

**293.490 Payment upon death of person entitled to money from state if estate not in probate.**

(1) Except for property described under ORS 98.304 to 98.436, and as otherwise directed by law, upon the death of any person entitled to payment of money in the State Treasury or on deposit with a state agency or officer, if the estate is not to be administered in a court having probate jurisdiction, the State Treasurer or the state agency or officer authorized to disburse the funds may pay or cause to be paid the money due, as provided in subsection (3) of this section. Except as to payment of salary or wages due a deceased state officer or employee from the State of Oregon, no payment under this section shall be made in excess of \$10,000.

(2) Notwithstanding the provisions of subsection (1) of this section, moneys on deposit with a state agency or officer representing unpaid wages collected on behalf of a person by the Bureau of Labor and Industries shall be payable pursuant to subsection (3) of this section.

(3) Payment authorized by subsection (1) of this section shall be made to the following groups of survivors of the decedent, their guardians or the conservators of their estates, in equal shares to all survivors in a group, and in the order listed, with no payment to survivors in any group if there is any survivor in any group preceding it as listed:

(a) Surviving spouse.

(b) The trustee of a revocable inter vivos trust created by the decedent, unless within six months after the decedent dies a will executed by the decedent requiring distribution of the amount to a different person is admitted to probate.

(c) In equal shares to the children of the decedent and to the issue of any deceased child by right of representation.

(d) Parents.

(e) Brothers and sisters.

(f) Nephews and nieces. [Formerly 291.526; 1965 c.401 §1; 1973 c.823 §125; 1979 c.763 §4; 1981 c.594 §2; 1989 c.171 §39; 1993 c.694 §33; 1995 c.290 §1]

**114.225 Possession and control of decedent's estate.** A personal representative has a right to and shall take possession and control of the estate of the decedent, but the personal representative is not required to take possession of or be accountable for property in the possession of an heir or devisee unless in the opinion of the personal representative possession by the personal representative is reasonably required for purposes of administration. [1969 c.591 §121]

**114.230** [Repealed by 1969 c.591 §305]

**114.240** [Repealed by 1969 c.591 §305]

**114.250** [Repealed by 1969 c.591 §305]

**DUTIES AND POWERS OF PERSONAL REPRESENTATIVES**

**114.255 Commencement of duties and powers of personal representative; prior acts.**

The duties and powers of a personal representative commence upon the issuance of the letters of the personal representative. The powers of a personal representative relate back in time to give the acts of the personal representative occurring prior to appointment the same effect as those

occurring thereafter. A personal representative may ratify and accept acts on behalf of the estate done by others where those acts would have been proper for a personal representative. [1969 c.591 §122]

**114.260** [Repealed by 1969 c.591 §305]

**114.265 General duties of personal representative.** A personal representative is a fiduciary who is under a general duty to and shall collect the income from property of the estate in the possession of the personal representative and preserve, settle and distribute the estate in accordance with the terms of the will and ORS chapters 111, 112, 113, 114, 115, 116 and 117 as expeditiously and with as little sacrifice of value as is reasonable under the circumstances. [1969 c.591 §123]

**114.270** [Repealed by 1969 c.591 §305]

**114.275 Personal representative to proceed without court order; application for authority, approval or instructions.** A personal representative shall proceed with the administration, settlement and distribution of the estate without adjudication, order or direction of the court, except as otherwise provided in ORS chapters 111, 112, 113, 114, 115, 116 and 117. However, a personal representative or any interested person may apply to the court for authority, approval or instructions on any matter concerning the administration, settlement or distribution of the estate, and the court, without hearing or upon such hearing as it may prescribe, shall instruct the personal representative or rule on the matter as may be appropriate. [1969 c.591 §124]

**114.285 Naming or appointment of personal representative does not discharge claim.** The naming or appointment of any person as personal representative does not discharge any claim which the decedent had against that person. The claim shall be included in the inventory. If the person agrees to act as personal representative, the person is liable for the claim as for so much money in the hands of the person at the time the claim becomes due and payable; otherwise the person is liable for the claim as any other debtor of the decedent. [1969 c.591 §125]

**114.295 Discharge or devise in will of claim of testator.** The discharge or devise in a will of a claim of the testator against a personal representative or against any other person is of no effect as against creditors of the decedent. The claim shall be included in the inventory and for purposes of administration shall be regarded and treated as a specific devise of the amount of the claim. [1969 c.591 §126]

**114.305 Transactions authorized for personal representative.** Subject to the provisions of ORS 97.130 (2) and (10) and except as restricted or otherwise provided by the will of the decedent, a document of anatomical gift under ORS 97.965 or by court order, a personal representative, acting reasonably for the benefit of interested persons, is authorized to:

