

January 2016

Issue 127

2015 Legislation Alerts Resources	page 1
2016 PLF Assessment	page 1
The Case for Excess	page 2
Changes to the 2016 PLF Primary Claims Made Plan	page 4
Oregon eCourt Updates	page 5
PLF Coverage for Marijuana-Related Claims	page 6
2015 Legislation Alerts Table of Contents	page 7
Tips, Traps, and Resources	page 11
Cases of Note	page 11
Acknowledgments	page 12

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.

DISCLAIMER

This material is provided for informational purposes only and does not establish, report, or create the standard of care for attorneys in Oregon, nor does it represent a complete analysis of the topics presented. Readers should conduct their own appropriate legal research. The information presented does not represent legal advice. This information may not be republished, sold, or used in any other form without the written consent of the Oregon State Bar Professional Liability Fund except that permission is granted for Oregon lawyers to use and modify these materials in their own practices. © 2016 OSB Professional Liability Fund.

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.”



As you build your practice,
we’ll help with any baggage.

Don’t allow personal or professional issues to hold you back. The professionals at the *Oregon Attorney Assistance Program* are lawyers and trained counselors — ideally suited to help lawyers and judges with:

- ♦ ALCOHOL & SUBSTANCE ABUSE
- ♦ DEPRESSION & MENTAL HEALTH CONCERNS
- ♦ TIME MANAGEMENT & PROCRASTINATION
- ♦ CAREER CHANGE AND TRANSITION
- ♦ PROBLEMATIC INTERNET USE
- ♦ COMPULSIVE/SELF-DEFEATING BEHAVIOR
- ♦ PROBLEM GAMBLING

Our services are *confidential* and *free of charge*.

Call 503.226.1057 · 1.800.321.6227



OREGON ATTORNEY
ASSISTANCE PROGRAM
*helping lawyers and judges
since 1982*

OAAP COUNSELORS: ♦ SHARI R. GREGORY ♦ KYRA M. HAZILLA ♦ MIKE LONG ♦ DOUGLAS S. QUERIN

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 OECE 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 OECE 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 Robert D. Newell (Chair, Portland), Teresa A. Statler (Vice Chair, Portland), Tim Martinez (Secretary-Treasurer, Public Member, Salem), Julia I. Manela (Eugene), 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

TABLE OF CONTENTS

BUSINESS LAW

Cooperatives

ORS 62.015, 62.265, 62.435
2015 Oregon Laws Ch. 113 (SB 35)

Abolishing Corporations Sole

ORS 65.057, 65.067
2015 Oregon Laws Ch. 278 (SB 77)

Business Entities Must Appear Through Counsel

ORS 9.320 – 2015 Oregon Laws Ch. 7 (HB 2328)

Converting Business Entities; Shareholders' Rights

ORS Ch. 60, 62, 63, 65, 67, 70
2015 Oregon Laws Ch. 28 (HB 2330)

CIVIL PROCEDURE

Use of Forms in Filings

UTCRC 1.160, UTCRC 15

eFiling Requirements

UTCRC 21

Declaration Under Penalty of Perjury in Lieu of Affidavit

ORCP 1

Summons

ORCP 7

Service and Filing of Pleadings

ORCP 9

Minor or Incapacitated Parties

ORCP 27

Failure to Make Discovery; Sanctions

ORCP 46

Dismissal of Actions; Compromise

ORCP 54

Subpoena

ORCP 55

Judgments

ORCP 67

Taxation of Attorney Fees and Costs and Disbursements

ORCP 68

Judgments by Confession

ORCP 73

Class Actions

ORCP 32 – 2015 Oregon Laws Ch. 2 (HB 2700)

Time

ORCP 10 – 2015 Oregon Laws Ch. 212 (HB 2911)

Declarations Under Penalty of Perjury

ORS Ch. 46, 107, 109, 124, 153, 163, 419B
2015 Oregon Laws Ch. 121 (SB 375)

Minority Tolling Statute

ORS 12.160 – 2015 Oregon Laws Ch. 510 (HB 2333)

Notices of Appeal

ORS 19.260 – 2015 Oregon Laws Ch. 80 (HB 2336)

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)

Condo and HOA Assessments During Redemption Period

ORS 18.966 to 18.980, 94.712, 100.475
2015 Oregon Laws Ch. 120 (SB 367)

Money Judgments in Foreclosures

ORS 18.862, 18.936, 86.797, 88.010, 88.060
2015 Oregon Laws Ch. 291 (SB 368)

Debtor Names on Financing Statements

ORS 79.0502, 79.0503
2015 Oregon Laws Ch. 538 (SB 462)

Expanded Identity Theft Protection

ORS 646.607, 646A.602, 646A.604, 646A.622
2015 Oregon Laws Ch. 357 (SB 601)

Phishing Violates the UTPA

ORS 646.607
2015 Oregon Laws Ch. 128 (HB 2377)

Required Disclosures for Reverse Mortgages

ORS 86A.196
2015 Oregon Laws Ch. 87 (HB 2532)

Lender Payoff Statements

ORS 86.157
2015 Oregon Laws Ch. 431 (HB 3244)

