have been appealed out of circuit court. House Bill 2380 gives the

parties to such an action the ability to ask the circuit court for a revised judgment in order to settle the appeal.

Effective date: January 1, 2016. The bill applies to post-conviction relief petitions filed on or after the effective date.

ELECTRONIC CERTIFICATION OF COMPLAINT

ORS 133.015, 133.992
2015 OREGON LAWS CH. 250 (HB 2609)

ORS 133.015 prescribes what an information or a complaint must contain. Traditionally, complaints have been physically filed with the local court. House Bill 2609 allows jurisdictions to file informations and complaints electronically without the need for verification with a physical signing of the document. Rather, the document may be processed electronically in court along with a verification that complies with the new language of the statute.

Effective date: January 1, 2016.

EMERGENCY PROTECTIVE ORDERS

ORS 133.310
2015 OREGON LAWS CH. 252 (HB 2776)

House Bill 2776 creates an emergency protective order that operates much like the FAPA restraining order, albeit on a more limited basis. The bill creates a protective order for which a peace officer may apply, with the victim's permission. Once the victim gives consent, the peace officer is permitted to unilaterally approach the court to make a showing that probable cause exists that: (1) The officer has responded to an incident of domestic disturbance and the circumstances for mandatory arrest exist; (2) A person is in immediate danger of abuse by a family or household member; and (3) An emergency protective order is necessary to prevent a person from suffering the occurrence or recurrence of abuse. Should the judge make such a finding, the court will enter an order prohibiting contact between the individuals.

The order is not effective unless it is properly served upon the person restricted from contact. An emergency protective order expires on the seventh judicial business day following the day of its entry into the Law Enforcement Data System. Just like a FAPA restraining order, a violation of the order constitutes contempt of court punishable by up to six months in jail.

Effective date: January 1, 2016.

DOMESTIC RELATIONS

DIVISION OF DEATH BENEFITS IN JUDGMENT OF ANNULMENT, DISSOLUTION OF MARRIAGE, OR SEPARATION

ORS 237.600, 237.620, 238.465, 238A.230

2015 OREGON LAWS CH. 506 (SB 370)

ORS 238.465 provides for payment of PERS benefits to an alternate payee on divorce, annulment, or unlimited separation. ORS 237.600 deals with payment of benefits from a member of state and local public retirement plans other than PERS. Oregon PERS took the position that a divorced member of OPSRP (Oregon Public Service Retirement Plan, ORS Chapter 238A) who remains single cannot designate a former spouse to receive survivor benefits – at all. Only if the member remarries a second spouse can the member be required to provide benefits to a first spouse. By contrast, PERS Tier One and Tier Two allow survivor benefits to anyone; they are not restricted just to a spouse, much less a former spouse.

Senate Bill 370 requires that the Oregon PERS OPSRP plan and other public employer retirement plans pay out a survivor benefit to a former spouse of the member as provided in a judgment or order.

Effective date: June 19, 2015. The amendments apply only to benefits of a member who dies on or after the effective date.

EQUAL CONSIDERATION TO RELATIVES AND CURRENT CARETAKERS AS PROSPECTIVE ADOPTIVE PARENTS

ORS 109.309, 419A.004, 419B.090 TO 419B.470

2015 OREGON LAWS CH. 795 (SB 741)

Under current law governing adoption proceedings; there is no expressed placement preference. Instead, adoption statutes recite the general “best interests of the child” standard as to where the child ought to be placed. Senate Bill 741 requires that the administrative rules governing home studies and placement reports provide equal status and priority to relatives and current caretakers seeking to adopt as is provided to other prospective adoptive parents with regard to factors having to do with the child’s safety, attachment, and well-being. Additionally, SB 741 requires that with regard to suitability of placement, the rules include a preference for relatives and current caretakers over other individuals seeking to adopt.

Effective date: July 27, 2015. Some of the amendments became operative on September 1, 2015, and some of the amendments became operative January 1, 2016.

PETITION FOR ANNULMENT, DISSOLUTION, OR SEPARATION TO DISCLOSE PROTECTIVE AND RESTRAINING ORDERS

ORS 107.085

2015 OREGON LAWS CH. 399 (SB 788)

Senate Bill 788 amends ORS 107.085 to provide that a petitioner in an action for marital annulment, dissolution, or separation must state whether there exists in Oregon or in any jurisdiction a protective order between the parties or any other order that restrains one of the parties from contact with the other party or with the parties’ minor children.

Effective date: January 1, 2016. The amendment applies to petitions filed on or after the effective date.

PERSONAL INFORMATION CONTAINED IN JUDGMENTS

ORS 18.042, 18.048, 18.170, 25.020, 109.073

2015 OREGON LAWS CH. 197 (HB 2340)

House Bill 2340 protects the personal information of litigants by limiting the information that must be required in court documents. The bill amends a number of statutory provisions that previously required the inclusion of complete Social Security numbers, Taxpayer Identification Numbers, and driver license numbers.

HB 2340 targets four individual types of documents:

- (1) Civil judgments (including judgments arising from dissolution and child support proceedings) containing a money award must now only include the last four digits of a judgment debtor’s Taxpayer Identification Number (TIN). Note that ORS 18.042 previously allowed for the exclusion of all but the last four digits of the debtor’s Social Security number (SSN), but the IRS defines TINs as including SSNs, which could lead to confusion. HB 2340 creates consistency in the type of information that ought to be excluded from judgments and protected from the public’s view;
- (2) Lien record abstracts were subjected to a similar change and must now only include the last four digits of a judgment debtor’s TIN (or SSN);

DOMESTIC RELATIONS continued

- (3) Paternity and support judgments and orders must now only include the final four digits of each party's SSN and driver license number; and
- (4) Criminal judgments relating to the payment of restitution and compensatory fines to victims of crime must now exclude the victim's name and address.

Practice Tip: In the family law context, the TIN that will be included in the money award section of the judgment is the obligor/debtor's SSN. That means practitioners should already be in the habit of including the last four digits of the obligor/debtor's SSN. Practitioners typically exclude all confidential personal information from documents filed with the court pursuant to UTCR 2.130 (Family Law Confidential Personal Information). UTCR 2.130 is specific, however, that mandatory redaction of confidential personal information does not apply to the information required in a money award under ORS 18.042.

ORS 18.042 requires that a money award contain the year of birth, final four digits of either the TIN or SSN, and the final four digits of the driver license number and the name of the state that issued the license for each judgment obligor/debtor.

Effective date: June 22, 2015. The amendments became operative on January 1, 2016.

CREATION OF A RE-ADOPTION PROCESS ORS 21.135, 109.309 TO 109.385 2015 OREGON LAWS CH. 511 (HB 2365)

Prior to the passage of House Bill 2365, Oregon law lacked a statutory process for re-adoptions. A re-adoption occurs when adoptive parents travel to a different country and complete the adoption of their child in that country. Prior to passage of HB 2365, re-adoption processes informally adopted in Oregon by one county might differ from those found in other counties. HB 2365 amends ORS 109.385 to provide a specific step-by-step process for a re-adoption proceeding in Oregon that ensures a consistent statewide standard.

Effective date: June 22, 2015. Some of the amendments apply to adoptions commenced before, on, or after the effective date. Some of the amendments apply to adoptions commenced on or after the operative date of January 1, 2016.

ADOPTION FILING FEES ORS 21.135, 109.319, 109.410 2015 OREGON LAWS CH. 512 (HB 2366)

House Bill 2366 provides for an increase in the filing fee for a petition in an adoption proceeding from \$252 to \$255. Under current law, the petitioner must pay a \$252 filing fee when filing the petition, but must then pay an additional \$1 fee once the adoption is finalized for issuance of the Court Certificate of Adoption. HB 2366 combines those two fees in an effort to streamline the administrative process involved in adoptions. The additional \$2 increase in the fee reflects that the court may no longer charge for issuing certificates of adoption and must, in fact, issue "one or more" certificates once the adoption process is complete.