(1) Direct and authorize disposition of the remains of the decedent pursuant to ORS 97.130 and incur expenses for the funeral, burial or other disposition of the remains in a manner suitable to the condition in life of the decedent. Only those funeral expenses necessary for a plain and

decent funeral and disposition of the remains of the decedent may be paid from the estate if the assets are insufficient to pay the claims of the Department of Human Services and the Oregon Health Authority for the net amount of public assistance, as defined in ORS 411.010, or medical assistance, as defined in ORS 414.025, paid to or for the decedent and for care and maintenance of any decedent who was at a state institution to the extent provided in ORS 179.610 to 179.770.

(2) Retain assets owned by the decedent pending distribution or liquidation.

(3) Receive assets from fiduciaries or other sources.

(4) Complete, compromise or refuse performance of contracts of the decedent that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease real property, the personal representative, among other courses of action, may:

(a) Execute and deliver a deed upon satisfaction of any sum remaining unpaid or upon receipt of the note of the purchaser adequately secured; or

(b) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.

(5) Satisfy written pledges of the decedent for contributions, whether or not the pledges constituted binding obligations of the decedent or were properly presented as claims.

(6) Deposit funds not needed to meet currently payable debts and expenses, and not immediately distributable, in bank or savings and loan association accounts, or invest the funds in bank or savings and loan association certificates of deposit, or federally regulated money-market funds and short-term investment funds suitable for investment by trustees under ORS 130.750 to 130.775, or short-term United States Government obligations.

(7) Abandon burdensome property when it is valueless, or is so encumbered or is in a condition that it is of no benefit to the estate.

(8) Vote stocks or other securities in person or by general or limited proxy.

(9) Pay calls, assessments and other sums chargeable or accruing against or on account of securities.

(10) Sell or exercise stock subscription or conversion rights.

(11) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise.

(12) Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held.

(13) Insure the assets of the estate against damage and loss, and insure the personal representative against liability to third persons.

(14) Advance or borrow money with or without security.

(15) Compromise, extend, renew or otherwise modify an obligation owing to the estate. A personal representative who holds a mortgage, pledge, lien or other security interest may accept a conveyance or transfer of the encumbered asset in lieu of foreclosure in full or partial satisfaction of the indebtedness.

(16) Accept other real property in part payment of the purchase price of real property sold by the personal representative.

(17) Pay taxes, assessments and expenses incident to the administration of the estate.

(18) Employ qualified persons, including attorneys, accountants and investment advisers, to advise and assist the personal representative and to perform acts of administration, whether or not discretionary, on behalf of the personal representative.

(19) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of duties as personal representative.

(20) Prosecute claims of the decedent including those for personal injury or wrongful death.

(21) Continue any business or venture in which the decedent was engaged at the time of death to preserve the value of the business or venture.

(22) Incorporate or otherwise change the business form of any business or venture in which the decedent was engaged at the time of death.

(23) Discontinue and wind up any business or venture in which the decedent was engaged at the time of death.

(24) Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.

(25) Satisfy and settle claims and distribute the estate as provided in ORS chapters 111, 112, 113, 114, 115, 116 and 117.

(26) Perform all other acts required or permitted by law or by the will of the decedent. [1969 c.591 §127; 1969 c.597 §278; 1977 c.211 §1; 1981 c.278 §1; 1995 c.157 §16; 1997 c.472 §10; 2001 c.900 §17; 2005 c.348 §126; 2007 c.681 §25; 2011 c.164 §4; 2011 c.720 §59; 2013 c.688 §16]

**114.310** [Repealed by 1969 c.591 §305]

**114.315 Right to perfect lien or security interest.** A personal representative has the same rights to perfect a lien or security interest as the decedent would have had if the decedent were living. [1969 c.591 §128]

**114.320** [Repealed by 1969 c.591 §305]

**114.325 Power to sell, mortgage, lease and deal with property.** (1) A personal representative has power to sell, mortgage, lease or otherwise deal with property of the estate without notice, hearing or court order.

