SMALL ESTATES AFFIDAVIT

To file a Small Estates Affidavit, you will need the following:

1. **Affidavit of Claiming Successor**
   Testate if there is a will
   Intestate if there is no will

The affidavit can be purchased at office supply or stationery stores. Fill in the blanks and have the affidavit notarized. If you bring the affidavit to the courthouse with proper identification (i.e. valid driver's license), the clerk can witness your signature.

2. **Certified copy of the death certificate**.
   A photocopy cannot be accepted.

3. **The original will, if one exists.**

4. **Filing fee in the amount of $111.00. A certified copy of the affidavit will cost $5.00 (certification fee) plus $ .25 per page (copy fee).**

Note: For those persons filing for PERS distribution, a **certified** copy of the affidavit should be sent to PERS.

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Washington County Circuit Court
Probate Department
150 North First Avenue
Hillsboro, OR 97124

HOURS: 8:00 a.m. - 5:00 p.m
Monday - Friday

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PLEASE NOTE: *The court staff is not allowed to give legal advice*.
You must decide if the estate qualifies as a small estate. If you have questions about handling an estate, you should contact an attorney. The Oregon State Bar Lawyer Referral Service can provide names of probate lawyers in your area. The number for the referral service is 1-800-452-7636.

Small Estates Affidavit

Oregon law allows an abbreviated procedure for handling small estates which may otherwise require a probate proceeding. See ORS 114.505 through 114.560 (copy attached). This process is accomplished by filing an "Affidavit of Claiming Successor", sometimes referred to as a small estate affidavit.

Estates That Qualify:

An Affidavit of Claiming Successor may be filed if:

1. The estate has personal property that has fair market value of $75,000 or less, and/or
2. The estate has real property that has fair market value of $200,000 or less.

"Fair Market Value" is the value of the property on the open market (between unrelated parties), not reduced to reflect debts owed against the property.

"Real Property" is land or interests in land.

"Personal Property" is all other property that is not real property, including contracts for the sale of real property, bank accounts, vehicles, etc. The dollar amounts do not include any property that transfers without probate or the small estate procedure.

An Affidavit of Claiming Successor that includes a safe-deposit box as an asset ***cannot* be filed** until the requirements of ORS 114.537 and ORS 708A.655 have been met.

Who May File:

The small estate affidavit must be filed by one or more "claiming successors." A claiming successor is: 1. An heir or devisee of the decedent (depending on whether a will exists); 2. The person nominated as personal representative in the decedent's will. 3. A creditor of the estate who has not been paid within 60 days after the decedent's death (Note: If the decedent died without a will or heirs, the creditor must have the written authorization from the Division of State Lands); 4. The Director of the Division of State Lands, if there is no will and no heirs.

What to File:

You can buy printed forms at some stationery stores. If the decedent had a will, the affidavit will be for a "Testate Estate". If the decedent did not have a will, the affidavit will be for an "Intestate Estate". The decedent's "heirs" are the people who would inherit property under Oregon's laws of intestacy. The "devisee" of the decedent are people named to receive property in the decedent's will. An "interest" in decedent's property is what each heir/devisee is to receive from the estate.

In addition to the affidavit, a *certified* copy of the death certificate must be filed. If the decedent died testate, the *original* will must be filed with the affidavit.
The filing fee in Washington County is currently $111.00. To obtain a certified copy of the affidavit, the fee is $5.00 plus $.25 per page.

When to File:

The affidavit may not be filed until 30 days after the death of the decedent.

Where to File

The affidavit can be filed with the probate court for: 1) The county where the decedent died; 2) The county where the decedent lived or had a home at the time of death; 3) A county where property of the decedent is located at the time the affidavit is filed or was located at the time of the decedent's death.

Duties of the Claiming Successor:

The person who filed the affidavit is the affiant and has the following duties required by law:

1. Mail or deliver a copy of the affidavit to the following: a) The heirs and devisees. If there is a will, a copy should be included with the affidavit; b) Each creditor, if any, who has not been paid in full; c) Any person known to the affiant who asserts a claim against the estate; d) Department of Human Services, Estate Administration Unit, P.O. Box 14021, Salem, Oregon 97309-9913; e) Oregon Health Authority, 500 Summer Street NE E20, Salem Oregon 97301. This must be done within 30 days after filing the affidavit.
2. Take Control of the property. See ORS 114.535.
3. Pay estate claims and expenses from estate property.
See ORS 114.545(1)(c).
4. After four months from the date the affidavit is filed and if no personal representative is appointed for the estate, the affiant should transfer the estate property to the heirs and devisees. Before the four months expire, the affiant may transfer property as allowed by ORS 114.545 (1)(e) and (f).

Accountability of the Claiming Successor:

The affiant and any other claiming successor who receives property under the small estate statute is personally answerable and accountable to: 1) estate creditors, to the extent of the value of the property received; 2) to any personal representative appointed within four months after the affidavit is filed; 3) any omitted heir or devisee.

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)(c) 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]

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 pursuant to ORS chapter 411 or 414 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]

Note: Section 2, chapter 413, Oregon Laws 2009, provides:

Sec. 2. The amendments to ORS 114.515 by section 1 of this 2009 Act apply only to decedents who die on or after the effective date of this 2009 Act [January 1, 2010]. [2009 c.413 §2]

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 pursuant to ORS chapter 411 or 414 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]

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. 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 certificate 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 and the Oregon Health 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]

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; 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) 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.

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

(e) 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.

(f) 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) 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.

(3) 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 executed in the manner required by ORS chapter 93.

