Do we need a probate?

Quite often, practitioners receive phone calls from anxious clients whose loved one has just died. They wonder what they have to do to transfer the decedent’s assets and pay creditors. Many assume they must initiate a probate, or have been advised by a banker or other helpful employee of a financial institution that to access the decedent’s accounts they need Letters Testamentary. I have had more than one phone call asking me where these letters can be obtained, and if I can draft them. The first step in advising these clients is determining whether a probate is necessary at all. Indeed, many estates qualify for a small estate proceeding, especially when jointly owned property or accounts with beneficiary designations are removed from the equation.

Small Estates

Statutory Authority.

Small estates are authorized by ORS 114.505 et seq. A small estate may be chosen if:

- The FMV of the entire estate is $275,000 or less;
- No more than $75,000 of the FMV of the estate is attributable to personal property; and
- No more than $200,000 of the FMV of the estate is attributable to real property.

ORS 114.515(2).

Only certain persons listed in ORS 114.515(1) may file a small estates affidavit. They are:

- One or more of the decedent’s claiming successors, as defined in ORS 114.560(2):
  - If the decedent died intestate, the heir or heirs, or if there are no heirs, an estate administrator of the Department of State Lands
  - If the decedent died testate, the devisee or devisees
  - Any creditor of the estate entitled to payment or reimbursement from the estate who has been paid or reimbursed the full amount owed to the creditor within 60 days after the decedent’s death.
- The person nominated as personal representative in the decedent’s will.
- 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, when the cost of such public assistance may be recovered from the estate.

The Affidavit.

The affidavit may be filed no earlier than 30 days after the decedent’s death, and it must contain the following information, set forth at ORS 114.525:

- The name, age, domicile, post office address, and Social Security number of the decedent;
• The date and place of the decedent’s death, and a certified copy of the death certificate must be attached
• Describe and state the FMV of all property in the estate, including a legal description of any real property;
• A statement that no application or petition for the appointment of a personal representative has been granted in Oregon;
• Whether the decedent died testate or intestate. If testate, the will must be attached to the affidavit.
• A list of the heirs of the decedent and each heir’s last known address. The affiant must include a statement 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.
• If the decedent died testate, list the names of the devisees and each devisee’s last known address. The affiant must include a statement that a copy of the affidavit showing the date of filing and a copy of the will will be delivered to each devisee or mailed to each devisee at the last-known address.
• A statement that 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
• A statement that reasonable efforts have been made to ascertain creditors of the estate
• A list of expenses of and claims against the estate that have yet to be paid; a statement 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 such creditor at the last-known address.
• A list of the names and addresses of creditors known by affiant to be asserting a disputed claim against the estate
• A statement 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
• A statement where claims may be presented and when such claims may be disallowed or barred.

Advantages/Disadvantages of a Small Estate.

A small estate proceeding is much less expensive than a full probate. The current filing fee for the affidavit is $105, and the attorney fees and other costs will be significantly less as well. However, a small estate proceeding is not available or advisable under certain circumstances. For example, if your affiant does not have the original will, you cannot file a small estate affidavit. The unwillingness of the claiming successors to file an affidavit may pose a problem, too. More importantly, there may be issues regarding the decedent’s creditors, potential claims of the estate, and even issues with heirs and their creditors. For example, if you have real property in the estate and heirs with judgment liens, a probate is probably the better way to go to avoid any issues with conveying clear title.

Joint Ownership.

When the decedent owned property jointly with another person, either as tenants by the entirety or with right of survivorship, title to the property vests in the survivor (provided the co-
owner survives by at least 120 hours). Record the decedent’s death certificate with the county in which any real property is located. Title to a vehicle that was owned with right of survivorship can be transferred to the survivor’s sole name by submitting the following to the DMV:

- The Oregon title
- Completed Form 735-226 (see attached)
- Proof of death
- Any other supporting documentation
- Title and registration fees

**Designated Beneficiaries.**

*Deposit accounts.*

Financial institutions will have their own process for distributing the account to the beneficiary named by the decedent. Typically, they will request a death certificate and often some sort of claim form to be completed by the beneficiary.

*Real property.*

There is a new option available in Oregon for the transfer of real property that doesn’t require joint ownership during life. This option is similar to investment or bank accounts that name a beneficiary in whom title will vest on the death of the original owner. This option is codified at ORS 93.948 *et seq.*, and is known as the Uniform Real Property Transfer on Death Act.