(2) Exercise of the power of sale by the personal representative is improper, except after notice, hearing and order of the court, if:

(a) The sale is in contravention of the provisions of the will; or

(b) The property is specifically devised and the will does not authorize its sale; or

(c) A bond of the personal representative has been required and filed, the sale price of the property to be sold exceeds \$5,000 and the bond of the personal representative has not been increased by the amount of cash to be realized on the sale, unless the court has directed otherwise. [1969 c.591 §129]

**114.330** [Repealed by 1969 c.591 §305]

**114.333 Transfer of title and interest to real property by foreign personal representative.** Upon performance of a recorded contract of sale of real property the foreign

personal representative of a deceased vendor whose estate is being administered in a foreign jurisdiction may convey the title and interest of the vendor in the property to the vendee or the assignee of the vendee upon recording in the deed records of the county where the property is located a certified copy of letters testamentary or of administration. The certificate shall include a statement that the letters are in effect. [1973 c.506 §28]

**114.335 Court order for sale, mortgage or lease.** Upon proof satisfactory to the court by an interested person that a sale, mortgage or lease of property of the estate is required for paying support of spouse and children, elective share of surviving spouse, claims or expenses of administration, or for distribution, and that the personal representative has failed or declined to act, the court may order the personal representative to make the sale, mortgage or lease. [1969 c.591 §130]

**114.340** [Repealed by 1969 c.591 §305]

**114.345 Title conveyed free of claims of creditors.** Property sold, mortgaged or leased by a personal representative is subject to liens and encumbrances against the decedent or the estate of the decedent, but is not subject to rights of creditors of the decedent or liens or encumbrances against the heirs or devisees of the decedent. The filing and allowance of a claim in an estate proceeding does not make the claimant a secured creditor. [1969 c.591 §131]

**114.350** [Repealed by 1963 c.287 §1]

**114.385 Persons dealing with personal representative; protection.** A person dealing with or assisting a personal representative without actual knowledge that the personal representative is improperly exercising the power of the personal representative is protected as if the personal representative properly exercised the power. The person is not bound to inquire whether the personal representative is properly exercising the power of the personal representative, and is not bound to inquire concerning the provisions of any will or any order of court that may affect the propriety of the acts of the personal representative. No provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection expressed in this section extends to a person dealing with or assisting a personal representative appointed under ORS 113.085 without actual knowledge that the personal representative was not qualified as provided in ORS 113.095 or that the appointment of the personal representative involved procedural irregularity. [1969 c.591 §135]

**114.405 Personal liability of personal representative.** (1) The personal liability of a personal representative to third parties, as distinguished from fiduciary accountability to the estate, arising from the administration of the estate is that of an agent for a disclosed principal.

(2) A personal representative is not personally liable on contracts properly entered into in the fiduciary capacity in the course of administration of the estate unless the personal representative expressly agrees to be personally liable.

(3) A personal representative is not personally liable for obligations arising from possession or control of property of the estate or for torts committed in the course of administration of the estate unless the personal representative is personally at fault.

(4) Claims based upon contracts, obligations and torts of the types described in subsections (2) and (3) of this section may be allowed against the estate whether or not the personal representative is personally liable therefor. [1969 c.591 §137]

**114.410** [Repealed by 1969 c.591 §305]

**114.415 Copersonal representatives; when joint action required.** (1) When two or more persons are appointed copersonal representatives, the concurrence of all is required for all acts connected with the administration and distribution of the estate, except:

(a) Any copersonal representative may receive and receipt for property due the estate.

(b) When the concurrence of all cannot readily be obtained in the time reasonably available for emergency action.

(c) Where any others have delegated their power to act.

(d) Where the will provides otherwise.

(e) Where the court otherwise directs.

(2) Persons dealing with a copersonal representative who are actually unaware that another has been appointed to serve with the person are as fully protected as if the person with whom they dealt had been the sole personal representative. [1969 c.591 §138]

**114.420** [Repealed by 1969 c.591 §305]

**114.425 Discovery of property, writings and information.** (1) The court may order any person to appear and give testimony by deposition if it appears probable that the person:

(a) Has concealed, secreted or disposed of any property of the estate of a decedent;

(b) Has been entrusted with property of the estate of a decedent and fails to account therefor to the personal representative;

(c) Has concealed, secreted or disposed of any writing, instrument or document pertaining to the estate;

(d) Has knowledge or information that is necessary to the administration of the estate; or

(e) As an officer or agent of a corporation, has refused to allow examination of the books and records of the corporation that the decedent had the right to examine.

(2) If a person cited as provided in subsection (1) of this section fails to appear or to answer questions asked as authorized by the order of the court, the person is in contempt and may be punished as for other contempts. [1969 c.591 §139; 1979 c.284 §106]

**114.430** [Repealed by 1969 c.591 §305]

**114.435 Power to avoid transfers.** The property liable for the payment of expenses of administration, funeral expenses, claims and taxes shall include property transferred by the decedent with intent to defraud the creditors of the decedent or transferred by any means which

is in law void or voidable as against the creditors of the decedent. The right to recover that property so far as necessary for the payment of those expenses, claims and taxes is in the personal representative, who shall take necessary steps to recover it. That property constitutes general assets for the payment of creditors. [1969 c.591 §140]

**114.440** [Repealed by 1969 c.591 §305]

## SMALL ESTATES

**114.505 Definitions for ORS 114.505 to 114.560.** As used in ORS 114.505 to 114.560:

(1) "Affiant" means the person or persons signing an affidavit filed under ORS 114.515.