HB 2366 additionally imposes a filing fee (set forth in ORS 21.145, which is currently \$105) for a motion filed by the birth parent of an adult adoptee under Oregon's new open adoption records law, except in cases where the Department of Human Services (DHS) consented to the adoption.

Effective date: January 1, 2016.

VOLUNTARY ADOPTION REGISTRIES ORS CH. 109 2015 OREGON LAWS CH. 200 (HB 2414)

House Bill 2414 permits parents or guardians of minor adoptees or minor genetic siblings of adoptees to use and register with voluntary adoption registries. Under existing law, minor siblings are restricted from utilizing the mandatory adoption search and registry program unless the minor child's birth parent has already registered with the program, the birth parent approves of the use and registry, and all adoptees and siblings have reached the age of 18. HB 2414 amends ORS Chapter 109 to provide that a minor child's adoptive parent may opt in to the search and registry program on the child's behalf in an effort to locate a sibling of the minor child, unless the other sibling presently resides with the birth parent. This change in the law provides an avenue for siblings separated by adoption to locate each other with the assistance of their adoptive parents without having to wait until reaching the age of majority.

HB 2414 additionally provides an avenue for children of a deceased adult adoptee to access the search and registry program. Under existing law, the child of an adult adoptee had no independent access to the program, which meant that if the adult adoptee (i.e., parent) died without having ever utilized the program, the child would be left with no

DOMESTIC RELATIONS continued

readily available avenue to initiate contact with previously unknown family members. HB 2414 permits a child of a deceased adult adoptee to utilize the program so as to promote access to previously unknown family members.

Effective date: January 1, 2016.

No FEES FOR STALKING PROTECTIVE ORDER ORS 30.866

2015 OREGON LAWS CH. 89 (HB 2628)

Existing law provides that a petitioner seeking a Stalking Protective Order (SPO) without also seeking damages shall be exempted from filing fees, service fees, and hearing fees. House Bill 2628 extends the exemption of fees to all persons seeking SPOs, regardless of whether additional relief (i.e., monetary damages) is sought.

Effective date: May 18, 2015.

EMERGENCY PROTECTIVE ORDER BY PEACE OFFICER ORS 133.310

2015 OREGON LAWS CH. 252 (HB 2776)

House Bill 2776 authorizes a peace officer to request an emergency protective order on a victim's behalf that operates much like a traditional FAPA restraining order, albeit on a more restrictive basis. In order to request such an order, the peace officer must first obtain the victim's consent. The peace officer must then make a showing that probable cause exists that (1) the peace officer has responded to an incident of domestic disturbance and the circumstances for mandatory arrest exist, or that a person is in immediate danger; and (2) an emergency protective order is necessary to prevent a person from suffering the occurrence or recurrence of abuse.

An emergency protective order entered pursuant to this new law is effective upon service of the respondent, but automatically expires seven calendar days from the date the court signs the order or upon further order of the court.

Note: The presiding judge of the circuit court in each county shall designate at least one judge to be reasonably available to enter, in person or by electronic transmission, ex parte emergency protective orders at all times, whether or not the court is open.

Effective date: January 1, 2016.

TEMPORARY SUSPENSION OF ENFORCEMENT OF CHILD SUPPORT ORS 25.125

2015 OREGON LAWS CH. 72 (HB 3156)

ORS Chapter 25 sets forth the framework for enforcement of child support obligations. Under current law, the Oregon Child Support Program (CSP) may suspend enforcement of child support obligations only when continued enforcement will result in a credit. House Bill 3156 provides authority to temporarily suspend enforcement regardless of whether continued enforcement will result in a credit balance, but only if all of the children are residing with the obligor and continued collection of support would impair the obligor's ability to provide direct support to the children. The CSP may only suspend enforcement if an action is currently pending to terminate, vacate, or set aside a support order, or to modify a support order because of a change in physical custody of the children.

The obligee may object within 14 days of receiving notice of the CSP's intent to suspend enforcement of the support order, but may only object on the following limited grounds:

- (1) The child is not in the physical custody of the obligor;
- (2) The child is in the physical custody of the obligor, but without the consent of the obligee; or
- (3) The basis for the suspension of enforcement is factually incorrect.

Effective date: January 1, 2016.

MULTIPLE CHILD SUPPORT JUDGMENTS 2015 OREGON LAWS CH. 73 (HB 3158)

In 2005, House Bill 2275 was passed to address cases involving multiple child support judgments. That bill provided that the terms of a later-issued judgment control and the earlier judgment is automatically terminated, but only if several factors are met, including:

- (1) The court (or administrator) specifically ordered that the later-issued judgment would take precedence over the earlier-issued judgment;
- (2) All parties had an opportunity to challenge the later-issued judgment;
- (3) The administrator was providing enforcement services;
- (4) The two child support judgments involved the same obligor, child, and time period; and

DOMESTIC RELATIONS continued

- (5) The later-issued child support judgment was entered before January 1, 2004.

House Bill 3158 removes the requirement that the later-issued child support judgment be entered before January 1, 2004, and changes the requirement that the administrator was providing services to a requirement that the administrator is providing services. These changes provide the Oregon Child Support Program with the ability to provide prompt enforcement of the most recent order entered involving the parties.

Practice Tip: While HB 3158 creates no new requirements for language practitioners must include in judgments dealing with cases involving multiple child support judgments, it creates an opportunity to review current form language. The most common situation in which there are multiple child support judgments is when an administrative child support order was put in place initially, followed by a second subsequent order as a result of a dissolution, filiation, or other support proceeding filed in the circuit court. In such instances, the following language should be included in the later-issued judgment:

LATER-ISSUED JUDGMENT AS CONTROLLING JUDGMENT

Finding of Fact

4. An administrative support order was issued February 13, 2015, in CSP Case No. 012AAAB34567. That order was judicially docketed in Marion County Case No. 15DR98765. It is appropriate that the administrative support order remain effective until October 31, 2015, at which time it should terminate (subject to the collection of any arrearage thereunder), and the support judgment entered herein should become the governing child support judgment under ORS 25.091. Although the support judgment herein will then be the governing child support judgment, any arrearage under the administrative order at the time the governing child support judgment becomes effective should continue to be collected and enforced. A copy of the administrative order is attached hereto as required by ORS 25.091(8)(a).

Order Section

3.4 Governing Child Support Judgment. The child support judgment herein is effective November 1, 2015, and shall become the governing child support judgment on that date. Father's support obligation under CSP Case No. 012AAAB34567, Marion County Case No. 15DR98765 shall terminate October 31, 2015.

Effective date: January 1, 2016.

DISHONORED CHECK AS PAYMENT FOR CHILD SUPPORT ORS 25.125

2015 OREGON LAWS CH. 74 (HB 3159)

House Bill 3159 amends ORS 25.125 to provide that the State may recover from any person or entity that issues a dishonored check for payment of child support. Under current law, the State is permitted to recover only from the obligor or the withholder who presented the check (i.e., obligor's employer). The bill clarifies that the State may recover from either the obligor or the issuer.

Effective date: January 1, 2016.

PRIVILEGE FOR COMMUNICATIONS BETWEEN VICTIMS OF DOMESTIC VIOLENCE AND ADVOCATES ORS 40.225 TO 40.295

2015 OREGON LAWS CH. 265 (HB 3476)

House Bill 3476 creates a new type of communications privilege protected under the Oregon Evidence Code. The bill provides that confidential communications between a victim of sexual assault, domestic violence, or stalking and victim advocates or services programs are protected communications that are inadmissible in civil, criminal, administrative, and school proceedings. The victim holds the privilege, but consistent with other protected privileges, the communication may be disclosed by the advocate or program without the victim's consent to the extent necessary for defense in any civil, criminal, or administrative action that is brought against the advocate or program by or on behalf of the victim.

Effective date: June 4, 2015. Most of the bill became operative on October 1, 2015. The bill applies only to proceedings occurring on or after the operative date. The bill applies to communications and records made before, on, or after the operative date, unless the communications were disclosed to a third party before the operative date.