- Available for decedents dying on or after January 1, 2012. ORS 93.950.
- An individual may designate one or more:
  - Primary beneficiaries; and
  - Alternate beneficiaries if none of the primary beneficiaries is qualified or survives the transferor. ORS 93.953.
- A transfer on death deed is revocable. ORS 93.955. The capacity required to execute such a deed is the same as is required to make a will. ORS 93.959(1).
- A deed procured by fraud, duress, or undue influence is void. ORS 93.959(2).
- There is an 18 month time limit in which actions must be commenced to void a transfer on death deed due to lack of capacity or fraud, duress, or undue influence. ORS 93.959(3).
- Requirements of the deed:
  - All essential elements and formalities of a properly recordable inter vivos deed.
  - Must identify the designated beneficiary by name. *Cannot* identify beneficiaries as members of a class. ORS 93.961(2).
  - Must be recorded before the transferor’s death
- During the transferor’s life, the deed does not:
  - Affect the transferor’s interest in the property, including the right to transfer or encumber the property
  - Doesn’t affect transferor’s eligibility for any form of public assistance
  - Doesn’t subject property to claims of a designated beneficiary’s secured, unsecured, or future creditor. See ORS 93.967.
- Creditor claims
• A transferor’s estate may enforce a liability against property transferred to the extent that the transferor’s estate is insufficient to satisfy claims allowed by summary determination or a separate action against the estate or a statutory allowance to a surviving spouse or child.

• Proceedings must be commenced within 18 months of the transferor’s death.

• The Estate Administration Unit will have a right to assert a recovery action against the decedent’s estate and/or the beneficiary of the property. In fact, in August 2011, one employee of the EAU indicated that the EAU would take the position that the 18 month limit in the statute does not apply to the recovery process. This is, to the best of my knowledge, a still unsettled question, and one that was hotly debated by estate planning attorneys on the OSB list serve.

• Divorce or annulment will revoke a transfer on death deed in favor of transferor’s former spouse unless a different intent is evidenced.

Other options

For the most modest of estates, a probate or small estate proceeding may not be necessary at all. There are a number of people whose property interests at death are limited to a vehicle and a bank account. If a decedent’s estate is not being probated, title to the vehicle can be transferred by providing the following to the DMV:

• Notarized inheritance affidavits (Form 735-516, attached) listing who is awarded the vehicle

• The Oregon title

• If there is a security interest, evidence that it has been satisfied or obtain consent for the transfer

• Completed Form 735-226

• Any other supporting documents the DMV might require

• Title and registration fees

Likewise, even bank accounts do not necessarily need to go through probate or the small estate proceeding. For a decedent with less than $25,000 on deposit at all Oregon banks, one should consider whether the affidavit process under ORS 708A.430 is appropriate, thus bypassing the need for a small estate affidavit altogether. This statute provides for the closure of a decedent’s bank account and disbursement of the funds to the persons identified by statute. This list is different than intestate succession:

• To the surviving spouse on demand of the surviving spouse at any time after the death of the depositor;

• If there is no surviving spouse, to the Oregon Health Authority or the Department of Human Services, on demand of the authority or the department no less than 46 days and no more than 75 days from the death of the depositor when there is a preferred claim arising under ORS 411.708, 411.795 or 416.350;

• If there is no surviving spouse and no authority or department claim, to the depositor’s surviving children 18 years of age or older;

• If there is no surviving spouse, authority claim, department claim or surviving child 18 years of age or older, to the depositor’s surviving parents; or
If there is no surviving spouse, authority claim, department claim, surviving child 18 years of age or older or surviving parent, to the depositor’s surviving brothers and sisters 18 years of age or older.

Although a financial institution must determine the relationship of the affiant to the deceased depositor, if the financial institution pays the money in good faith, the financial institution is discharged and released from any liability or responsibility for the transfer. Still, a financial institution may require the transferee to furnish a written indemnity agreement, indemnifying the transferor against loss to the extent of the amount of the deposit.

Advising Clients During the Estate Planning Process

For many of us, it is a rarer occurrence that we are advising clients on how to avoid formal estate planning and probate. I would venture to guess that most of us are meeting with clients who have acknowledged the need for a will or trust. I have found the greatest resistance comes from clients who are low income and see an attorney’s fees as an unnecessary expense. Counseling such clients requires sensitivity to their financial situation as well as an understanding of whether their probate avoidance plan puts them at risk. Relying on probate avoidance techniques and failing to have a will increases the likelihood that the client’s ultimate wishes will not be satisfied. Many of these techniques can be undone by a (well-meaning!) fiduciary acting on the client’s behalf after incapacity. Property can be sold, or an unexpected inheritance/gift can push a bank account over the $25,000 limit. Family members who might have statutory preference to file a small estate affidavit or access a bank account may predecease your client. Poorly educated and/or overly nervous bankers can make things difficult, if not impossible.

