

# Best Practices in Accounting: How to Avoid Common Mistakes and Tips to Make Your Accountings Easier to Review

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## Marion County Courthouse

Salem, Oregon

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1. Use the proper accounting period. All transactions should be within this period.

UTCRC 9.160 (1) requires: The beginning of the accounting shall state:

- (a) The first and last date of the accounting period. For annual accountings, the last day of the accounting period shall be within 30 days of the anniversary of appointment.

2. Defining the accounting period.

- State in the first paragraph of the accounting the period.
- Best practice: Include the accounting period at the top of the Asset Schedule or in the header of each exhibit.
- The beginning balance of the accounting and each asset within the accounting is ALWAYS the ending balance of the last accounting or the Inventory value.
- An accounting is a *snapshot* of what the assets look like on two exact dates:
  - Estates: The first date is the date of death OR the last date of the prior accounting. The last date, not the day after the last date.
  - Conservatorships: The first date is the date of appointment OR the last date of the prior accounting. The last date, not the day after the last date.

3. Adjusting the accounting period. If you believe it is more cost effective to use an accounting period that is the last day of the month, in the first accounting, ask the court to modify the accounting period to be 2/1 to 1/31.

- Don't just start accounting in that manner - get PRIOR court approval via a motion and order to avoid difficulties.
- Do not ask for an accounting period that exceeds one year. Account and use an earlier date for the next accounting if you are requesting an adjustment to the accounting period.

4. Accounting Periods that Exceed One Year. There is no authority for an accounting to

exceed one year unless you get prior court permission, it is timely and has a basis such as moving from a mid month accounting date to a month end accounting date.

- If you file the accounting late, the ending date of the accounting is **not** three months into the late accounting (which causes you to be able to file three months later next year).
- The accounting end date remains within 30 days of the anniversary of appointment.

5. Consistency on End Date of Accounting. Too many accountings reviewed did not use the same end date for all assets. The accounting needs to consistently use the same end date.
  - If the statement is issued on a date other than the last day of the accounting period, you must do the math. This means subtract any receipts made after the last date of the accounting and do not add any disbursements subsequent to the last date.
  - Make sure you have a document that supports the value.
6. The Accounting Period in Estates begins on the DATE OF DEATH **not** the date of appointment OR taking possession of the assets from a prior fiduciary like a conservator or agent under a power of attorney.
7. Estimating Income. Add a description of the income to help you and your staff properly calculate this amount. Show the math right on your accounting.

FOR EXAMPLE:

*Social Security @ \$892/mo x 12 = 10,704*

*Pension @ \$650/mo X 12 = 7,800*

*Bank Interest based on prior year = 50*

*Annuity Payments @ 600/quarter =2,400*

*Estimate of Brokerage Account*

*Dividends based on total from prior year = 2,100*

*(This is easy to find on all brokerage account statements where they say dividends to date. You can prorate from the prior calendar year and add the current calendar year for the estimate).*

*Rent from property @ 930/mo x 12 =11,160*

*Total Estimated Income: 34,214*

8. A bond is a requirement of the statute. There is a duty for attorneys to be forthright with the courts. Don't try and ignore the requirement that all assets need to be bonded. Either increase the bond or address the matter directly and get permission to reduce the amount of the bond or restrict the assets.
9. YOU MUST INCLUDE THE DATE OF THE ORDER RESTRICTING ASSETS. The dates of all currently effective orders are required to be included. See UTCR

9.160(1)(b)(iv). Do not make the court look through numerous approvals of accountings to find it. If you do - you are slowing down the process for other attorneys and the court.

10. If you want to reduce a bond DO THE FOLLOWING:

- a. PROVIDE A VALID REASON FOR THE REDUCTION. If it is just a limited amount over such as \$5,000 or less, then explain that to the court. If the cost of adjusting the bond will exhaust the amount in excess of the current bond, include that information here.
- b. PROVIDE THE COURT WITH INFORMATION THAT REFLECTS THE ASSETS WILL OBJECTIVELY BE PROTECTED.
- c. TELL THE COURT THE DIFFERENCE BETWEEN THE AMOUNT THAT SHOULD BE BONDED, THE AMOUNT OF THE CURRENT BOND, AND THE AMOUNT YOU WANT THE BOND TO BE. Do the math for the court in a way the court can see it. If you detail it with a written narrative, also show the math for clarity. For example:

Total assets and estimated income	\$180,000
Current Bond	\$150,000
Difference	\$30,000

EXAMPLE: The fiduciary requests that the bond remain the same because the amount in excess of the current bond will be reduced as follows:

Attorney fees requested in this accounting	\$5,000
Conservator fees requested in this accounting	\$1,000
Care Bill due (month of the accounting)	\$7,000
Care Bill due (month following the accounting)	\$7,000

Resulting in a difference of \$10,000. The \$10,000 is related to the estimated income. Due to the cost of care the amount managed by the fiduciary at any one time will not exceed the amount of the bond.