ELDER LAW / PROTECTIVE PROCEEDINGS

UPDATE OF OREGON PROBATE CODE ORS CH. 111, 112, 116, 419B 2015 OREGON LAWS CH. 387 (SB 379)

Senate Bill 379 updates the probate statutes relating to wills and intestate estates. The bill creates a process for introducing a writing as a will, revocation of a will, or addition to a will when execution requirements are not met; creates an avenue for inheritance for a child conceived posthumously; allows continuation of wills executed by domestic partners if they later marry; allows express limitation or exclusion of an individual or class within a will; specifies that termination of parental rights is included as forfeiture of share by parent; requires diligent search and inquiry prior to property escheating to state; clarifies rights of child adopted after domestic partners marry; requires signatures of witness to will to hear or observe testator direct another to sign will, and sign the will within a reasonable time before testator's death; allows contemporaneously executed affidavits to be counted as signatures; prohibits electronic documents as formal will; allows digital statement or list disposing of personal effects; prohibits disposal of money, business property, or certificates of title through digital writing; and clarifies statutes on enforcement of no-contest clauses and partial revocation of will.

One of the more significant changes made by SB 379, found in section 29, is the adoption of the doctrine of "harmless error." This doctrine was developed to address the situation when mistakes were made in the execution of a will, codicil, or written revocation of a will, rendering the document ineffective. SB 379 creates a process whereby a proponent of a document may present evidence to the court to demonstrate the decedent's intent to adopt the document. The standard of review to establish harmless error is clear and convincing evidence.

Effective date: January 1, 2016. The amendments apply to decedents dying and wills and writings executed after the effective date.

SEARCH WARRANTS ORS 133.545

2015 OREGON LAWS CH. 415 (HB 2225)

House Bill 2225 amends ORS 133.545. Circuit court judges are now authorized to execute search warrants outside the judicial district in which the court is located if (1) an enumerated offense involves a victim 65 years of age or older at the time of the offense; (2) the search is for financial records; and (3) the person requesting the search

warrant is not able to ascertain at the time of the request the proper place of trial for any of the enumerated offenses. The enumerated offenses are criminal mistreatment in the first degree, identity theft, aggravated identity theft, computer crime, fraudulent use of a credit card, forgery in any degree, criminal possession of a forged instrument in any degree, theft in any degree, or aggravated theft in the first degree.

Effective date: January 1, 2016.

DEFINITION OF VICTIM EXPANDED ORS 137.103, 137.106, 161.685 2015 OREGON LAWS CH. 9 (HB 2226)

House Bill 2226 expands the meaning of "victim" as defined in the restitution provisions of ORS 137.103 to include decedents who suffered or did suffer economic damages as a result of an offense; the estate of the decedents who suffered or did suffer economic damages as a result of an offense; and the estate, successor in interest, trust, trustee, successor trustee, or beneficiary of a trust that suffered economic damages as a result of an offense.

Effective date: January 1, 2016.

DEFINITION OF SEXUAL ABUSE LIMITED ORS 124.050

2015 OREGON LAWS CH. 416 (HB 2227)

House Bill 2227 limits the application of "sexual abuse" as defined in ORS 124.050(11)(a). The amendment carves out from the definition of "sexual abuse" the consensual sexual contact between an elderly person and an employee of a facility who is also the spouse of the elderly person. Prior to the effective date of HB 2227, only consensual sexual contact between an elderly person and a paid caregiver is exempt from the definition of "sexual abuse."

Effective date: January 1, 2016.

MODIFICATION OF OREGON UNIFORM TRUST CODE ORS 130.230, 130.232, 130.715, 130.730

2015 OREGON LAWS CH. 126 (HB 2331)

House Bill 2331 makes several changes to ORS Chapter 130, Oregon's Uniform Trust Code. Legislation in 2013 had the effect of preventing the application of the "Separate Share Rule" in IRC section 663 to Oregon trusts. This rule allows a trust's creator to choose to provide in

ELDER LAW / PROTECTIVE PROCEEDINGS continued

the trust document whether the trust will be divided into separate shares that would benefit separate beneficiaries. HB 2331 reinstates this option for a settler in Oregon.

HB 2331 also authorizes trustees to distribute capital gains from an existing irrevocable trust to pass through the capital gains to the beneficiary and thus taxed to the beneficiary and not the trust. This option avoids the higher capital gains rate applied to trusts.

Finally, HB 2331 codifies the early vesting rule of trusts. This rule holds that trust interests vest when the grantor of the trust created the trust or when the trust became irrevocable, not at a later date, unless the trust document clearly indicates a different intent. 2013 legislation had created some confusion whether this was still the rule in Oregon, so HB 2331 codifies the rule.

Effective date: January 1, 2016. The amendments apply to trusts executed on or after the effective date.

PETITION FOR APPOINTMENT ORS 125.240, 125.475

2015 OREGON LAWS CH. 364 (HB 2349)

House Bill 2349 amends ORS 125.240 to require additional information in the petition for appointment of a professional fiduciary as follows:

- (1) The investment credentials and licensing of the individual responsible as, or acting on behalf of, the professional fiduciary;
- (2) Whether there is any revenue-sharing arrangement between the professional fiduciary and any other person;
- (3) The method in which fees will be assessed or charged, including commissions, monthly charges, and any other method; and
- (4) An acknowledgement that the professional fiduciary will make investments in accordance with ORS 130.750 to 130.775 (The Uniform Prudent Investor Act).

Effective date: January 1, 2016.

DISCRETIONARY WAIVER OF FILING FEE ORS 125.075

2015 OREGON LAWS CH. 365 (HB 2361)

House Bill 2361 amends ORS 125.075, which provides for filing of objections or motions by an interested person in a protective proceeding. The amendment allows the court the discretion to waive the filing fee for an objection

or motion when the interested party is the respondent, protected person, the office of the long-term-care ombudsman, or a system to protect and advocate the rights of individuals as provided in ORS 192.517. An example of a system to protect and advocate is the nonprofit law office Disability Rights Oregon.

Effective date: January 1, 2016. This amendment applies to protective proceedings commenced on or after the effective date.

ATTORNEY FEES ORS 125.098

2015 OREGON LAWS CH. 127 (HB 2362)

House Bill 2362 amends ORS 125.098(2), which lists a number of factors for a court to consider in determining whether to award attorney fees. Previously, no factor was weighted higher than another. Under HB 2362, the court is now required to give the greatest weight to one factor: “the benefit to the person subject to the protective proceeding by the party’s action in the proceeding.”

Effective date: January 1, 2016.

CLAIMS ON BEHALF OF MINORS ORS 31.700

2015 OREGON LAWS CH. 213 (HB 2964)

House Bill 2964 amends ORS 31.700(1) to empower conservators for an estate of a person under 18 years of age, along with guardians ad litem, to file a cause of action for recovery of damages to a child by a wrongful act. Prior to HB 2964, only a guardian ad litem is empowered to seek recovery.

In addition, HB 2964 distinguishes the procedural effect of an accompanying consent to include in the cause of action the damages as, in all the circumstances of the case, may be just, and will reasonably and fairly compensate for the doctor, hospital, and medical expenses. If the consent is filed by a guardian ad litem, a court has the discretion to allow the filing. Upon the court’s approval of the consent filing, then no court shall entertain a cause of action by the parent, parents, or conservator for doctor, hospital, or medical expenses. If the consent is filed by a conservator, the court has no discretion whether to allow the filing. Again, as with a consent filed by a guardian ad litem, upon filing of the consent, no court shall entertain a cause of action by the parent, parents, or conservator for doctor, hospital, or medical expenses.

Effective date: June 2, 2015.