Thus, a will is a safety net. Part of the education process is, in my opinion, reassuring clients that even if they want to avoid probate and have taken steps to do so, a well-drafted will can eliminate as much confusion as possible, and provide back-up to a probate avoidance plan in case something slips through the cracks. Further, explaining to clients that probate is not always a parade of horribles is helpful, too. I’ve found that explaining what the process is like in Oregon and how often estates become messy reassures most clients’ minds.

Occasionally, I will meet with a client who is contemplating adding a child or other friend to a bank account or even the deed to a home. There are no attorney fees for adding someone to a bank account, and only minimal costs for re-titling a vehicle or home. For clients who have little disposable income, or for those who are averse to paying attorneys, this is very attractive. Further, this plan may accomplish exactly what the client wants. If a client has one child, or only one loved or close friend he or she wishes to benefit, joint ownership may very well work, and will avoid the cost of estate planning and probate (and the delays inherent with the latter).

The downside to these plans are often glossed over by clients, who haven’t heard the horror stories we attorneys encounter, who have gotten bad advice from financial planners, or who simply don’t believe that a loved one could ever betray them. One risk is outright abuse or fraud by the new joint owner. An unscrupulous family member or “friend” can convince someone that being a joint owner on the account is a good way to assist with bills or provide other help. The wrongdoer will then have access to the account and can withdraw funds at will, and recovering the funds post-death is more difficult. For bank accounts, note that the surviving joint owner is rebuttably presumed to be entitled to the assets remaining on deposit after the
death of the other joint owner. ORS 708A.470. A recent discussion on the estate planning list serve was informative, as few attorneys could say that they had been successful in overcoming that presumption.

Even when the new joint owner is honest and well-intentioned, problems can arise. If the new joint tenant is sued or has a judgment against him, the jointly owned assets are vulnerable to liens or garnishment. Even if all goes well during life, the surviving joint owner may feel stingy after the first owner’s death. A promise to distribute the asset to the decedent’s other children or family members may be broken. Finally, the downside to this type of plan is how difficult it is for clients to undo the plan if they change their mind. Once vehicles and homes are titled in both names, both parties must agree to a transfer.

Unintended consequences can arise, too. One that is likely to occur with greater frequency in coming years is Medicaid eligibility. With a five year look back, a transfer to anyone other than a spouse can affect later eligibility for Medicaid. Sometimes, the transferee will be an adult disabled child and will have his own Medicaid eligibility in play. I hear many clients confuse the annual exclusion for gift taxes with the amount of money they can gift for Medicaid purposes, and occasionally, this misperception is enforced by financial planners or other professionals who are unfamiliar with Medicaid. Receipt of an asset may terminate much-needed assistance. Better planning would prevent these sorts of outcomes – and it’s probably less expensive to do it right the first time.

Other options

All things considered, a TOD/POD designation is preferable to outright joint ownership with a non-spouse. After all, such a designation can be changed at any time, and it does not limit the owner’s rights to the account during lifetime. However, be aware of the client who intends to leave different accounts to different children as a means of equalizing distribution from the estate. (This plan was actually recommended to a client of our firm by a financial planner.) Such a client can inadvertently distribute an asset with income tax implications (like an IRA) to only one of the beneficiaries. Worse, if one of the children has power of attorney, she could easily pay the parent’s expenses from the other assets, preserving the value of the one she will receive on the parent’s death.

The transfer on death deed is new in Oregon and was hotly debated by estate planning attorneys last summer. Many estate planning attorneys are concerned about the problems that this form of deed might create, notably related to title insurance, creditors’ claims, and the ever-enjoyable issues surrounding tenancies in common that will arise when, for example a decedent’s adult children don’t behave post-death as the decedent might have hoped. Addressing the TOD deed option with clients will likely require careful counseling and disclosures, as the money saved by such a deed may end up lining the pockets of a real estate lawyer down the road.

Conclusion

Being well-versed in the alternatives to probate can save clients money and worry. It is an opportunity for practitioners to help clients avoid costly mistakes, and develop a relationship of trust with them and their family members.
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.

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.

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.

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.

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
(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;

(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.

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.

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.

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.

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.
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.

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.

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.

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.

UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

93.948 URPTDA 1. Short title. ORS 93.948 to 93.979 may be cited as the Uniform Real Property Transfer on Death Act.

93.949 URPTDA 2. Definitions. As used in ORS 93.948 to 93.979:

(1) “Beneficiary” means a person that receives property under a transfer on death deed.