CONSTRUCTION LAW

Pleading Requirements Against Design Professionals

ORS 31.300
2015 Oregon Laws Ch. 610 (SB 383)

Evidentiary Exclusion for Natural Disaster Preparedness

ORS 40.010 to 40.585
2015 Oregon Laws Ch. 541 (SB 775)

CRIMINAL LAW

Endangering a Person Protected by FAPA Restraining Order

ORS 163.160 to 163.208
2015 Oregon Laws Ch. 527 (SB 3)

Defendant Right to Testify Before Grand Jury

ORS 132.320
2015 Oregon Laws Ch. 586 (SB 825)

Post-Conviction Relief Cleanup

2015 Oregon Laws Ch. 12 (HB 2380)

Electronic Certification of Complaint

ORS 133.015, 133.992
2015 Oregon Laws Ch. 250 (HB 2609)

Emergency Protective Orders

ORS 133.310
2015 Oregon Laws Ch. 252 (HB 2776)

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)

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)

Petition for Annulment, Dissolution, or Separation to Disclose Protective and Restraining Orders

ORS 107.085
2015 Oregon Laws Ch. 399 (SB 788)

Personal Information Contained in Judgments

ORS 18.042, 18.048, 18.170, 25.020, 109.073
2015 Oregon Laws Ch. 197 (HB 2340)

Creation of a Re-Adoption Process

ORS 21.135, 109.309 to 109.385
2015 Oregon Laws Ch. 511 (HB 2365)

Adoption Filing Fees

ORS 21.135, 109.319, 109.410
2015 Oregon Laws Ch. 512 (HB 2366)

Voluntary Adoption Registries

ORS Ch. 109
2015 Oregon Laws Ch. 200 (HB 2414)

No Fees for Stalking Protective Order

ORS 30.866
2015 Oregon Laws Ch. 89 (HB 2628)

Emergency Protective Order by Peace Officer

ORS 133.310
2015 Oregon Laws Ch. 252 (HB 2776)

Temporary Suspension of Enforcement of Child Support

ORS 25.125
2015 Oregon Laws Ch. 72 (HB 3156)

Multiple Child Support Judgments

2015 Oregon Laws Ch. 73 (HB 3158)

Dishonored Check as Payment for Child Support

ORS 25.125
2015 Oregon Laws Ch. 74 (HB 3159)

Privilege for Communications Between Victims of Domestic Violence and Advocates

ORS 40.225 to 40.295
2015 Oregon Laws Ch. 265 (HB 3476)

ELDER LAW / PROTECTIVE PROCEEDINGS

Update of Oregon Probate Code

ORS Ch. 111, 112, 116, 419B
2015 Oregon Laws Ch. 387 (SB 379)

Search Warrants

ORS 133.545
2015 Oregon Laws Ch. 415 (HB 2225)

Definition of Victim Expanded

ORS 137.103, 137.106, 161.685
2015 Oregon Laws Ch. 9 (HB 2226)

Definition of Sexual Abuse Limited

ORS 124.050
2015 Oregon Laws Ch. 416 (HB 2227)

Modification of Oregon Uniform Trust Code

ORS 130.230, 130.232, 130.715, 130.730
2015 Oregon Laws Ch. 126 (HB 2331)

Petition for Appointment

ORS 125.240, 125.475
2015 Oregon Laws Ch. 364 (HB 2349)

Discretionary Waiver of Filing Fee

ORS 125.075
2015 Oregon Laws Ch. 365 (HB 2361)

Attorney Fees

ORS 125.098
2015 Oregon Laws Ch. 127 (HB 2362)

Claims on Behalf of Minors

ORS 31.700
2015 Oregon Laws Ch. 213 (HB 2964)

FINANCIAL INSTITUTIONS (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)

Access to Customer Financial Records

ORS 192.583 to 192.607
2015 Oregon Laws Ch. 129 (HB 2415)

HEALTH LAW

Confidential Communications

ORS 743.801, 743.804, 746.607, 750.055, 750.333
2015 Oregon Laws Ch. 470 (HB 2758)

Protected Health Information

ORS 192.553 to 192.581
2015 Oregon Laws Ch. 473 (HB 2948)

Electronic Provider Reimbursements

ORS 743.801, 743.804, 743.911
2015 Oregon Laws Ch. 218 (HB 3021)

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)

Interpreters for Victims in all Critical Stages of Proceeding

ORS 45.275 to 45.285, 419C.285
2015 Oregon Laws Ch. 155 (HB 2339)

Protection of Information in Court Documents

ORS 18.042, 18.048, 18.170, 25.020, 109.073
2015 Oregon Laws Ch. 197 (HB 2340)

JUVENILE LAW

Appearances by Attorney in Juvenile Court Proceedings

2015 Oregon Laws Ch. 776 (SB 222)

Appointment of Court Visitors for Minor Respondents in Guardianship Proceedings

ORS 125.055, 125.150
2015 Oregon Laws Ch. 176 (SB 590)

Grandparent Rights

ORS 419B.875, 419B.876
2015 Oregon Laws Ch. 216 (HB 3014)