FINANCIAL INSTITUTIONS LAW

SEE ALSO **COMMERCIAL, CONSUMER, AND DEBTOR-CREDITOR; REAL PROPERTY**

ACCOUNTS FOR SMALL ESTATE AFFIANTS

ORS 114.505, 114.545

2015 OREGON LAWS CH. 146 (SB 402)

Senate Bill 402 creates express authority for financial institutions (banks and credit unions under ORS 706.008) to open deposit accounts with funds of a decedent for whom an affiant has filed a small estate affidavit under ORS 114.505-114.560. The bill provides that once such an account is opened, the affiant may withdraw funds by check, draft, negotiable order of withdrawal, or otherwise for the payment of claims and expenses pursuant to ORS 114.545(1)(d).

The measure provides that a financial institution that opens accounts for affiants under the bill will not be liable to any other person for opening or permitting affiant withdrawals from the account, and is not required to ensure the proper application of decedent's funds paid out by the affiant.

An amendment was added to the bill at the request of the Oregon Department of Human Services (DHS) and the Oregon Health Authority (OHA), which allows small estate affiants who are approved by DHS or OHA to convey real or personal property in a small estate to a third party where the decedent's heir or devisee will not join in the conveyance. The amendment further provides that property conveyed under ORS 114.545 is subject to liens and encumbrances against the decedent or decedent's estate, but is not subject to rights of the decedent's creditors or to liens or encumbrances against the decedent's heirs or devisees.

Effective date: January 1, 2016.

ACCESS TO CUSTOMER FINANCIAL RECORDS

ORS 192.583 TO 192.607

2015 OREGON LAWS CH. 129 (HB 2415)

Under House Bill 2415, at any time after an individual dies, the Oregon Department of Human Services (DHS) or the Oregon Health Authority (OHA) may give a financial institution a written notice and request identifying the decedent, stating the decedent received public or medical assistance that is subject to reimbursement, and requesting that the financial institution disclose whether the decedent held (alone or with others) any deposit accounts in the institution and, if so, the date-of-death balance in each account. The request may also ask for:

- (1) The name of each person to whom the institution has paid out funds from the account since the depositor's death;
- (2) The record of account activity during the 30 days leading up to the date of the customer's death;
- (3) A copy of any affidavit the institution has received under ORS 708A.430 or 723.466 (which permit institutions to pay out decedents' funds in some circumstances); and
- (4) The identification and any contact information the institution has on other owners of the account.

Effective date: January 1, 2016.

HEALTH LAW

CONFIDENTIAL COMMUNICATIONS **ORS 743.801, 743.804, 746.607,** **750.055, 750.333**

2015 OREGON LAWS CH. 470 (HB 2758)

House Bill 2758 allows health plan enrollees to request that their health plan or the third-party administrator for the health plan redirect enrollee communications to an alternate address, including physical address, email address, or telephone number. The health plan or third-party administrator must act upon the request within seven days if the request is submitted electronically or within 30 days if the request is received in writing. Any such confidential communications request remains in effect until the enrollee revokes the request in writing or submits a superseding confidential communications request.

Health plans and third-party administrators must allow enrollees to use the form developed by the Department of Consumer and Business Services (DCBS) and cannot require enrollees to use a plan-specific form to request confidential communications.

The confidential communications request precludes disclosure of designated communications to the policyholder or certificate holder absent the express written consent of the enrollee, even in instances in which the policyholder or certificate holder wishes to appeal an adverse benefit determination on behalf of the enrollee.

Effective date: June 18, 2015. Section 2 applies to health benefit plans issued or renewed on or after January 1, 2016.

PROTECTED HEALTH INFORMATION **ORS 192.553 TO 192.581** **2015 OREGON LAWS CH. 473 (HB 2948)**

House Bill 2948, also known as the Susanna Blake Gabay Act, amends ORS 192.553 to 192.581 to clarify the instances in which a provider may disclose protected health information (PHI) to a friend, family member, or other party involved in an individual's care. The bill closely parallels the disclosures to third parties permitted under the Health Insurance Portability and Accountability Act (HIPAA), and expressly permits providers to disclose

information (including behavioral health information) to (1) a person identified by the individual, provided the PHI is directly relevant to the person's involvement with the individual's health care; or (2) a family member, a personal representative of the individual, or another person responsible for the care of the individual to notify the person of the individual's location, general condition, or death.

The bill permits, but does not require, the aforementioned disclosures if the individual is not present or is otherwise unable to consent to the disclosure and the provider, in the exercise of professional judgment, determines that the disclosure is in the best interests of the individual.

HB 2948 also permits disclosure when the individual is present and the provider receives express or tacit consent to disclose PHI to another person. Lastly, the bill also permits a provider to disclose PHI if the provider believes, in good faith, that such disclosure is necessary to prevent or lessen a serious threat to the health or safety of any person or the public, provided the information is disclosed only to a person who is reasonably able to prevent or lessen the threat.

Effective date: June 18, 2015.

ELECTRONIC PROVIDER REIMBURSEMENTS **ORS 743.801, 743.804, 743.911** **2015 OREGON LAWS CH. 218 (HB 3021)**

House Bill 3021 amends ORS 743.911 by specifying that an insurer of a health benefit plan may pay a claim using a credit card or electronic funds transfer payment that imposes a fee or similar charge on the provider (including an employee or designee of a provider who has the responsibility for billing claims for reimbursement or receiving payment on claims) only if (1) the insurer notifies the provider in advance regarding the fee or charge; (2) the insurer offers the provider an alternative payment method that does not impose a fee or charge; and (3) the provider or the provider's designee elects to accept the payment of the claim using the credit card or electronic funds transfer payment method.

Effective date: January 1, 2016.

JUDICIAL ADMINISTRATION

JUSTICE COURT FEES AND ADMINISTRATION; MATERIAL WITNESSES

ORS 51.310, 52.410, 53.090, 55.130
2015 OREGON LAWS CH. 623 (HB 2316)

House Bill 2316 changed several sections of statutes relating to justice court fees, administration of justice and municipal courts, and recording requirements for proceedings in those courts. Additionally, the measure provides an avenue for deposition of a material witness within ORS 136.600 *et. seq.*

HB 2316 increases a variety of fees charged by a Justice of the Peace. For example, the first appearance of the parties will increase from \$40 to \$90. Fees for filing a small claim will increase from \$28 to \$35 in 2015, and from \$35 to \$37 in 2018. Small fees for taking affidavits or taking depositions are removed. Trial fees for small claims trials are prohibited. Other trial fees are increased to \$100 per day, payable by the plaintiff.

Additionally, HB 2316 creates a process for taking the deposition testimony of a material witness. The petition for deposition must be granted or denied within 30 days of filing. The amendment specifies that the deposition of a material witness does not invalidate or otherwise affect the material witness order, but may be considered in connection with an application to vacate or modify an order.

Finally, HB 2316 revises provisions of HB 3399 dealing with recording of proceedings within municipal and justice courts. The measure augments the audio recording allowed in HB 3399 to also include recording through stenographic or others means.

Effective dates: The sections of HB 2316 relating to court fees took effect on October 1, 2015, with an additional increase scheduled for January 1, 2018. The sections relating to material witnesses took effect on July 1, 2015, and the sections relating to recording in municipal and justice courts took effect on January 1, 2016.

INTERPRETERS FOR VICTIMS IN ALL CRITICAL STAGES OF PROCEEDING

ORS 45.275 TO 45.285, 419C.285
2015 OREGON LAWS CH. 155 (HB 2339)

House Bill 2339 extends the requirement under ORS 45.275 to 45.285 that courts appoint interpreters in certain circumstances to non-English-speaking or disabled victims when those victims are seeking to exercise their rights under the Oregon Constitution but are not parties or witnesses.

Article I, Section 42 of Oregon's Constitution grants certain rights to crime victims, including the right to be present at all critical stages of the criminal prosecution and to be heard at the pre-trial release hearing and sentencing. A "critical stage" of a proceeding is defined in ORS 147.500 and includes release hearings, preliminary hearings, hearings on motions and petitions, entry of pleas, trials, restitution hearings, sentencing, probation violation hearings, or any other stage of the proceeding the court determines is a critical stage.

