

2017 LEGISLATION ALERTS

Elder Law and Estate Administration

HB 2630 (Ch. 391) Guardianships

HB 2630 makes several changes to guardianship laws and is intended to increase the notification, awareness, and protection of a protected person's interest.

ORS 125.055 (petitions in protective proceedings)

Now when petitioning for an appointment of a fiduciary in a protective proceeding, the petitioner, in addition to pleading the factual information to support the petition, is required to plead the less restrictive alternatives to the appointment of a fiduciary that were considered and why the alternatives were determined to be inadequate. ORS 125.055(2)(g).

The bill also adds a new subsection (k) to ORS 125.055(2). The petitioner will now need to plead whether he or she is seeking that the fiduciary has plenary authority or only specific limited authority. However, the amendment does not define "plenary authority."

ORS 125.060 (who must be given notice)

As part of the notice requirements for the appointment of a guardian, entry of other protective orders in a guardian matter, motion to terminate a guardianship, motion for removal of a guardian, motion for modification of a guardian's power or authority, motion for approval of a guardian's actions, or motion for protective orders, ORS 125.060(8) now requires the person seeking one of the above-referenced motions to provide to persons

identified in ORS 125.060(8)(a), (b), and (c) the protected person's address, telephone number, and other contact information. The amendment does not provide a disclosure exception when it is in the best interest of the protected person. When it is in the best interest of the protected person, disclosure of the protected person's address may be restricted. *State v. Symon (in re Symons)*, 264 Or.App. 769, 333 P.3d 1170 (Or.App. 2014).

ORS 125.075 (presentation of objections)

Prior to HB 2630, ORS 125.075(2) objections to a motion in a protective proceeding were required to be in writing. Now, a protected person may object in writing, orally in person, or by other means that are intended to convey the protected person's objection. Any person, other than the protected person, objecting to a motion in a protective proceeding must still do so in writing. Further, amended ORS 125.075(2) requires the court to designate the manner in which an oral objection may be made that "ensures that a protected person will have the protected person's objection presented in the court."

ORS 125.225 (removal of fiduciary)

Currently, a court may remove a guardian if the guardian places the protected person in a mental health treatment facility, nursing home, or residential facility. Now, in addition, the court may remove the guardian if the guardian changes the adult protected person's abode.

ORS 125.320 (limitation on guardian)

In addition to an intention to change the adult protected person's placement at a mental health treatment facility, nursing home, or other residential facility, an intention to change an abode requires the guardian to notify the court by filing and serving a statement declaring the guardian's intent.

Pursuant to ORS 125.065, the statement must be filed and served to those persons specified in ORS 125.060 (3) and (8) at least 15 days prior to each change of abode or placement. However, if the guardian determines that the change of abode or placement must occur in less than 15 days to protect the immediate health, welfare, or safety of the protected person, the statement to the court shall declare that the change of abode or placement must occur in less than 15 days for the reasons stated above. The statement must be filed and served with as much advance notice as possible. However, the statement must be filed no later than two judicial days after the change of abode or placement, and the guardian may make the change of abode or placement prior to the objection hearing.

ORS 125.325 (guardian report)

The guardian's report has been amended to require facts that support the conclusion that the protected person is incapacitated.

HB 2630 takes effect on January 1, 2018.

SB 59 (Ch. 633) Long Term Care Ombudsman

SB 59 amends ORS 125.085 and allows the Office of Long Term Care Ombudsman to appear in existing protective proceedings, to move to remove a fiduciary, to move for a modification of the powers or authority of a fiduciary, and to move for termination of a protective proceeding.

Under the bill, any protected information disclosed to the court by the Office of Long Term Care Ombudsman shall remain confidential, subject only to inspection by the parties to the proceeding, and not subject to inspection by members of the public except by court order after a showing of good cause.

SB 59 took effect on August 2, 2017.

SB 95 (Ch. 514) Financial Exploitation

SB 95 adds sections to ORS 59.005 to 59.451 and provides that certain securities professionals are now required to be mandatory elder financial abuse reporters. This new act specifically requires that "qualified individuals" are required to report "financial exploitation" of a vulnerable individual with whom they have contact. A qualified individual includes a person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or state investment adviser.

When a qualified individual who has reasonable cause to believe that financial exploitation of a vulnerable person with whom he or she has come into contact has occurred, has been attempted, or is being attempted, as soon as practicable that qualified individual must notify the Department of Consumer and Business Services. The new act lists the type of information that must be provided in the notice.

Notice may also be provided to a third party who has previously been designated by the vulnerable person to receive information that otherwise would be private.

Any person who violates these reporting requirements, or who procures, aids, or abets in the violation, may be subject to a penalty of not more than \$1,000 for every violation. However, a qualified individual, a broker-dealer, and state investment advisers are not liable for following these provisions if they are performed in good faith with reasonable cause and with the exercise of reasonable care.

SB 95 takes effect on January 1, 2018.

HB 2608 (Ch. 54) Uniform Trust Code

HB 2608 corrects an oversight in HB 2331, passed during the 2015 session. That bill made several major changes to ORS chapter 130, Oregon's Uniform Trust Code (UTC). As drafted, HB 2331 applied only to trusts executed after that bill went into effect. HB 2608 addresses this problem by specifying that the changes to the UTC apply to all trust proceedings that are commenced after HB 2608 goes into effect, as well as to all trusts executed after HB 2331 took effect.

HB 2608 took effect on May 15, 2017.

HB 2986 (Ch. 169) Probate Modernization

HB 2986 makes a large number of changes to ORS chapters 111, 113, 114, 115, and 116, including expanding the definition of “estate” in Chapter 111.

The bill expands on the process for the appointment of a special administrator in chapter 113, and provides the court with guidance on setting the amount of the bond in order to balance the need for a bond to protect persons interested in an estate with the concern that in some situations a bond can create an unnecessary expense.

The bill also creates an alternative compensation scheme for personal representatives in ORS chapter 113. This change is intended to address circumstances where an estate has modest assets but complicated property issues. The bill also makes changes to the priority order for the naming of a personal representative.

Among the many other changes made in HB 2986, the bill adds requirements that individuals filing a will contest must provide notice to heirs and devisees identified in the petition for probate.

HB 2986 takes effect on January 1, 2018.