11. Begin Your Draft of the Accounting with the Asset Schedule Document from the Inventory or the Prior Accounting and address each asset that existed on the Inventory or the prior accounting in the same order in which it appears on the inventory or prior accounting.
12. Waiver of Vouchers. Remember to include the request for waiver of the vouchers in the prayer of the motion to approve accounting and in the order or judgment approving the accounting.

13. Changes During the Accounting Period. Provide a narrative on the following:
- a. Sales or other dispositions of assets
  - b. Change in the name of the financial institution - include this information on the Asset Schedule and Exhibits as well.
  - c. Closing and opening accounts - explain the reason.
  - d. Change in needs of protected person that affect receipts or disbursements.
  - e. In estates, give the court information on the status of matters in estate that are keeping the estate open
  - f. Anything else that affects how the numbers and the assets might be perceived.
  - g. Disclose change in the amount of Social Security or Pension, increases in health insurance bills.
  - h. Explain substantial increases in cost of services or goods like prescriptions.
  - i. Better to over disclose than under disclose - especially in light of the holding in the Fuentes case discussed below.
  - j. It is helpful if you include in the narrative brief background information about a conservatorship. Important information includes:
    - The reason the protected person is financially incapable (age related dementia, stroke, minor, mental illness).
    - Age of minor children or persons with mental illness.
    - Relationship of the conservator to the protected person or minor.
    - Where the protected person lives.
    - Prior budget approvals.
    - Annuity payment terms summary.
    - Activities of the protected person that are reflected in the disbursements (such as horse back riding, lunch with a friend/paid companion, extra care givers, challenging behaviors).
14. Disclosures of Dealings.
- a. The court does not have total recall of all files. If the court previously approved a transaction which requires court approval (e.g., gift over statutory amounts, payment of fiduciary or attorney's fees, sale of the protected person's residence, creation of a trust, etc.), it is extremely helpful if the listing of the transaction includes a reference to the date of the order approving the transaction. This saves time searching through the file.
  - b. Report anything squishy. Out it and have your client own it and deal with it at the time. It is better to disclose and address the matter in the year of the accounting the transaction occurred as opposed to failing to disclose the issue and the court finding out later - which can be grounds for removal due to best interests of protected person.
  - c. Report changes in business practices for professional fiduciary.
  - d. Update professional fiduciary disclosures if there are any changes from the disclosures made at the time of appointment.

- e. Be sure you know which transactions require prior approval. If you find in preparing the accounting that one of these has inadvertently occurred, file a motion asking for approval with the accounting and provide an explanation of why the transaction occurred without prior approval. The most common ones the courts see are: payments to the fiduciary or the attorney for the fiduciary (ORS 125.095(3)); gifts of more than \$250 in a calendar year to one individual or exceeding an aggregate total of \$1000 in a calendar year (ORS 125.435); sale of the protected person's residence (ORS 125.430); payment of room and board to a conservator who is also the guardian (ORS 125.320(2)); conveyance or release of joint tenancy for assets like bank accounts (ORS 125.440(1)) and creation of trusts (ORS 125.440(2)). Other limitations are listed in ORS 125.440.
- f. NSF Charges: The fiduciary is charged with properly managing the protected person's finances. Absent some unusual situation like fraud or the protected person continuing to access accounts without the fiduciary's knowledge, there should not be bank fees for bounced checks, late payment fees, etc. The fiduciary will be expected to explain any such charges and will generally be required to reimburse the protected person for them unless due to circumstances beyond the fiduciary's control.
- g. Don't forget about *Fuentes v. Tillett*, 263 Or App 9, 326 P3d 1263 (2014). In *Fuentes*, the Court of Appeals found that where objections relate to matters not disclosed in the accountings, the orders approving the accountings cannot cut off the protected person's rights to complain about those undisclosed matters. Intermediate accounting orders are final only as to the conservator's liability regarding the matters that were actually presented to, and considered by, the probate court when it approved the interim accountings.
- h. Counsel representing a fiduciary should be sure that each interim accounting is full and complete, especially as to things that could look problematic. Without full disclosure, the accounting and the order approving it will not actually cut off the fiduciary's liability for misdeeds not disclosed in the accounting. The Court of Appeals did not give any direct guidance in *Fuentes* as to how specific and clear such disclosure must be, but obviously, the more clear and specific the disclosure the more likely it is that the order will have the preclusive effect that we all would expect it to have.
- i. In light of *Fuentes*, the best practice may be to keep all records until after the close of the proceeding - including retention of vouchers.
- j. ORS 124 contains the civil action for Elder Abuse. Avoid being a bystander who gets run over by the bus in an elder abuse action against the fiduciary. Withdraw if necessary. *Remember* Judges are mandatory elder abuse reporters and also