(4) 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. [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]

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]

708A.655 Procedures for opening safe deposit box after death of person who was sole lessee or last surviving lessee of box. (1) This section applies to the safe deposit box of any person who is the sole lessee or last surviving lessee of the box and who has died.

(2) Subject to ORS 114.537, upon being furnished with a certified copy of the decedent's death certificate or other evidence of death satisfactory to the Oregon operating institution, the Oregon operating institution within which the box is located shall cause or permit the box to be opened and the contents of the box examined at the request of an individual who furnishes an affidavit stating:

(a) That the individual believes the box may contain the will of the decedent, a trust instrument creating a trust of which the decedent was a trustor or a trustee at the time of the decedent's death, documents pertaining to the disposition of the remains of the decedent, documents pertaining to property of the estate of the decedent or property of the estate of the decedent; and

(b) That the individual is an interested person and wishes to open the box to conduct a will search or trust instrument search, obtain documents relating to the disposition of the decedent's remains, inventory the contents of the box or remove property of the estate of the decedent pursuant to a small estate affidavit filed under ORS 114.515.

(3) For the purpose of this section, "interested person" means any of the following:

(a) A person named as personal representative of the decedent in a purported will of the decedent;

(b) The surviving spouse or any heir of the decedent;

(c) A person who was serving as the court-appointed guardian or conservator of the decedent or as trustee for the decedent immediately prior to the decedent's death;

(d) A person named as successor trustee in a purported trust instrument creating a trust of which the decedent was a trustor or a trustee at the time of the decedent's death;

(e) A person designated by the decedent in a writing that is acceptable to the Oregon operating institution and is filed with it prior to the decedent's death;

(f) A person who immediately prior to the death of the decedent had the right of access to the box as an agent of the decedent under a durable power of attorney;

(g) If there are no heirs of the decedent, an estate administrator of the Department of State Lands appointed under ORS 113.235; or

(h) A person who is authorized to file an affidavit under ORS 114.515.

(4) If the box is opened for the purpose of conducting a will search, the Oregon operating institution shall remove any document that appears to be a will, make a true and correct copy of it and deliver the original will to a person designated in the will to serve as the decedent's personal representative, or if no such person is designated or the Oregon operating institution cannot, despite reasonable efforts, determine the whereabouts of such person, the Oregon operating institution shall retain the will or deliver it to a court having jurisdiction of the estate of the decedent. A copy of the will shall be

retained in the box. At the request of the interested person, a copy of the will, together with copies of any documents pertaining to the disposition of the remains of the decedent, may be given to the interested person.

(5) If the box is opened for the purpose of conducting a trust instrument search, the Oregon operating institution shall remove any document that appears to be a trust instrument creating a trust of which the decedent was a trustor or trustee at the time of the decedent's death, make a true and correct copy of it and deliver the original trust instrument to a person designated in the trust instrument to serve as the successor trustee on the death of the decedent. If no such person is designated or the Oregon operating institution cannot, despite reasonable efforts, determine the whereabouts of such person, the Oregon operating institution shall retain the trust instrument. A copy of the trust instrument shall be retained in the box. At the request of any interested person, a copy of the trust instrument may be given to the interested person.

(6) If the box is opened for the purpose of obtaining documents pertaining to the disposition of the decedent's remains, the Oregon operating institution shall comply with subsection (4) or (5) of this section with respect to any will or trust instrument of the decedent found in the box, and may in its discretion either:

(a) Make and retain in the box a copy of any documents pertaining to the disposition of the remains of the decedent and tender the original documents to the interested person; or

(b) Provide a copy of any documents pertaining to the disposition of the remains of the decedent to the interested person and retain the original documents in the box.

(7) If the box is opened for the purpose of making an inventory of its contents, the Oregon operating institution shall comply with subsection (4) or (5) of this section with respect to any will or trust instrument of the decedent that is found in the box, and shall cause the inventory to be made. The inventory must be attested to by a representative of the Oregon operating institution and may be attested to by the interested person, if the interested person is present when the inventory is made. The Oregon operating institution shall retain the original inventory in the box, and shall furnish a copy of the inventory to the interested person upon request.

(8) If the interested person is an affiant of a small estate affidavit filed under ORS 114.515 and delivers a certified copy of the affidavit in the manner provided by ORS 114.535, the Oregon operating institution shall provide to the affiant access to the decedent's property. The Oregon operating institution shall comply with subsection (4) or (5) of this section if a will or trust instrument of the decedent is found in the box. Subject to ORS 114.537, the Oregon operating institution shall allow the affiant to take possession of the personal property in the box.

(9) The Oregon operating institution may presume the truth of any statement contained in the affidavit required to be furnished under this section or ORS 114.535, and when acting in reliance upon such an affidavit, the Oregon operating institution is discharged as if it had dealt with the personal representative of the decedent. The Oregon operating institution is not responsible for the adequacy of the description of any property included in an inventory of the contents of a box, or for the conversion of the property in connection with actions performed under this section, except for conversion by intentional acts of the Oregon operating institution or its employees, directors, officers or agents. If the Oregon operating institution is not satisfied that the requirements of this section have been satisfied, the Oregon

operating institution may decline to open the box.

(10) If the interested person or affiant does not furnish the key needed to open the box, and the Oregon operating institution must incur expense in gaining entry to the box, the Oregon operating institution may require that the interested person or affiant pay the expense of opening the box.

(11) Any examination of the contents of a box under this section shall be conducted in the presence of at least one employee of the Oregon operating institution. [1999 c.506 §2; 2001 c.10 §1; 2003 c.395 §21; 2011 c.422 §4]