Prior to HB 2339, courts were not expressly authorized to appoint interpreters or provide assistive listening devices for victims unless the victim was a party or witness.

Effective date: May 26, 2015. The amendments apply only to proceedings occurring on or after the effective date.

PROTECTION OF INFORMATION IN COURT DOCUMENTS

**ORS 18.042, 18.048, 18.170,
25.020, 109.073**

2015 OREGON LAWS CH. 197 (HB 2340)

House Bill 2340 restricts identifying information available in court documents, such as Social Security numbers, tax payer identification numbers, and driver license numbers, to only the last four digits of those numbers. Additionally, if a restitution or compensatory fine is ordered by a court, only the name of the person will be included, not the address.

Effective date: June 2, 2015. Most provisions took effect on January 1, 2016. For additional information about this bill, please see Domestic Relations.

JUVENILE LAW

APPEARANCE BY ATTORNEY IN JUVENILE COURT PROCEEDINGS 2015 OREGON LAWS CH. 776 (SB 222)

Senate Bill 222 extends the sunset date established in HB 4156 (2014) of the provision authorizing DHS to appear as a party in juvenile court proceedings without appearing through an attorney. Under ORS 9.320, the State of Oregon must appear by attorney in all court cases; in this case, through the Attorney General. As a practical matter, this has not always happened, and DHS caseworkers have frequently appeared in dependency cases without counsel.

Under SB 222, the temporary authorization for DHS to appear without counsel will continue until June 30, 2018, after which DHS will have to have Attorney General representation in all proceedings.

Effective date: July 27, 2015.

APPOINTMENT OF COURT VISITORS FOR MINOR RESPONDENTS IN GUARDIANSHIP PROCEEDINGS ORS 125.055, 125.150 2015 OREGON LAWS CH. 176 (SB 590)

Senate Bill 590 amends ORS 125.055 and 125.150 and directs the court to appoint a court visitor for a minor respondent in a guardianship proceeding where the minor is more than 16 years old and the court determines there is the likelihood that the petition seeking guardianship for the respondent as an adult will be filed before the respondent attains the age of majority or as an adult.

Effective date: January 1, 2016.

GRANDPARENT RIGHTS ORS 419B.875, 419B.876 2015 OREGON LAWS CH. 216 (HB 3014)

House Bill 3014 amends ORS 419B.875 and 419B.876 to expand the definition of the term “grandparent,” for purposes of juvenile dependency and termination of parental rights proceeding, to “legal parent of the child’s or ward’s legal parent,” regardless of whether the parental rights of the child’s or ward’s legal parent have been terminated under ORS 419B.500 to 419B.524.

Effective date: January 1, 2016. This amendment applies to juvenile dependency proceedings pending or commenced on or after the effective date.

LABOR AND EMPLOYMENT

SOCIAL MEDIA PRIVACY

ORS 659A.330

2015 OREGON LAWS CH. 229 (SB 185)

Senate Bill 185 amends ORS 659A.330 to also make it unlawful for an employer to:

- Require applicants or employees to establish or maintain a social media account as a condition of employment (e.g., employers cannot refuse to hire an applicant for the sole reason that he or she does not have a social media account); or
- Demand that applicants or employees allow the employer to advertise on their “personal social media account.” Personal social media accounts are those that are used solely for personal purposes unrelated to any business purpose of the employer and are not paid for or otherwise provided for by the employer.

Employers may continue to view the public portions of an employee’s or applicant’s social media content without violating the law. Second, employers do not violate the law if they inadvertently come across information that would provide them access to personal social media content (e.g., during the monitoring of sites an employee accesses from a work computer). Third, the law also provides that an employer may direct an employee to share his or her social media as part of an investigation into alleged misconduct or harassment involving social media.

Effective date: January 1, 2016.

OVERPAID UNEMPLOYMENT INSURANCE BENEFITS

ORS 657.315, 657.320

2015 OREGON LAWS CH. 530 (SB 243)

Senate Bill 243 amends ORS 657.315 and 657.320 by providing that an individual who receives unemployment benefits to which he or she is not entitled may, in certain circumstances, have that amount deducted from future benefits that the individual would otherwise receive under the law of another state. Additionally, the bill also increases the period of time in which the Oregon Employment Department has to uncover overpayments due to false statement, misrepresentation, or non-disclosure of a material fact to five years.

Effective date: June 22, 2015. The amendments apply to amounts paid to individuals as benefits (1) for which

the individual is found liable under ORS 657.310, on or after the effective date, to repay or to have deducted from benefits payable; or (2) for which the three-year period described in ORS 657.320 has not elapsed on the effective date.

INJURED STATE WORKER RIGHT TO REINSTATEMENT

ORS 659A.052

2015 OREGON LAWS CH. 232 (SB 291)

Senate Bill 291 amends ORS 659A.052 to clarify that the injured state worker has a right to reinstatement or reemployment at any available and suitable position in another agency within the same branch of government when all permanent restrictions are known.

Effective date: June 2, 2015.

PAID SICK LEAVE

ORS 653.256, 659A.885

2015 OREGON LAWS CH. 537 (SB 454)

Senate Bill 454 requires Oregon employers to provide up to 40 hours of sick leave to employees per year beginning January 1, 2016, and, in most cases, that leave time must be paid.

Under the new law, which amends ORS 653.256 and ORS 659A.885, employers with 10 or more employees (six or more for Portland employers) will be required to provide their employees who work in Oregon with up to 40 hours of paid sick leave per year. Employers with fewer than 10 employees (fewer than six for Portland employers) will also be required to provide employees with up to 40 hours of sick leave, but this bank of leave time can be unpaid. The law applies to the vast majority of Oregon’s workforce, including full-time, part-time, temporary, and seasonal employees.

Employers are prohibited from interfering with an employee’s right to use sick leave or from retaliating against an employee who requests or uses sick leave. In addition to enforcement by the Oregon Bureau of Labor and Industries (BOLI), employees who believe their rights under this act have been violated will have a private right of action to sue.

Employers must provide notification at least once per quarter to each employee of the amount of accrued and unused sick time available for use by the employee; this

LABOR AND EMPLOYMENT *continued*

obligation can be satisfied by including the information in employee pay statements. Employers are also required to provide written notice to employees regarding the requirements of the law, and BOLI will soon make available to employers a template that meets the required notice provisions under the law.

Effective date: January 1, 2016. The bill applies to hours worked and sick time accrued or used on or after the effective date.

WARRANTS FOR BACK WAGES OR FINES ORS 18.854

2015 OREGON LAWS CH. 294 (SB 468)

Senate Bill 468 provides BOLI with the authority to issue a warrant for unpaid amounts due resulting from a final order or judgment. The bill allows 30 days from the date that amount becomes due prior to issuing the warrant. It requires the warrant to include principal, interest, and costs. The warrant may be filed with the county clerk.

Effective date: January 1, 2016. The amendments apply to all debts owed to BOLI on or after the effective date.

SUPPLEMENTING DOMESTIC VIOLENCE LEAVE ORS 659A.285

2015 OREGON LAWS CH. 352 (SB 492)

Since 2007, Oregon law, via ORS 659A.270-280, has required covered employers (those with six or more employees) to provide victims of domestic violence, sexual assault, harassment, or stalking with unpaid leave. A 2014 amendment requires covered employers to provide employees with such leave starting with the first day of his or her employment.

Senate Bill 492 amends the law to clarify that an employee taking leave for reasons related to domestic violence, sexual assault, harassment, or stalking is entitled to use accrued sick leave or personal business leave when taking that leave. The prior version of the statute only provided that employees may use any paid accrued vacation leave or other paid leave offered in lieu of vacation leave.

Effective date: January 1, 2016.

DOMESTIC WORKERS' PROTECTION ACT ORS 659A.885

2015 OREGON LAWS CH. 457 (SB 552)

Senate Bill 552 provides various workplace protections for domestic workers, including those who provide care in private homes (e.g., nannies) and/or maintain private homes and their premises (e.g., housekeepers). SB 552 requires that domestic workers receive overtime pay at 1.5 times the employee's base wage for hours worked in excess of 40 hours a week or, in the case of workers living in an employer's home, 44 hours a week. Additionally, an employer of a domestic worker is now required to provide written notice (prior to employment) of expected hours worked, regular rates of pay (including overtime), and regular paydays.