mandatory reporters (like all attorneys) to the Oregon State Bar for ethics violations. You have PLF insurance (hopefully in an amount that would cover your client's taking) and you are a deep pocket. Your flake of a fiduciary may not even have a bond. Even if the flaky fiduciary has a bond, it is unlikely that the bond is in an amount equal to three times the economic damages PLUS reasonable attorney fees and reasonable fees for the services of a successor guardian or conservator. The treble damages and attorney fees are the award for a successful civil action for Elder Abuse.

ORS 124.100(5) provides:

“(5) An action may be brought under this section against a person for permitting another person to engage in physical or financial abuse if the person knowingly acts or fails to act under circumstances in which a reasonable person should have known of the physical or financial abuse.”

ORS 124.110 provides:

- “(1) An action may be brought under ORS 124.100 (Definitions for ORS 124.100 to 124.140) for financial abuse in the following circumstances:
- (a) When a person wrongfully takes or appropriates money or property of a vulnerable person, without regard to whether the person taking or appropriating the money or property has a fiduciary relationship with the vulnerable person.
  - (b) When a vulnerable person requests that another person transfer to the vulnerable person any money or property that the other person holds or controls and that belongs to or is held in express trust, constructive trust or resulting trust for the vulnerable person, and the other person, without good cause, either continues to hold the money or property or fails to take reasonable steps to make the money or property readily available to the vulnerable person when:
    - (A) The ownership or control of the money or property was acquired in whole or in part by the other person or someone acting in concert with the other person from the vulnerable person; and
    - (B) The other person acts in bad faith, or knew or should have known of the right of the vulnerable person to have the money or property transferred as requested or otherwise made available to the vulnerable person.

k. UTCR 9.170 requires disclosure of certain transactions. The disclosures

required cover a broad range of transactions and reflect the UTCR committee's concern regarding many different kinds of actions by fiduciaries. It requires disclosures of any transactions "with a person or entity with whom the fiduciary has a relationship which could compromise or otherwise affect decisions made by the fiduciary." This provision specifically includes, but is not limited to, payment for goods, services, rent, reimbursement of expenses, or any other like transactions. UTCR 9.170(2). The rule requires disclosure of any payment for goods or services provided to either a person who is not engaged in an established business providing such goods or services to the public, or where such payment is at a rate higher than that ordinarily charged to the general public. UTCR 9.170(3).

15. Fees. If it is a conservatorship and the attorney fees are paid from any source in which the protected person has an interest or where the fiduciary later desires to be reimbursed, the attorney fees must be approved by the court.

**NOTE:** A protected person's beneficial interest in a trust is an asset the court may consider to be "funds of a person subjected to a protective proceeding" under ORS 125.095(1). This is based on *Helmig v. Farley, Piazza & Associates*, 218 Or App 622 (2008), where the court found a property interest sufficient to justify a conservatorship in the fact that, "There is clear and convincing evidence that Lea's beneficiary interest in the trust was not being properly managed."

16. Fees without Prior Court Approval. Taking fees without prior court approval is an ethical violation. *In re Altstatt*, 321 Or 324, 897 P 2d 1164 (1995). It is an estate case, but the rule is the same for protective proceedings and there have been subsequent disciplinary proceedings applying the concept in conservatorships. Here is the relevant section of the opinion of the Oregon Supreme Court.