(2) "Claiming successors" means:

(a) If the decedent died intestate, the heir or heirs of the decedent, or if there is no heir, an estate administrator of the Department of State Lands appointed under ORS 113.235;

(b) If the decedent died testate, the devisee or devisees of the decedent; and

(c) Any creditor of the estate entitled to payment or reimbursement from the estate under ORS 114.545 (1)(d) who has not been paid or reimbursed the full amount owed such creditor within 60 days after the date of the decedent's death.

(3) "Estate" means decedent's property subject to administration in Oregon. [1973 c.710 §2; 1977 c.239 §1; 1979 c.340 §1; 1979 c.467 §3; 1989 c.228 §1; 2003 c.395 §14; 2005 c.22 §92; 2015 c.146 §2]

**114.515 Value of estate; where affidavit filed; fee; amended affidavit; supplemental affidavit.** (1) If the estate of a decedent meets the requirements of subsection (2) of this section, any of the following persons may file an affidavit with the clerk of the probate court in any county where there is venue for a proceeding seeking the appointment of a personal representative for the estate:

(a) One or more of the claiming successors of the decedent.

(b) If the decedent died testate, any person named as personal representative in the decedent's will.

(c) The Director of Human Services, the Director of the Oregon Health Authority or an attorney approved under ORS 114.517, if the decedent received public assistance as defined in ORS 411.010, received medical assistance as defined in ORS 414.025 or received care at an institution as defined in ORS 179.010, and it appears that the assistance or the cost of care may be recovered from the estate of the decedent.

(2) An affidavit under this section may be filed only if:

(a) The fair market value of the estate is \$275,000 or less;

(b) Not more than \$75,000 of the fair market value of the estate is attributable to personal property; and

(c) Not more than \$200,000 of the fair market value of the estate is attributable to real property.

(3) An affidavit under this section may not be filed until 30 days after the death of the decedent.

(4) An affidavit filed under the provisions of this section must contain the information required in ORS 114.525 and shall be made a part of the probate records. If the affiant is an

attorney approved by the Director of Human Services or the Director of the Oregon Health Authority, a copy of the document approving the attorney must be attached to the affidavit.

(5) In determining fair market value under this section, the fair market value of the entire interest in the property included in the estate shall be used without reduction for liens or other debts.

(6) The clerk of the probate court shall charge and collect the fee established under ORS 21.145 for the filing of any affidavit under this section.

(7) Any error or omission in an affidavit filed under this section may be corrected by filing an amended affidavit within four months after the filing of the affidavit.

(8) One or more supplemental affidavits may be filed at any time after the filing of an affidavit under this section for the purpose of including property not described in the original affidavit. Copies of all previously filed affidavits must be attached to the supplemental affidavit and all information required in ORS 114.525 must be reflected in the supplemental affidavit. A supplemental affidavit may not be filed if by reason of the additional property described in the supplemental affidavit any limitation imposed by subsection (2) of this section is exceeded.

[1973 c.710 §§3, 8; 1977 c.239 §2; 1979 c.467 §1; 1981 s.s. c.3 §36; 1985 c.368 §1; 1985 c.496 §6; 1987 c.586 §28; 1989 c.228 §2; 1989 c.856 §1; 1995 c.682 §1; 1997 c.447 §1; 1997 c.801 §32; 2003 c.737 §§59,60; 2005 c.122 §§1,2; 2005 c.273 §§1,2; 2005 c.702 §§69,70,71; 2009 c.262 §7; 2009 c.413 §1; 2009 c.828 §10; 2011 c.595 §22; 2013 c.688 §17]

**114.517 Approval of attorneys filing affidavits for recipients of Medicaid or other public assistance.** The Director of Human Services, or the director's designated representative, or the Director of the Oregon Health Authority, or the director's designated representative, may approve in writing attorneys who are eligible to file an affidavit under ORS 114.515 if the decedent received public assistance as defined in ORS 411.010, received medical assistance as defined in ORS 414.025 or received care at an institution as defined in ORS 179.010, and it appears that the assistance or the cost of care may be recovered from the estate of the decedent. An attorney approved under this section does not represent the Director of Human Services or the Director of the Oregon Health Authority when the attorney files an affidavit under ORS 114.515. [2009 c.262 §6; 2009 c.828 §9; 2013 c.688 §18]

**114.520 Authorization from Department of State Lands required for filing of affidavit by creditor if decedent dies intestate and without heirs; rules.** (1) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming successor may not file an affidavit under ORS 114.515 unless the creditor has received written authorization from an estate administrator of the Department of State Lands appointed under ORS 113.235. Except as provided by rule adopted by the Director of the Department of State Lands, an estate administrator shall consent to the filing of an affidavit under ORS 114.515 by a creditor only if it appears after investigation that the estate is insolvent.

