

Case Number/Name: \_\_\_\_\_

Date: \_\_\_\_\_

### **OPENING PROBATE**

#### **Venue:** (ORS 113.015(1))

The decedent needs to have one of the following connections to Marion County:

\_\_\_ A domicile or a place of abode in Marion County at the time of death – ORS 113.015(1)(a)

\_\_\_ Has real property (i.e. real estate) or personal property (i.e. a toaster), in Marion County at the time of death or at the time the proceeding is commenced – ORS 113.015(1)(b)

\_\_\_ Died in Marion County - ORS 113.015(1)(c)

\_\_\_ In the county where a personal injury or wrongful death claim, as those terms are defined ORS 114.441, could be maintained - ORS 113.015(d)

#### **Preference in appointing PR:** (ORS 113.085)

\_\_\_ Named in Will - ORS 113.085(1)(a)

\_\_\_ If nominated PR is not serving, a declination or statement that the PR is deceased or incapacitated is needed

\_\_\_ Surviving spouse (only if a distributee under the Will) or nominee of surviving spouse - ORS 113.085(1)(b)

\_\_\_ Nearest of kin or nominee of nearest of kin - ORS 113.085(1)(c)

\_\_\_ Others: consult statute - ORS 113.085(1)(d), ORS 113.085(1)(e), ORS 113.085(1)(f), ORS 113.085(1)(g) **\*\*If decedent died wholly intestate and without known heirs, the State Treasurer should be appointed personal representative unless written authorization from the State Treasurer is attached.**

#### **PR requesting pre-approved PRs fees by a method determined other than authorized by ORS 116.173(3)**

#### **Bond:** (ORS 113.105)

\_\_\_ A bond can be waived under the following circumstances:

\_\_\_ Waived in will - ORS 113.105(2)(a)

\_\_\_ At the Court's discretion - all known heirs/devisees agree in writing and separate agreements are filed with court - ORS 113.105(4)

\_\_\_ All assets are restricted

\_\_\_ Court required bond - ORS 113.105(1)

- The Court has the discretion to require a bond, even if it is waived in the will

- Consider this for insolvent cases

- Out-of-state PR requires bond

- \_\_\_ Factors consider in setting amount of bond - ORS 113.105(1)(b)
  - \_\_\_ Value of the assets (real, personal, and intangible property) of the estate: ORS 113.105(1)(b)(A)
  - \_\_\_ Anticipated income during administrations: ORS 113.105(1)(b)(B)
  - \_\_\_ Probable indebtedness and taxes reduce bond amount: ORS 113.105(1)(b)(C)
  - \_\_\_ Amount can be reduced by the value of restricted assets. Restrictions on real property must restrict sale, conveyance, or encumbrance.

\_\_\_ **Intestate:** decedent left no will = order appoints PR, will is not admitted to probate. **\*List heirs below \*\*If decedent died wholly intestate and without known heirs, the State Treasurer should be appointed personal representative unless written authorization from the State Treasurer is attached.**

\_\_\_ **Testate \*List heirs and devisees below:**

- \_\_\_ Have the original will. If there is no original will, then:
  - \_\_\_ Need affidavit that original will was lost and not intentionally destroyed or revoked - ORS 113.035(10)
    - Presume decedent destroyed the will if one is not found (Evidence Rule)
- \_\_\_ Witnesses to the will - must be witnessed by two people. ORS 112.235 (1)(b)
- \_\_\_ Proof of will – testimony of attesting witnesses to will: ORS 113.055
  - \_\_\_ Affidavit of at least one of the attesting witnesses - ORS 113.055(1)
  - \_\_\_ If there is no witness that can sign an affidavit, other evidence that the signature of the testator or one of the witnesses is genuine - ORS 113.055(3)
- \_\_\_ Order appoints PR, admits will to probate.

**Heirs**

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**Devisees**

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