*"Since Coe, this court has held that estate lawyers who take attorney fees from an estate without obtaining prior court approval engage in unethical conduct. See In re Devers, 317 Or. 261, 266, 855 P.2d 617 (1993) (lawyer licensed to practice law in both Oregon and Michigan who, while representing a personal representative in Michigan, collected a \$2,775 fee from the heirs but did not disclose the fee to the probate court, violated DR 2-106(A)); In re Phelps, 306 Or. 508, 517, 760 P.2d 1331 (1988) (lawyer disbarred for, inter alia, retaining attorney fees "although he had not obtained authorization from the court as required by ORS 116.183(1)"); In re Weidner, 320 Or. 336, 338-39, 341, 883 P.2d 1293 (1994) (lawyer violated DR 2-106(A) when he collected attorney fees from an estate without applying to the probate court or obtaining an order from*

*that court, as required by ORS 116.183).[5] The rule to be derived from those cases is that it is impermissible to collect attorney fees from an estate in probate without prior court approval. Any such attorney fee that is collected without approval is unlawful and, hence, an "illegal" fee. Therefore, the **accused's receipt of the attorney fees without court approval in this case was the collection of an illegal fee and was unethical conduct** under DR 2-106(A).[6]" [Emphasis added.]*

17. Notices. Make it easy for your staff and the court by creating a document that is a table with the interested persons' names and addresses. Then, block copy the names and addresses of interested persons and insert in any pleadings that require information on interested persons, insert in the notice itself, and insert in the proof of service. This will help your staff keep it consistent and help the court to efficiently review the accounting.
18. The Asset Schedule. Under the column for "Description of Asset" include: institution name, acct no., type of account, address for property and tax account no., in a conservatorship insert the date the abstract was recorded and filed with the court, for new assets the date of acquisition or disposition if it occurred during the accounting period.
19. Real Property Abstract. File a copy of the recorded abstract with the court contemporaneously with the inventory or as soon thereafter as reasonably possible. On the Asset Schedule and the Exhibit reference the date of recording and filing of the abstract and in the first accounting, if the abstract has not been separately filed or attached to the inventory then attach a copy to the Accounting Exhibit for the real property. See ORS 125.470(3) for the requirement of filing an abstract for any protective proceeding that includes real property. The form of the abstract is also statutory.
20. Disposition of Assets. If an asset is transferred, disposed of, the form changes (for example cash to a CD, it is abandoned or exhausted during the accounting period) - include this detail in the description on the asset schedule. It saves court staff from flipping back and forth between the narrative and the asset schedule and trying to put together sometimes poorly written narrative with numbers and exhibits.
21. For new financial accounts opened during the accounting period - the value of the later acquired asset column is zero. The account starts out with no assets/empty. An example of this is closing accounts in the protected person/decedent's own name, and moving the accounts to the new checking account for the fiduciary. These new accounts have a later acquired value of zero. Then, as part of the reconciliation of the new account, all receipts and disbursements are shown.
22. TOTAL ALL THE COLUMNS ON THE ASSET SCHEDULE AS REQUIRED BY UTCR 9.160(2)(b).



23. RESTRICTIONS. UTCR 9.160(2)(a)(i) requires that the description of any asset ON THE ASSET SCHEDULE that has been restricted pursuant to court order SHALL INCLUDE the DATE AND TITLE of the order. Best practice is to also include the date the formal Affidavit and Acknowledgment of Restriction was filed with the court. This serves as a way to double check you have done everything you need to do and simplifies review by the court allowing accountings to be processed more efficiently.
24. Itemize receipts and disbursements SEPARATELY, as required by UTCR 9.160, as well as providing the total of each list of receipts and disbursements at the end of each list. If you fail to do this, do not be surprised if your accounting gets returned to you for failure to comply with the UTCR.
25. For investment accounts, it is sufficient to show for each month "gain in investment value" or "loss in investment value." The court may request all the brokerage statements for any given accounting period.
26. UTCR 9.160(3)(a) requires the receipts and disbursements to be IN CHRONOLOGICAL ORDER - not organized by check number or some other method.
27. HUGE Common Error: List all transactions that occurred during the accounting period, and do not list transactions outside of the accounting period. In other words, if the accounting period ends on May 1, a check written on April 30 should be listed, but a check written May 2 should not be listed, even if it is shown on the bank statement that confirms the ending balance on May 1.
28. Do not make assumptions about what the court should know from the file or the prior accounting. On the description of disbursements, state the name of the payee and the purpose. If you just put "Walgreens" it is not clear whether it was a prescription, personal hygiene products or wine for the conservator. Use as much detail as possible. If you pay a doctor, use the term medical expense in the purpose.
29. REVIEW:
  - a. THE ATTORNEY SHOULD REVIEW the accounting exhibits specifically for prohibited disbursements. Prohibited disbursements include:
    1. Any payments to a guardian, conservator, or attorney without prior court approval. Cost reimbursement is OK with proper documentation. If a guardian or conservator is reimbursing themselves, the costs should be reasonable.
    2. Any payment of room or board to a guardian without prior court approval.
    3. Gifts greater than \$250 to one person or totaling more than \$1,000 combined among all donees for one accounting year.