(2) A creditor of an estate who is subject to subsection (1) of this section may give written notice to an estate administrator of the Department of State Lands informing the estate administrator that the creditor intends to file an affidavit under ORS 114.515. Upon receiving the notice permitted by this subsection, the estate administrator shall investigate the assets and liabilities of the estate. Within 30 days after receiving the notice required by this subsection, the estate administrator shall either:

(a) Give written authorization to the creditor for the filing of an affidavit by the creditor under ORS 114.515; or

(b) Inform the creditor that the Department of State Lands will file an affidavit as claiming successor under ORS 114.515.

(3) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming successor and who files an affidavit under ORS 114.515 must notate at the top of the affidavit that the affidavit is being filed by a creditor of the estate. If the affidavit contains the notation required by this subsection, the clerk of the probate court may not accept the affidavit for filing unless there is attached to the affidavit written authorization for the filing of the affidavit by the creditor from an estate administrator of the Department of State Lands. The written authorization may be a copy of a memorandum of an interagency agreement between the Department of State Lands and another state agency. [1997 c.88 §2; 2003 c.395 §15]

**114.525 Content of affidavit; rules.** An affidavit filed under ORS 114.515 shall:

(1) State the name, age, domicile, post-office address and Social Security number of the decedent;

(2) State the date and place of the decedent's death. A certified copy of the death record shall be attached to the affidavit;

(3) Describe and state the fair market value of all property in the estate, including a legal description of any real property;

(4) State that no application or petition for the appointment of a personal representative has been granted in Oregon;

(5) State whether the decedent died testate or intestate, and if the decedent died testate, the will shall be attached to the affidavit;

(6) List the heirs of the decedent and the last address of each heir as known to the affiant, and state that a copy of the affidavit showing the date of filing and a copy of the will, if the decedent died testate, will be delivered to each heir or mailed to the heir at the last-known address;

(7) If the decedent died testate, list the devisees of the decedent and the last address of each devisee as known to the affiant and state that a copy of the will and a copy of the affidavit showing the date of filing will be delivered to each devisee or mailed to the devisee at the last-known address;

(8) State the interest in the property described in the affidavit to which each heir or devisee is entitled and the interest, if any, that will escheat;

(9) State that reasonable efforts have been made to ascertain creditors of the estate. List the expenses of and claims against the estate remaining unpaid or on account of which the affiant or any other person is entitled to reimbursement from the estate, including the known or estimated amounts thereof and the names and addresses of the creditors as known to the affiant, and state that a copy of the affidavit showing the date of filing will be delivered to each creditor who has not been paid in full or mailed to the creditor at the last-known address;

(10) Separately list the name and address of each person known to the affiant to assert a claim against the estate that the affiant disputes and the known or estimated amount thereof and state that a copy of the affidavit showing the date of filing will be delivered to each such person or mailed to the person at the last-known address;

(11) State that a copy of the affidavit showing the date of filing will be mailed or delivered to the Department of Human Services or to the Oregon Health Authority, as prescribed by rule by the authority;

(12) State that claims against the estate not listed in the affidavit or in amounts larger than those listed in the affidavit may be barred unless:

(a) A claim is presented to the affiant within four months of the filing of the affidavit at the address stated in the affidavit for presentment of claims; or

(b) A personal representative of the estate is appointed within the time allowed under ORS 114.555; and

(13) If the affidavit lists one or more claims that the affiant disputes, state that any such claim may be barred unless:

(a) A petition for summary determination is filed within four months of the filing of the affidavit; or

(b) A personal representative of the estate is appointed within the time allowed under ORS 114.555. [1973 c.710 §6; 1977 c.239 §3; 1979 c.340 §2; 1989 c.228 §3; 1991 c.191 §3; 1995 c.453 §1; 2001 c.104 §35; 2001 c.620 §2; 2001 c.900 §18a; 2003 c.196 §1; 2003 c.395 §16; 2005 c.22 §93; 2009 c.595 §79; 2013 c.14 §2; 2013 c.366 §60]

**114.535 Transfer of decedent's property to affiant; proceedings to compel transfer.** (1) Not sooner than 10 days after the filing of an affidavit under ORS 114.515, the affiant may deliver a certified copy of the affidavit to any person who was indebted to the decedent or who has possession of personal property belonging to the estate. Except as provided in this section, upon receipt of the copy, the person shall pay, transfer, deliver, provide access to and allow possession of the personal property to the affiant.