Domestic workers are also now required to receive at least 24 consecutive hours of rest in each workweek. If domestic employees work on that day of rest, they will be entitled to overtime pay. Along those same lines, qualifying domestic workers will also be entitled to at least three personal days of paid leave after one year of employment.

Employers of domestic workers are required to keep accurate records of daily and weekly hours worked by the domestic worker. Such employers are also prohibited from requiring that they retain the workers' passport, making unwelcome sexual advances, harassing a worker based on a protected classification, or unlawfully retaliating against a worker.

Effective date: January 1, 2016.

WAGE TRANSPARENCY ORS CH. 659A

2015 OREGON LAWS CH. 307 (HB 2007)

House Bill 2007 amends ORS Chapter 659A to make it an unlawful employment practice for employers to discipline, discriminate, or otherwise retaliate against employees for:

- Inquiring about wage information;
- Disclosing or discussing wage information (related to themselves or other employees); or
- Making a complaint based on the disclosure of such wage information.

LABOR AND EMPLOYMENT continued

The bill applies to all employees (including supervisors) and, moreover, will cover “any manner” of inquiries, discussions, or disclosures related to wages. Workers will be able to bring suit alleging unlawful retaliation if they are fired, disciplined, or otherwise impacted by an adverse employment action after having inquired about wage issues if they believe that the two actions are related.

HB 2007 explicitly does not apply to situations where an employee who has access to other employees’ wages as part of his or her job function (e.g., a payroll manager) discloses the wages of those employees to unauthorized individuals. However, there is an exception if the disclosure was made in response to a charge or complaint or in furtherance of an investigation, including an employer’s own internal investigation.

Effective date: January 1, 2016.

UNEMPLOYMENT BENEFITS HEARING ORS 657.270

2015 OREGON LAWS CH. 69 (HB 2439)

House Bill 2349 amends ORS 657.270 to state that, after the issuance of a written decision by an Administrative Law Judge regarding an unemployment claim, any party requesting a rehiring must file a request to reopen the hearing with the Office of Administrative Hearings while simultaneously providing a copy of that request to the Oregon Employment Department.

Effective date: May 14, 2015. The amendments apply to requests for hearings and requests to reopen hearings filed on or after the effective date.

REDUCTION OF UNEMPLOYMENT BENEFITS ORS 657.115, 657.150

2015 OREGON LAWS CH. 103 (HB 2440)

House Bill 2440 amends ORS 657.115 and 657.150 by requiring that unemployment benefits paid to a claimant must be reduced for any claimant who receives an award of back pay during the time period in which the unemployment benefits were received.

Effective date: May 20, 2015. The amendments apply to weeks beginning on or after the effective date.

CONTINUATION COVERAGE FOR OFLA LEAVE ORS 659A.171

2015 OREGON LAWS CH. 323 (HB 2600)

House Bill 2600 amends ORS 659A.171 to require that group health insurance coverage for an employee who is on leave under the Oregon Family Leave Act (OFLA) be provided on the same terms as when the employee is not on leave (including any coverage provided to spouses or dependents).

This amendment brings OFLA into close alignment with the federal Family Medical Leave Act (FMLA), which already requires that covered employers (i.e., employers with 50 or more employees) provide continuation coverage. Therefore, the primary employers affected by this amendment will be those employers that are covered by OFLA but not FMLA (i.e., employers with between 25 and 49 employees) and those that offer group health plans.

Effective date: January 1, 2016.

PAY FOR PUBLIC SECTOR EMPLOYEES ON MILITARY LEAVE ORS 408.240

2015 OREGON LAWS CH. 42 (HB 2763)

House Bill 2763 amends ORS 408.240 to permit a public employer to establish a program that allows employees to receive pay from the employer for the purpose of supplementing the compensation that they otherwise receive from the military. The amendment clarifies that the amount “received by” the employee under this law cannot exceed “the amount of the base salary” that the employee was earning on the date he or she began the military leave of absence. Before this amendment passed, ORS 408.240 explicitly barred public employers from offering supplemental pay to its employees. Offering supplemental pay for employees out on military leave is optional. Public employers are not obligated by HB 2763 to offer such pay.

Effective date: April 22, 2015.

CRIMINAL HISTORY INQUIRIES 2015 OREGON LAWS CH. 559 (HB 3025)

House Bill 3025 “bans the box” on application forms that inquire into an applicant’s criminal history. Employers will be generally barred from asking a job applicant to disclose his or her criminal conviction history prior to the

LABOR AND EMPLOYMENT continued

initial job interview or, if no job interview is conducted, prior to a conditional offer of employment.

HB 3025 does not apply to employers who are required by federal, state, or local laws to consider an applicant's criminal history (e.g., schools) or to positions in law enforcement or the criminal justice system.

The law explicitly states that it is not intended to "prevent an employer from considering an applicant's conviction history when making a hiring decision." Therefore, the law does not impede an employer's ability to explore an applicant's criminal history during the initial interview (where it can ask the applicant about his or her criminal convictions) or at an appropriate point thereafter.

Practice Tip: That said, certain enforcement agencies, such as the Equal Employment Opportunity Commission (EEOC), may still consider such practices unlawful. The EEOC has historically argued that general pre-employment criminal background checks or blanket exclusionary policies are unlawful due to the disproportionate impact on certain protected classes.

Effective date: January 1, 2016.

ENFORCEABILITY OF NONCOMPETITION AGREEMENTS

ORS 653.295

2015 OREGON LAWS CH. 429 (HB 3236)

House Bill 3236 amends ORS 653.295 to reduce Oregon's limit on the enforceability of noncompetition agreements from two years following the employee's termination to 18 months after the termination. This law is not retroactive.

Additionally, HB 3236A does not change the other restrictions that ORS 653.295 imposes on noncompetition agreements. Therefore, in order for the 18-month period to even come into play, there first has to be an enforceable noncompetition agreement. Also, it should be noted that the 18-month limit does not affect nonsolicitation agreements, as such agreements are treated differently under Oregon law.

Effective date: January 1, 2016. The amendments apply only to noncompetition agreements entered into on or after the effective date.

REAL PROPERTY

SEE ALSO COMMERCIAL, CONSUMER, AND DEBTOR-CREDITOR

CLARIFICATION OF LANDLORD-TENANT LAW

ORS CH. 90, 105

2015 OREGON LAWS CH. 388 (SB 390)

Senate Bill 390 clarifies and defines terms associated with landlord-tenant statutes. The bill allows landlord to charge a fee for failure to clean up waste of a service animal or a companion animal; excludes funds paid to landlord by any government housing assistance program from “rent” definition; clarifies process for fee assessments and applications; and lists circumstances where tenant is not responsible for damages.

Effective date: January 1, 2016.

MORTGAGE LOAN ORIGATION REQUIREMENTS

ORS 86A.203

2015 OREGON LAWS CH. 677 (SB 879)

Under the Oregon Mortgage Lender Law, an attorney does not need a mortgage loan originator license if he or she is negotiating the terms of a residential mortgage loan as an ancillary matter when representing a client and if compensation is not received from a mortgage banker, mortgage broker, mortgage loan originator or lender, or an agent of any such.

Senate Bill 879 exempts an attorney who negotiates the terms of a residential mortgage loan in his or her representation of a client that buys or sells a dwelling unit from the requirement to obtain a mortgage loan originator license in order to perform activities of a mortgage loan originator.

Effective date: January 1, 2016.

HOMESTEAD PROPERTY TAX DEFERRAL PROGRAM

ORS 311.356 TO 311.695

2015 OREGON LAWS CH. 309 (HB 2083)

Certain homeowners – those qualifying as disabled or over 62 – may be permitted to defer payment of their property taxes until the owner dies or sells the property. Under such a deferment, any taxes owed are paid by the State, which obtains a lien against the property.