- c. THE ATTORNEY SHOULD REVIEW the accounting exhibits specifically for transactions with an actual or potential conflict of interest. Conflicts of interest include:
  - 1. Loans to or from the conservator.
  - 2. Sales or purchases of assets with or to the conservator, a family member or close friend of the conservator or an employee of the conservator.
  - 3. Payments to relatives of the conservator for services provided to the protected person.
- d. THE ATTORNEY SHOULD REVIEW the math on the reconciliation and compare the beginning balance and the ending balance to the financial institution statement for each asset. If it is well organized by staff, this should be a quick process. If it is not a quick process for the reviewing attorney, then it is not a quick process for the court staff and you are creating delays for both the court and other attorneys.
- e. THE ATTORNEY SHOULD Verify that the closing statement on the old/disposed of asset matches the amount transferred to the other account. If you can't find it quickly, then it's also a problem for the court.

30. REQUIRED FORMAT FOR PLEADING AND EXHIBIT:

- a. Exhibits are required to be numbered with Arabic numbers like 1, 2, 3, 4. **Do not use letters like Exhibit A, B, C.** UTCR 2.010(9)(a).
- b. As per UTCR 2.010(4) On the first page of the pleading, there must be:
  - i. 2 inches at the top of the first page blank.
  - ii. All documents, except exhibits and wills, shall be prepared with a one-inch margin on each side.
- c. In pleadings, you must use distinct paragraphs. All paragraphs in a pleading or motion must be numbered consecutively **in the center of the page with Arabic numerals**, beginning with the first paragraph of the document and continuing through the last. **Subdivisions within a paragraph must be designated by lowercase letters, enclosed in parentheses, placed at the left margin of each subdivision.** UTCR 2.010(8).
- d. When an exhibit is appended to a filed document, each page of the exhibit must be identified by the word "Exhibit" or "Ex" to appear at the **bottom right-hand side of the exhibit** - not in the middle of the page or at the top of the page. **See the example in the UTCR.** Here is the link:  
[https://www.courts.oregon.gov/rules/UTCR/2017\\_UTCR\\_ch2.pdf](https://www.courts.oregon.gov/rules/UTCR/2017_UTCR_ch2.pdf)

- e. Captions are required to include the identification of the parties' roles. UTCR 2.010(11)(a)(iii). For example: Conservator's third annual Accounting, Protected Person's Objection, Objection of Interested Person, Objection of Devisee/Heir - the key is to identify who is filing the document in the caption title. It is also helpful to repeat this information in the footer. Try and make the name used in the caption and the footer consistent - to the extent the footer has room for the caption. If the footer does not have enough room for the entire caption, try to use the basic information from the caption like party identity, motion, accounting, objection to . . .
- f. All judgments and orders must have at least two lines of text. This is to avoid switching out the judge's signature page with a different text. See UTCR 2.010(12).
- g. Motions and orders must be submitted separately. UTCR 2.010(12)(c).
- h. If the order or judgment was prepared by a party, **the name and identity of the party submitting the order must appear therein, preceded by the words "submitted by."** For example:

*Submitted by:*

Heather O. Gilmore, OSB No. 902720  
Attorney for the Petitioner

Or

*Submitted by:*

Heather O. Gilmore, OSB No. 902720  
Attorney for Objector Smith

- i. Communication with the court is governed by the UTCR for probate and all other types of cases. The rule is found at 2.080 and it provides:

2.080      COMMUNICATION WITH COURT

- (1) Except as exempted by statute, UTCR 2.100, or UTCR 2.110, when written communication is made to the court, copies must simultaneously be mailed or delivered to all other parties and indication made on the original of such mailing or delivery.
- (2) All written communication to the court shall refer to the title of the cause and the case number.