(2) Subject to ORS 114.537, if a copy of an affidavit is delivered under subsection (1) of this section to a person that controls access to personal property belonging to the estate of the decedent, including personal property held in a safe deposit box for which the decedent was the sole lessee or the last surviving lessee, the person shall:

(a) Provide the affiant with access to the decedent's personal property; and

(b) Allow the affiant to take possession of the personal property.

(3) Subject to ORS 114.537, if a copy of an affidavit is delivered under subsection (1) of this section to a person who has received property of the decedent under ORS 446.616, 708A.430, 723.466 or 803.094, or a similar statute providing for the transfer of property of an estate that is not being probated, the person shall pay, transfer, deliver, provide access to or allow possession of the property to the affiant if the person would be required to pay, transfer, deliver, provide access to or allow possession of the property to a personal representative of the estate.

(4) Any person that pays, transfers, delivers, provides access to or allows possession of property of a decedent in the manner provided by this section is discharged and released from any liability or responsibility for the property in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the decedent.

(5) A transfer agent of any corporate security registered in the name of the decedent shall change the registered ownership on the books of the corporation to the person entitled thereto on presentation of a certified copy of the affidavit filed under ORS 114.515.

(6) If a person to whom an affidavit is delivered refuses to pay, deliver, transfer, provide access to or allow possession of any personal property as required by this section, the property may be recovered or payment, delivery, transfer of or access to the property may be compelled upon proof of the transferee's entitlement in a proceeding brought for the purpose by or on behalf of the transferee.

(7) If the affidavit was signed by the Director of Human Services, the Director of the Oregon Health Authority or an attorney approved under ORS 114.517, the Director of Human Services, the Director of the Oregon Health Authority or the attorney may certify a copy of the affidavit for the purposes described in this section. [1973 c.710 §4; 1979 c.340 §3; 1989 c.228 §4; 1991 c.67 §23; 1997 c.631 §404; 2003 c.196 §2; 2003 c.655 §60; 2009 c.541 §4; 2009 c.595 §80; 2009 c.828 §11; 2011 c.422 §3]

**114.537 Safe deposit boxes.** (1) If a claiming successor or other person who is eligible to file an affidavit under ORS 114.515 is aware that the decedent was the sole lessee or the last surviving lessee of a safe deposit box at the time of the decedent's death, the claiming successor or other person may not file an affidavit under ORS 114.515 until the person requests an inventory of the box under ORS 708A.655, if the lessor of the box is an Oregon operating institution as defined in ORS 706.008, or under ORS 723.844, if the lessor of the box is a credit union as defined in ORS 723.008. Upon receiving the request, the lessor of the box shall cause an inventory of the contents of the box to be made. The lessor shall retain the original inventory in the box and shall provide a copy of the inventory to the person requesting the inventory. The person requesting the inventory shall take the contents of the box into consideration in determining whether the estate of the decedent is within the limits prescribed by ORS 114.515 (2). If an affidavit under ORS 114.515 is filed by the person, the value of the contents of the box shall be stated in the affidavit.

(2) If a person who has filed an affidavit under ORS 114.515 becomes aware after the filing of the affidavit that the decedent was the sole lessee or the last surviving lessee of a safe deposit box at the time of the decedent's death, the person shall promptly request an inventory of the box under ORS 708A.655, if the lessor of the box is an Oregon operating institution as defined in ORS 706.008, or under ORS 723.844, if the lessor of the box is a credit union as defined in ORS 723.008. Upon receiving the request, the lessor of the box shall cause an inventory of the contents of the box to be made. The lessor shall retain the original inventory in the box and shall provide a copy of the inventory to the person requesting the inventory. If the estate of the decedent remains within the limits prescribed by ORS 114.515 (2) after consideration of the value of the contents of the box, the person shall file an amended affidavit under ORS 114.515. Upon providing the lessor of the box with a certified copy of the amended affidavit, the lessor shall allow the person to take possession of the contents of the box. If the estate of the decedent exceeds the limits prescribed by ORS 114.515 (2) after consideration of the value of the contents of the box, the person may not file an amended affidavit under ORS 114.515 and shall file notice with the court that the estate of the decedent is not subject to ORS 114.505 to 114.560 and shall serve a copy of the notice on the lessor of the box. The lessor of the box shall thereafter deliver the contents of the box to the personal representative for the decedent, or to such other person as may be provided for under the terms of the lease of the box. [2011 c.422 §2]