LABOR AND EMPLOYMENT

Social Media Privacy

ORS 659A.330
2015 Oregon Laws Ch. 229 (SB 185)

Overpaid Unemployment Insurance Benefits

ORS 657.315, 657.320
2015 Oregon Laws Ch. 530 (SB 243)

Injured State Worker Right to Reinstatement

ORS 659A.052
2015 Oregon Laws Ch. 232 (SB 291)

Paid Sick Leave

ORS 653.256, 659A.885
2015 Oregon Laws Ch. 537 (SB 454)

Warrants for Back Wages or Fines

ORS 18.854
2015 Oregon Laws Ch. 294 (SB 468)

Supplementing Domestic Violence Leave

ORS 659A.285
2015 Oregon Laws Ch. 352 (SB 492)

Domestic Workers' Protection Act

ORS 659A.885
2015 Oregon Laws Ch. 457 (SB 552)

Wage Transparency

ORS Ch. 659A
2015 Oregon Laws Ch. 307 (HB 2007)

Unemployment Benefits Hearing

ORS 657.270
2015 Oregon Laws Ch. 69 (HB 2439)

Reduction of Unemployment Benefits

ORS 657.115, 657.150
2015 Oregon Laws Ch. 103 (HB 2440)

2015 LEGISLATION ALERTS TABLE OF CONTENTS continued

Continuation Coverage for OFLA Leave

ORS 659A.171
2015 Oregon Laws Ch. 323 (HB 2600)

Pay for Public Sector Employees on Military Leave

ORS 408.240
2015 Oregon Laws Ch. 42 (HB 2763)

Criminal History Inquiries

2015 Oregon Laws Ch. 559 (HB 3025)

Enforceability of Noncompetition Agreements

ORS 653.295
2015 Oregon Laws Ch. 429 (HB 3236)

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)

Mortgage Loan Origination Requirements

ORS 86A.203
2015 Oregon Laws Ch. 677 (SB 879)

Homestead Property Tax Deferral Program

ORS 311.356 to 311.695
2015 Oregon Laws Ch. 309 (HB 2083)

Obligation Borrowers

ORS 86.157
2015 Oregon Laws Ch. 431 (HB 3244)

Notice Before Rent Increases and Evictions

Portland City Council Ordinance

TAXATION

Reconnection

ORS Ch. 238A, 305, 314, 315, 316, 317, 348, 458, 657
2015 Oregon Laws Ch. 442 (SB 63)

Business Personal Property Tax Lien Disclosure

ORS 311.605 to 311.635, 311.806
2015 Oregon Laws Ch. 444 (SB 161)

Residence of Active-Duty Military Personnel

ORS 316.027
2015 Oregon Laws Ch. 701 (HB 2171)

Hardship Exception from Pay-to-Play Rule

ORS 305.419
2015 Oregon Laws Ch. 45 (HB 2334)

Deadline for Personal Property Tax Returns

ORS 308.250 to 308.300
2015 Oregon Laws Ch. 38 (HB 2484)

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)

Minority Tolling Statute

ORS 12.160
2015 Oregon Laws Ch. 510 (HB 2333)

Claims Against State for Wrongful Death

ORS 30.265
2015 Oregon Laws Ch. 419 (HB 2644)

WORKERS' COMPENSATION

Closure Notices

ORS 656.218, 656.268
2015 Oregon Laws Ch. 144 (SB 371)

Attorney Fees

ORS Ch. 656
2015 Oregon Laws Ch. 521 (HB 2764)

Temporary Disability Compensation

ORS 656.262
2015 Oregon Laws Ch. 211 (HB 2797)

Rejection of Health Benefit Plan Claim

ORS 656.265
2015 Oregon Laws Ch. 259 (HB 3114)



The path to fulfillment begins with a phone call.

The *Oregon Attorney Assistance Program* is here to help you through any personal or professional issue — confidentially and free of charge.

Call 503.226.1057 · 1.800.321.6227

 **OREGON ATTORNEY ASSISTANCE PROGRAM**
helping lawyers and judges since 1982

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,
for their assistance with this tip.*

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

Published
by the
Professional
Liability Fund

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
State
Bar

PROFESSIONAL LIABILITY FUND

P. O. BOX 231600
TIGARD, OR 97281-1600

PRSR STD
U.S. POSTAGE
PAID
PORTLAND, OR
PERMIT NO. 5300

Professional Liability Fund Board of Directors and Officers

Robert D. Newell
Portland
Chair

Teresa A. Statler
Portland
Vice Chair

Tim Martinez
Salem
*Secretary-Treasurer
Public Member*

Julia I. Manela
Eugene

Dennis H. Black
Medford

Saville W. Easley
Portland

Robert S. Raschio
Canyon City

Molly Jo Mullen
Portland

Tom Newhouse
Portland
Public Member

The Professional Liability Fund sincerely thanks the following
people for their assistance with this Legislation Alerts
issue of *In Brief*:

Ryan Carty

D. Gary Christensen

Eric Deitrick

Alyssa Engelberg

C. Andrew Gibson

Kelly Harpster

Amber Hollister

Jennifer Kimble

Robert Manicke

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

THANK YOU!