New provisions for ORS 111-116 are coming that will support the obligation to

avoid ex parte communication.

31. UTCR 2.120 allows declarations in lieu of affidavits. Unless otherwise mandated by statute or UTCR, a declaration under penalty of perjury, in substantially the same form as specified in ORCP 1E, may be used in lieu of an affidavit required or allowed by these rules. UTCR 9.060 does provide that attorney fees are required to be supported by affidavits. However, UTCR 9.060 existed prior to the provision in UTCR 2.120 so the Marion County court will accept declarations in support of attorney fees that otherwise meet the requirements for attorney fee requests.

32. Make it easy to review your Exhibits:

- a. At the top of the first page of the Exhibit, identify the Exhibit number, description of the asset, and period of the accounting. This helps your staff and the court to properly and promptly review the exhibit. It can be simply done by block copying and pasting from the Asset Schedule or to the Asset Schedule.
- b. Be Consistent in the description of assets.
- c. Make sure to number your exhibits as required by the UTCR.
- d. It makes it easier for your staff and you to footnote transactions outside of the accounting period which appear in the statement. This reminds staff that anything outside of the accounting period date range does not belong in the exhibit. This does take a bit of time, but it also saves tremendous time when you and your staff are trying to figure out why the account does not balance. For example:

\* The following checks/deposits appear on the statement, but these transactions are outside of the accounting period and were either reported in the prior accounting period or will be reported in the next accounting period:

3/28/19	Social Security Deposit	1,253.00
4/1/19	Rent	600.00

**e. Use Adobe or a highlighter pen on the original document to highlight the financial institution statement. Highlight the following:**

- i. The beginning balance for the accounting period;**
- ii. The ending balance for the accounting period; and**
- iii. The date.**

f. For all assets, except brokerage house statements - only attach the statements for

the beginning balance of the accounting period and the ending balance for the accounting period. It is very time consuming for the court to sort through the statements for all months for all assets to try and find beginning and ending balances.

- g. If real property is an asset, attach one of the following:
    - 1. A copy of the tax assessor's bill for the period;
    - 2. The closing statement for the sale; or
    - 3. A print out from the tax assessor's website or a title company's website reflecting the current status of ownership.
  - h. Redact the beginning numbers of an account with Adobe or a black sharpie.
  - i. For accounts that don't issue statements (for example CDs) use the certification of funds on deposit form that is now in the UTCR forms as Form 9.180.3. Here is the link:  
[https://www.courts.oregon.gov/rules/UTCR/2015\\_UTCR\\_Appendix\\_of\\_Forms.pdf](https://www.courts.oregon.gov/rules/UTCR/2015_UTCR_Appendix_of_Forms.pdf)
33. ASAP Orders: If you have a critical deadline, please let the court know and the court will do its best to accommodate it. **Please include a comment in the comment field requesting expedition including information as to what your deadline is and the reason it is urgent.** You can increase your odds of getting your order signed on time by giving us sufficient lead time. If you give the court a week and advise the court that you have a critical deadline, the court should almost always be able to get you taken care of. If you give the court only a day or two, the court will do its best, but the court will not always be able to get your order signed in that time frame.
34. Turn Around Time in General. Generally, orders are processed within thirty days. "Processed" means the order is either signed, or the court sends information as to why it cannot be signed. If you have not heard after 30 days, please feel free to contact the court.
35. Responding to Questions Raised by the Court. If the court sends you an e-mail or a letter with questions, please answer them in the order they are numbered.
36. Late Filings also known as Extensions. A motion, supporting affidavit, and proposed order is required for all extensions.
37. ORS 116.083(1)(a) does not require interim accountings in probate estates to be approved by the court.
38. BEFORE YOU FILE A FINAL ACCOUNT OR VERIFIED STATEMENT IN LIEU OF A FINAL ACCOUNT make sure all the prerequisites to close the estate have been met.