**114.540 Procedure for claims; disallowance; summary determination.** (1) A claim against an estate with respect to which an affidavit is filed under ORS 114.515 may be presented to the affiant within four months after the affidavit was filed. If an amended affidavit is filed under ORS 114.515 (7), claims against the estate must be filed within four months after the filing of the amended affidavit. If a supplemental affidavit is filed under ORS 114.515 (8), claims against the estate must be filed within four months after the filing of the supplemental affidavit. Each claim presented to the affiant must include the information required by ORS 115.025.

(2) A claim presented to the affiant shall be considered allowed as presented unless within 60 days after the date of presentment of the claim the affiant mails or delivers a notice of disallowance of the claim in whole or in part to the claimant and any attorney for the claimant. A notice of disallowance of a claim shall inform the claimant that the claim has been disallowed in whole or in part and, to the extent disallowed, will be barred unless:

(a) The claimant proceeds as provided in subsection (3) of this section; or

(b) A personal representative is appointed within the time allowed under ORS 114.555.

(3) A creditor of the estate whose claim has been presented within the time permitted by subsection (1) of this section and disallowed by the affiant may within 30 days after the date of mailing or delivery of the notice of disallowance file with the probate court a petition for summary determination of the claim by the court. A creditor of the decedent whose claim is listed in the affidavit as disputed may within four months after the filing of the affidavit file with the probate court a petition for summary determination of the creditor's claim by the court. The court shall hear the matter without a jury, after notice to the creditor and affiant, and any interested person may be heard in the proceeding. The claim may be proved as provided in ORS 115.195 (2). Upon the hearing the court shall determine the claim in a summary manner and shall make an order allowing or disallowing the claim in whole or in part. If the court allows the claim in whole or in part, the order shall direct the affiant, to the extent of property of the estate allocable to the payment of the claim pursuant to ORS 115.125, or any claiming successor to whom payment, delivery or transfer has been made under ORS 114.505 to 114.560 as a person entitled thereto as disclosed in the affidavit, to the extent of the value of the property received, to pay to the creditor the amount so allowed. No appeal may be taken from the order of the court made upon the summary determination. [1989 c.228 §7; 2003 c.523 §3; 2005 c.122 §4]

**114.545 Duties of person filing affidavit; accounts in financial institutions; payment of claims; conveyance of real property; liability of person to whom property transferred or payment made.** (1) The affiant:

(a) Shall take control of the property of the estate coming into the possession of the affiant.

(b) Within 30 days after filing the affidavit shall mail, deliver or cause to be recorded each instrument which the affidavit states will be mailed, delivered or recorded.

(c) May open one or more deposit accounts in a financial institution as defined in ORS 706.008 with funds of the decedent, upon which the affiant may withdraw funds by means of checks, drafts or negotiable orders of withdrawal or otherwise for the payment of claims and expenses described in paragraph (d) of this subsection.

(d) From and to the extent of the property of the estate, shall pay or reimburse any person who has paid:

(A) Expenses described in ORS 115.125 (1)(b) and (c) and listed in the affidavit;

(B) Claims listed in the affidavit as undisputed;

(C) Allowed claims presented to the affiant within the time permitted by ORS 114.540; and

(D) Claims which the probate court directs the affiant to pay.

(e) Shall pay claims and expenses under paragraph (d) of this subsection in the order of priority prescribed by ORS 115.125.

(f) May transfer or sell any vehicle that is part of the estate before the completion of the period established under ORS 114.555 if the affiant complies with the requirements established by the Department of Transportation for such purposes under ORS 803.094.

(g) May convey any real or personal property that is part of the estate before the completion of the period established under ORS 114.555, provided that each heir or devisee succeeding to the interest conveyed joins in the conveyance and that any proceeds of sale, net of the reasonable expenses of sale and any debt secured as of the date of the decedent's death by a duly perfected lien on the property, shall become a part of the estate subject to ORS 114.505 to 114.560. If the property is a manufactured structure as defined in ORS 446.561, the affiant must assign interest in the structure as provided in ORS 446.616. Any conveyance to a purchaser in good faith and for a valuable consideration made by the affiant and the heir or devisee succeeding to the interest conveyed, or made by the heir or devisee succeeding to the interest conveyed after completion of the period established under ORS 114.555, conveys the interest stated in the conveyance free of any interest of the claiming successors, and the purchaser has no duty with respect to application of the consideration paid for the conveyance.