House Bill 2083 creates an exception to certain ownership requirements, especially related to the length of time an individual must have owned the home, thereby allowing more individuals to qualify for the program. The bill requires the property to be insured and, if it is not, permits the Department of Revenue to insure the property and add any costs to the lien.

Effective date: October 5, 2015. The amendments apply to property tax years beginning on or after July 1, 2016.

OBLIGATION BORROWERS

ORS 86.157

2015 OREGON LAWS CH. 431 (HB 3244)

House Bill 3244 provides that a borrower or borrower’s agent may rely on the lender’s payoff statement for the purpose of establishing the amount required to discharge a mortgage unless and until the lender provides an amended payoff statement.

Under current practice, lenders may demand additional sums after closing in order for the lender to release the lien, which can catch new buyers and title companies in what is a dispute between the seller and the mortgage company. This bill functionally eliminates the lender’s right to continue to claim a lien after the obligation of the borrower, as stated on the payoff statement, is met. The bill does not affect the lenders’ right to collect any other amounts owed to them by the seller.

Effective date: June 16, 2015.

NOTICE BEFORE RENT INCREASES AND EVICTIONS

PORTLAND CITY COUNCIL ORDINANCE

The Portland City Council voted to require landlords to give tenants 90 days’ notice before no-fault evictions and for rent increases of more than five percent a year. Previously, the City only required 60 days’ notice.

Effective date: November 14, 2015.

RECONNECTION

ORS CH. 238A, 305, 314, 315, 316, 317, 348, 458, 657

2015 OREGON LAWS CH. 442 (SB 63)

Oregon's "rolling reconnect" provisions generally mean that Oregon income tax law automatically incorporates the Internal Revenue Code provisions relating to the definition of "taxable income" to the extent Congress makes changes. However, the Legislature (with input from the Oregon Society of CPAs (OSCPA)) typically passes a reconnection bill each session to update the numerous other references to the Internal Revenue Code that are not related to the definition of "taxable income."

Senate Bill 63 updates references to the Internal Revenue Code and to other provisions in federal tax law from December 31, 2013, to December 31, 2014. Examples include the definition of shareholders in S corporations who may represent their companies in proceedings before the tax court magistrate or the Department of Revenue; the definition of organizations that may qualify for consideration for a charitable tax checkoff; and statutes governing the Oregon College Savings Plan, IDAs, and unemployment insurance.

Effective date: October 5, 2015. The amendments apply to transactions or activities occurring on or after January 1, 2015, in tax years beginning on or after January 1, 2015.

"BUSINESS PERSONAL PROPERTY"

TAX LIEN DISCLOSURE

ORS 311.605 TO 311.635, 311.806

2015 OREGON LAWS CH. 444 (SB 161)

Existing law creates a lien for property tax attributable to personal property and also makes the tax a debt of the owner. See ORS 311.405 and 311.455. Senate Bill 161 requires the seller of personal property to provide the purchaser with a "disclosure notice" that includes (1) whether property taxes that were assessed against the property are outstanding; (2) whether there are any liens against the property; (3) if known, whether any counties other than the county where the property is located at the time of the transfer have assessed tax against the property; (4) if known, the name and address of any other person

who has owned or possessed the property; and (5) that the bona fide purchaser provisions of the new law apply to the transaction.

SB 161 provides that a bona fide purchaser is not liable for assessed taxes if purchased in good faith, for value, at arm's length, and without notice of delinquent taxes. The criteria for meeting the "without notice" standard include checking a new state registry of delinquent tax liens that SB 161 establishes as part of the Uniform Commercial Code filing system.

SB 161 allows a county tax collector to accept a compromise payment on property from a bona fide purchaser in an amount to be determined based on the facts and circumstances. The amount not forgiven remains a personal debt of the prior owner and a lien against the prior owner's other property of the same class. If the total outstanding amount of the tax is paid after receipt of the compromise payment, the compromise payment will be refunded, without interest.

Practice Tip: Despite the defined term "business personal property" used throughout the law, the law applies to "tangible personal property" and to certain machinery and equipment treated as personal property. There is no requirement that the property be used in a trade or business.

Effective date: October 5, 2015. The bill becomes operative January 1, 2016.

RESIDENCE OF ACTIVE-DUTY MILITARY PERSONNEL

ORS 316.027

2015 OREGON LAWS CH. 701 (HB 2171)

Section 50 of House Bill 2171 amends the definition of an Oregon resident to exclude active-duty military personnel whose residence is outside Oregon, as reflected in the records of the Defense Finance and Accounting Service.

Effective date: October 5, 2015. This provision applies to tax years beginning on or after January 1, 2012.

**HARDSHIP EXCEPTION FROM PAY-TO-PLAY RULE
ORS 305.419**

2015 OREGON LAWS CH. 45 (HB 2334)

Prior to House Bill 2334, Oregon law (ORS 305.419(3)) allowed a taxpayer to seek hardship relief from the requirement to pay all assessed tax, interest, and penalty in order to pursue an appeal in the Oregon Tax Court Regular Division. This process required a taxpayer seeking relief to file an affidavit “with the complaint.” HB 2334, sponsored by the Oregon State Bar and developed in consultation with Judge Breithaupt, allows the taxpayer to file an affidavit alleging undue hardship within 30 days after receiving notice of a lack of this affidavit from the court.

The bill also allows payment of taxes, penalties, and interest found to be deficient to be made within 30 days after an order to specially designate a complaint to the Regular Division of the Tax Court from the Magistrate Division. If a dispute exists about whether a tax is imposed on or measured by net income (recent examples include the wage-withholding tax and the corporate minimum tax), the tax, penalties, and interest must be paid within 30 days after a decision or order finding that the matter involves a deficiency of taxes imposed on or measured by net income.

Effective date: October 5, 2015. The amendments apply to complaints filed on or after the effective date.

**DEADLINE FOR PERSONAL PROPERTY TAX RETURNS
ORS 308.250 TO 308.300**

2015 OREGON LAWS CH. 38 (HB 2484)

House Bill 2484 extends the deadline for filing a personal property tax return from March 1 to March 15. The new law also eliminates the extension that previously was allowed until April 15. The Department of Revenue sponsored the bill and testified that the practice of granting extensions did not improve the quality of filed returns, and variations in standards among counties and between counties and the Department led to taxpayer confusion.

Effective date: October 5, 2015. The amendments apply to property tax years beginning on or after July 1, 2016.

TORTS

SEE ALSO CONSTRUCTION LAW; CIVIL PROCEDURE

PERSONAL INJURY PROTECTION AND UNINSURED MOTORIST COVERAGE ORS 742.500 TO 742.506, 742.524, 742.544

2015 OREGON LAWS CH. 005 (SB 411)

Senate Bill 411 modifies the Oregon Insurance Code at ORS 742.500 to 742.506 and ORS 742.524 to prioritize recovery of personal injury protection damages by the policyholder and to provide the policyholder with larger amounts of uninsured/underinsured motorist protection benefits.

SB 411 reorders the subrogation of liens so that an injured motorist policyholder recovers all damages before reimbursement of personal injury protection (PIP) benefits to the insurer following obtaining a payment or benefit from the at-fault driver. The measure extends PIP benefit coverage from one year to two years following the date of injury.

Additionally, the measure modifies the calculation of uninsured or underinsured motorist protection insurance (UIM) so that it covers the maximum of both the policyholder's UIM policy limits and the at-fault driver's liability policy limits, should both be needed to cover the damages. Prior to enactment of SB 411, UIM insurance covered the difference between the policyholder's UIM policy limits and the at-fault driver's liability limits.

Effective date: January 1, 2016. The amendments apply to motor vehicle liability policies that are issued or renewed on or after the effective date.