The prerequisites required to be filed are as follows:

- a. Proof of Service of Notice to Heirs and Devisees.
  - b. Proof of Service to EAU - it is helpful to file this separately.
  - c. The actual Information to Heirs and Devisees.
  - d. Inventory.
  - e. Affidavit of Publication of Notice to Interested Persons.
  - f. Make sure that at least 4 months have expired since the first date of publication of notice to interested persons.
  - g. Personal Representative's Affidavit of Compliance with Search for Creditors. Don't forget - if you send a Notice of Right to Assert a Claim - the actual notices sent to the creditors must be filed with the court as part of the Affidavit.
  - h. Check the court's record to make sure that ALL creditors claims filed with the court have been satisfied or otherwise resolved by the court. If the creditor filed a claim with the court, please obtain and file a satisfaction of claim. If the creditor fails to provide you with a satisfaction of claim, file a copy of the check (front and back) that reflects the creditor was paid in full and tell the court which Asset and Exhibit the payment was made from. If the creditor's claim is not resolved, the creditor must be served with the final account. You cannot file a verified statement if there are unpaid creditors, even if you propose to pay them. 116.083(4)(a)(B).
  - i. Make sure the distribution language in your judgment matches the terms of the Will with regard to all gifts established under this Will. This includes tangible personal property and specific devises which have been adeemed. An adeemed specific gift is any gift such as "my boat" which the decedent did not own at date of death.
  - j. If any devisee is deceased - even if you advised the court of this in the petition, repeat this information in the final account.
  - k. Double check the ages of the heirs or devisees. Distributions to minors require a conservatorship - established before the filing of the final account - unless the distribution amount is less than \$30,000 and the funds are transferred to a custodian under ORS 126.822. In addition, the court may require a guardian ad litem to be appointed to receive notice on behalf of a minor. It is better to do this at the beginning versus requesting the appointment at the end when the statutory notice periods may begin to run again.
39. The ATTORNEY MUST REVIEW THE ACCOUNTING. In 2003 an attorney was suspended for 60 days for failing to review accountings before filing them. In re Roberts, 335 OR 476 (2003); the opinion does not recite the facts, which can be found in the Bar Bulletin archives here:  
<http://www.osbar.org/publications/bulletin/03augsep/discipline.html>

40. Verified Statements in Lieu of a Final Accounting do not require the filing fee of an accounting.
41. Final Matters for both Personal Representatives and Conservators:
  - a. Don't forget to file the Order of Discharge
  - b. Don't forget to exonerate the bond.
  - c. You must file receipts for each beneficiary.
  - d. Best practice is to file receipts for attorneys' fees and personal representative's fees.
42. Wrongful death proceeds are not subject to taxes or creditors' claims against the decedent's estate. ORS 30.030 through ORS 30.050. There are claims that are required to be paid in relation to the death as described in ORS 30.030. Personal injury proceeds are subject to creditors' claims.
43. Software Tips:
  - a. Exhibit making with Adobe
    - There are less expensive programs than Adobe that will let you do what you need to do with PDF's, including highlighting, redaction, adding footers, and adding comments
  - b. Excel set up and use for lawyers unfamiliar with the software
  - c. Word perfect spreadsheets
44. Final Accounting. Example attached.
45. Interim Accounting. Example attached.

## ASSET SCHEDULE

### Exhibit 1

Date of Appointment of Conservator: June 3, 2015

Accounting Period: June 3, 2015 to June 2, 2016

Ex	Description of Asset (include institution, acct no., type of account, address for property and tax account no., date of acquisition or disposition if it occurred during the accounting period)	Beginning Value	Value of Later Acquired Asset	Value at Disposition	Current (ending) value
2	Real Property including Residence located at 1234 Main Street, Salem, OR, 97301 Marion County Tax Assessor's Acct No. R891011 Abstract Recorded: 6/15/2015 Sold: 10/23/15. Proceeds deposited Schwab Acct Ex. 6.	225,000.00	0	240,000	0
3	Chase Bank Account No. ***456 Checking Account Owned by protected person prior to protective proceeding closed. Transferred to Ex. 5	25,090.00	0	23,011.00	0
4	Charles Schwab Account No. ***888 Brokerage Account Owned by protected person prior to protective proceeding closed. Transferred to Ex. 6.	350,000.00	0	350,000.00	0
5	U.S. Bank Account No. ***9910 Checking Account New Checking Account for Conservatorship	0	0		23,011.00
6	Charles Schwab Acct. No. ***1010 Brokerage Account New Brokerage Account for Conservatorship	0	0		590,000.00
<b>COLUMN TOTALS</b>		600,090.00	0	600,090.00	613,011.00

*\*The Exhibit Number corresponds to the Receipts and Disbursements exhibit number for each asset that has receipts or disbursements during the accounting period. For each restricted asset, include the date and title of the order. Attach additional pages if needed.*

**Exhibit 1**  
**Page 1 of 1**