

Estate Planning and Probate

NO-ASSET PROBATES

2019 Oregon Laws Ch. 414 (HB 3006)

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

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

A parcel of real estate subject to foreclosure with no equity in the property is not considered to be a non-asset. If a claim is presented to a no-asset estate, the personal representative is under no obligation to disallow the claim until such time that the personal representative files an amended or supplemental inventory showing that assets have come into the possession of the estate, and such an inventory is required if such assets are found. The bill also permits abbreviated accountings and prompt closure of the estate if the personal representative represents to the court that the purpose of the appointment has been satisfied. If assets are later found, the bill provides

procedures for notifying the court and satisfying the procedural requirements that were waived when the estate was thought to be without assets.

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

REVISIONS TO SMALL ESTATE STATUTES

2019 Oregon Laws Ch. 165 (HB 3007)

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

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

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

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

PERSONAL INJURY AND WRONGFUL DEATH PROBATES

2019 Oregon Laws Ch. 166 (HB 3008)

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

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

One of the purposes of this legislation is to clarify the treatment of personal injury suits and wrongful

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

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

PERS DEATH BENEFIT FOR SURVIVING SPOUSES

2019 Oregon Laws Ch. 487 (HB 2417)

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

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

SENIOR DEFERRED PROPERTY TAXES FOLLOWING DEATH

2019 Oregon Laws Ch. 488 (HB 2460)

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

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

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

STEWARDSHIP TRUSTS

2019 Oregon Laws Ch. 162 (HB 2598)

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

The legislation allows the trust to be operated by a trustee, and be overseen by a stewardship committee and a trust enforcer. The drafters intend that all of the tax consequences of the business will be borne by the business, not by the trust. Distributions from the business can be made to various stakeholders, including employees, customers, investors, and the community, but because no distributions are made to the trust, the trust bears no income tax consequences.

SOCIAL CONTACTS OF PROTECTED PERSONS

2019 Oregon Laws Ch. 198 (HB 2601)

HB 2601 is designed to limit the ability of a guardian to restrict the protected person's access to friends and other social contacts. It also requires the guardian to promote the self-determination of the protected person and to maintain a personal acquaintance with the protected person through

regular visitation. The statutory form of a guardian's report is modified by this new bill.

SOCIAL AND ENVIRONMENTAL INVESTING

2019 Oregon Laws Ch. 546 (SB 361)

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

NOTICE OF GUARDIANSHIP

2019 Oregon Laws Ch. 77 (SB 376)

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

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

2019 Oregon Laws Ch. 461 (SB 474)

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