(2) Notwithstanding any other provision of this section, when an heir or devisee entitled to succeed to a conveyance fails or refuses to join in the conveyance as required by subsection (1)(g) of this section, an affiant approved under ORS 114.517 may convey any real or personal property that is part of the estate at any time to a third party for a valuable consideration.

(3) Property conveyed by an affiant under this section is subject to liens and encumbrances against the decedent or the estate of the decedent but is not subject to rights of creditors of the decedent or liens or encumbrances against the heirs or devisees of the decedent. The filing and allowance of a claim in a proceeding under ORS 114.505 to 114.560 does not make the claimant a secured creditor.

(4) Any claiming successor to whom payment, delivery or transfer is made under ORS 114.505 to 114.560 as a person entitled thereto as disclosed in the affidavit is personally answerable and accountable:

(a) To the extent of the value of the property received, to creditors of the estate to the extent such creditors are entitled to payment under subsection (1) of this section; and

(b) To any personal representative of the estate of the decedent thereafter appointed.

(5) After the expiration of the period established in subsection (1)(b) of this section, the affiant shall cause to be recorded in the deed records of any county in which real property belonging to the decedent is situated an affiant or claiming successor's deed conveying the property to persons entitled to the property, executed in the manner required by ORS chapter 93.

(6) For a manufactured structure as defined in ORS 446.561 belonging to a decedent and assessed as personal property, the affiant shall file with the Department of Consumer and Business Services the necessary information for recording the successor's interest in the manufactured structure on an ownership document.

(7) A financial institution as defined in ORS 706.008 that opens one or more deposit accounts for an affiant pursuant to subsection (1)(c) of this section is not liable to any other person for opening the account or accounts or for permitting the affiant to withdraw funds from the account or accounts by means of checks, drafts, negotiable orders of withdrawal or otherwise. The financial institution is not required to ensure that the funds of the decedent that are paid out by the affiant are properly applied. [1973 c.710 §7; 1979 c.340 §4; 1985 c.300 §5; 1989 c.148 §6; 1989 c.228 §5; 1991 c.191 §4; 2003 c.655 §61; 2015 c.146 §1]

**114.550 Summary review of administration of estate; hearing.** The affiant or any claiming successor of the estate who has not been paid the full amount owed such claiming successor may, within two years after the filing of an affidavit under ORS 114.515, file with the

probate court a petition for summary review of administration of the estate. A creditor may not file a petition under this section if the creditor received a copy of an affidavit filed under ORS 114.515 delivered or mailed to such creditor within 30 days after the date the affidavit was filed, the creditor was shown as a disputed creditor in the affidavit, and the creditor has not filed a petition for summary determination under ORS 114.540. The court shall hear the matter without a jury, after notice to the claiming successor and the affiant, and any interested person may be heard in the proceeding. Upon the hearing the court shall review administration of the estate in a summary manner and may order the affiant to sell property of the estate and pay creditors, to pay creditors of the estate from property of the estate or of the affiant, or to distribute property of the estate to the claiming successors, or may order any person who has received property of the estate to pay amounts owed to claiming successors of the estate in whole or in part. [1989 c.228 §8; 2003 c.196 §3]

**114.552 Filing fees.** (1) A person filing a petition for summary determination under ORS 114.540 or a petition for summary review of administration of estate under ORS 114.550, or any other appearance in a proceeding under ORS 114.505 to 114.560, must pay the filing fee established under ORS 21.135.

(2) If at any time after the filing of an affidavit under ORS 114.515 a petition for appointment of a personal representative is filed for the same estate, the person filing the petition must pay the fees established under ORS 21.170. [2011 c.595 §25]

**114.555 Effect of failure to appoint personal representative.** If a personal representative is not appointed within four months after the filing of the affidavit authorized by ORS 114.515, the interest of the decedent in all of the property described in the affidavit is transferred to the person or persons shown by the affidavit to be entitled thereto, and any other claims against the property are barred, except:

(1) As provided in ORS 114.540, 114.545 and 114.550; and

(2) For the purposes of a surviving spouse's claim for an elective share in the manner provided by ORS 114.600 to 114.725. [1973 c.710 §5; 1977 c.239 §4; 1989 c.228 §10; 2009 c.574 §21]

**114.560 Exclusive remedy.** The exclusive remedy of a person injured by the failure of the affiant or any claiming successor to comply with the requirements of ORS 114.505 to 114.560 shall be a summary determination under ORS 114.540, a summary review of administration under ORS 114.550, or appointment of a personal representative for the estate within the time allowed by ORS 114.555. [1989 c.228 §9]