MINORITY TOLLING STATUTE ORS 12.160

2015 OREGON LAWS CH. 510 (HB 2333)

House Bill 2333 clarifies that Oregon's Minority Tolling Statute applies to claims brought under the Oregon Tort Claims Act. In 2007, HB 2366 amended the statute to bring the statutes of limitations (SOLs) for claims brought by parents of injured children in line with the SOLs for the claims of the children themselves. In so doing, the wording of the Minority Tolling Statute was subtly changed from referencing "actions mentioned in" to "actions that are subject to" various relevant statutes. This resulted in at least some courts concluding that the Minority Tolling Statute no longer applied to claims against the state because claims under the Tort Claims Act – having separate statutes of limitations – are not "subject to" the statutes listed.

HB 2333 corrects this unintended consequence by reverting to the pre-2007 phrasing of the statute.

Effective date: June 22, 2015. The amendment applies to all causes of action arising on or after January 1, 2008. If the amendment revives a claim that was barred under ORS 12.160 immediately before the effective date, the person asserting the claim must commence the cause of action within the time prescribed for commencing the action under ORS 12.160, as amended by this bill, or within one year after the effective date, whichever is later.

CLAIMS AGAINST STATE FOR WRONGFUL DEATH ORS 30.265

2015 OREGON LAWS CH. 419 (HB 2644)

House Bill 2644 allows a claim against the state for wrongful death when the death occurred within the course and scope of the decedent's employment, the person responsible for the death is convicted of murder or found guilty except for insanity, and the decedent was not employed by a public body at the time of death.

Effective date: June 16, 2015. The bill applies only to claims based on a crime of murder committed on or after May 1, 2012, and is repealed on January 2, 2017. If the bill revives a claim that was previously barred under ORS 30.265, the person asserting the claim must commence the action within one year after the effective date.

WORKERS' COMPENSATION

CLOSURE NOTICES

ORS 656.218, 656.268

2015 OREGON LAWS CH. 144 (SB 371)

Under Senate Bill 371, if a worker is deceased at the time of the closure notice, the insurer (or self-insured employer) may mail copies of the closure notice to any known or potential beneficiaries. The bill then establishes two tiers of appeal rights – 60 days for those who were mailed the closure notice and one year for those who were not.

Additionally, SB 371 requires that if an injured worker seeks to submit a deposition to the reconsideration record, the insurer (or self-insured employer) is required to pay for deposition interpreter services for a non-English-speaking claimant. This new requirement parallels existing requirements that the insurer pay fees for court reporters and transcription costs.

Effective date: May 21, 2015. The amendments apply to notices of closure issued on or after the effective date.

ATTORNEY FEES

ORS CH. 656

2015 OREGON LAWS CH. 521 (HB 2764)

House Bill 2764 amends various portions of ORS Chapter 656 to modify the circumstances under which attorney fees may be awarded in workers' compensation claims. Specifically, the law allows for attorney fees for some instances of representation before the Director of the Department of Consumer and Business Service. Additionally, the Workers' Compensation Board is instructed to consider the inherently contingent nature of workers' compensation law when establishing fees and to review the attorney fee schedule for adjustment purposes on a biannual basis.

Effective date: January 1, 2016. The amendments apply to orders issued and attorney fees incurred on or after the effective date, regardless of the date on which the claim was filed.

TEMPORARY DISABILITY COMPENSATION

ORS 656.262

2015 OREGON LAWS CH. 211 (HB 2797)

House Bill 2797 requires the employer to pay the first installment of temporary disability compensation in workers' compensation claims ("time loss") within 14 days after the employer has notice or knowledge of the claim and of the worker's disability if the medical provider authorizes the temporary disability compensation. Previously, the 14-day timeline was triggered only when the employer had notice or knowledge of the claim.

Effective date: January 1, 2016. The amendment applies to claims filed on or after the effective date.

REJECTION OF HEALTH BENEFIT PLAN CLAIM

ORS 656.265

2015 OREGON LAWS CH. 259 (HB 3114)

House Bill 3114 amends ORS 656.265 to give an injured worker whose claim for benefits was rejected by a health benefit plan 90 days (from the date of rejection) to file a workers' compensation claim. If the injured worker's claim is then denied, HB 3114 also provides that the health benefit plan pay benefits in accordance with the plan.

Effective date: January 1, 2016.

Tips, Traps, and Resources

MAIL DELIVERY: Some law offices have recently encountered longer-than-average delivery times for mail delivered with the U.S. Postal Service. Given that some deadlines are based on date of receipt rather than the date postmarked, this situation illustrates the dangers of waiting to file at the last moment and relying on quick mail delivery. Practitioners should take extra precautions to avoid missing deadlines. The most important step you can take is to be proactive and file early! Additionally, lawyers may opt to supplement mail delivery with an email or phone call alert and/or to use a private messenger service to courier documents.

*Thanks to Troy S. Bundy, Hart Wagner, LLP, and the PLF Practice Management Advisors,
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Cases of Note

DOMESTIC RELATIONS: In the case of *Pollack and Pollack*, 357 Or 575 (July 30, 2015), the Oregon Supreme Court held that ORS 107.105(1)(f)(F) imposes a mandate on courts to require full disclosure of the parties' assets in making a just and proper division. That statutory duty endures until the court enters a dissolution judgment that effects a just division of the parties' assets. In short, the court said that before deciding whether the mediated agreement should be enforced, the trial court was obligated to decide wife's motion to compel production. www.publications.ojd.state.or.us/docs/S062000.pdf

POST-CONVICTION RELIEF: In *Verduzco v. State*, 357 Or 553 (July 30, 2015), the Oregon Supreme Court held that the escape clause in ORS 138.550(3) does not preclude a petitioner from relitigating only those grounds for relief that he was certain he could win when he filed his first post-conviction petition, but rather precludes him from raising, in his second petition, those grounds of relief that he could not reasonably have raised in his first petition. Failure to do so will bar the petitioner from later raising an omitted ground for relief. www.publications.ojd.state.or.us/docs/S062339.pdf

CONTRACT LAW: In *A&T Siding, Inc. v. Capitol Specialty Insurance Corporation*, 358 Or 32 (October 8, 2015), the Oregon Supreme Court decided a certified question from the Ninth Circuit Court of Appeals and held that an addendum executed by the parties cannot equitably reform a settlement agreement on the basis of a mistake of law in which the parties did not foresee the legal consequences of their original agreement. www.publications.ojd.state.or.us/docs/S062330.pdf

CONTRACT LAW: In *Brownstone Homes Condominium Association v. Brownstone Forest Heights, LLC*, 358 Or 223 (November 19, 2015), the Oregon Supreme Court concluded that *Stubblefield v. St. Paul Fire & Marine*, 267 Or 397 (1973), was wrongly decided and should be overruled. The court held that *Stubblefield* erred when it concluded that a covenant not to execute obtained in exchange for an assignment of rights, by itself, effects a complete release that extinguishes an insured's liability and, by extension, the insurer's liability as well. www.publications.ojd.state.or.us/docs/S061273A.pdf

MEDIATION CONFIDENTIALITY: In *Alferi v. Solomon*, 358 Or 383 (December 10, 2015), the Oregon Supreme Court held that confidential mediation communications under ORS 36.110(7)(a) do not include private communications between a mediating party and his or her attorney outside of mediation proceedings, even if those communications are integrally related to the mediation. www.publications.ojd.state.or.us/docs/S062520.pdf

IN BRIEF

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Carol J. Bernick, CEO

Editors:

Barbara S. Fishleder,
*Director of Personal
and Practice
Management
Assistance*
and
Tanya R. Hanson,
*Loss Prevention
Attorney*

503-639-6911
1-800-452-1639
www.osbplf.org

Oregon
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PROFESSIONAL LIABILITY FUND

P. O. BOX 231600
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Anastasia Meisner

Rich Meneghello

Bruce Miller

Justin D. Monahan

Channa Newell

Eva Novick

Judith Parker

Mark Peterson

Jeffrey Rhoades

Sam Sears

Kenneth Sherman, Jr.

Joanne Southey

Shannon Storey

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