(2) “Designated beneficiary” means a person designated to receive property in a transfer on death deed.

(3) “Joint owner” means a joint tenant, a tenant by the entirety and any other co-owner of property that is held in a manner that entitles one or more of the owners to ownership of the whole of the property upon the death of one or more of the other owners.

(4) “Person” means an individual, corporation, business trust, personal representative, trustee, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.

(5) “Property” means an interest in real property located in this state.
(6) “Transfer on death deed” means a deed that conveys property to a designated beneficiary at the transferor’s death.
(7) “Transferor” means an individual who makes a transfer on death deed.

93.950 URPTDA 3. Applicability. ORS 93.948 to 93.979 apply to a transfer on death deed made before, on or after January 1, 2012, by a transferor dying on or after January 1, 2012.

93.951 URPTDA 4. Nonexclusivity. ORS 93.948 to 93.979 do not affect any method of transferring property otherwise permitted by the law of this state.

93.953 URPTDA 5. Authority for transfer on death deed. (1) An individual may transfer property to one or more designated beneficiaries effective at the transferor’s death by a transfer on death deed.
(2) The individual may designate one or more:
   (a) Primary beneficiaries; and
   (b) Alternate beneficiaries who take the property only if none of the primary beneficiaries is qualified or survives the transferor.

93.955 URPTDA 6. Revocability of transfer on death deed. A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

93.957 URPTDA 7. Nontestamentary nature of transfer on death deed. A transfer on death deed is nontestamentary.

93.959 URPTDA 8. Capacity of transferor; fraud, duress or undue influence. (1) The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.
(2) A transfer on death deed or an instrument revoking a transfer on death deed that is procured by fraud, duress or undue influence is void.
(3) A proceeding must be commenced not later than 18 months after the transferor’s death to:
   (a) Contest the capacity of the transferor; or
   (b) Determine whether a transfer on death deed or an instrument revoking a transfer on death deed is void because it was procured by fraud, duress or undue influence.

93.961 URPTDA 9. Requirements. (1) A transfer on death deed:
   (a) Except as provided otherwise in paragraph (b) of this subsection, must contain the essential elements and formalities of a properly recordable inter vivos deed;
   (b) Must state that the transfer to the designated beneficiary is to occur at the transferor’s death;
   (c) Must identify the designated beneficiary by name; and
   (d) Must be recorded before the transferor’s death in the deed records in the office of the county clerk for the county in which the property is located.
(2) A beneficiary designation that identifies beneficiaries only as members of a class is void.

93.963 URPTDA 10. Notice; delivery; acceptance; consideration. A transfer on death deed is effective without:
   (1) Notice or delivery to, or acceptance by, the designated beneficiary during the transferor’s life; or
   (2) Consideration.

93.965 URPTDA 11. Revocation by instrument; revocation by act. (1) An instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:
   (a) Is acknowledged by the transferor after the transferor acknowledges the deed to be revoked;
   (b) Is recorded before the transferor’s death in the deed records of the county in which the property is located; and
(c) Is one of the following:
   (A) A transfer on death deed that revokes the deed, or part of the deed, expressly or by inconsistency;
   (B) An instrument of revocation that expressly revokes the deed, or part of the deed; or
   (C) An inter vivos deed that transfers an interest in property that is the subject of a transfer on death deed to the extent of the interest in property transferred by the inter vivos deed.

(2) If authority is expressly granted by the transfer on death deed, a designated agent of the transferor may revoke the transfer on death deed as provided in this section.

(3) If a transfer on death deed is made by more than one transferor, revocation by one transferor does not affect the transfer of another transferor’s interest in property by the transfer on death deed.

(4) After a transfer on death deed is recorded, the deed may not be revoked by a revocatory act on the deed.

(5) This section does not limit the effect of an inter vivos transfer of the property.

93.967 URPTDA 12. Effect of transfer on death deed during transferor’s life. During a transferor’s life, a transfer on death deed does not:

(1) Affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

(2) Affect an interest or right of a designated beneficiary, even if the designated beneficiary has actual or constructive notice of the deed;

(3) Affect an interest or right of a secured, unsecured or future creditor of the transferor even if the creditor has actual or constructive notice of the deed;

(4) Affect the eligibility of the transferor or a designated beneficiary for any form of public assistance;

(5) Create a legal or equitable interest in favor of the designated beneficiary; or

(6) Subject the property to claims or process of a secured, unsecured or future creditor of the designated beneficiary.

93.969 URPTDA 13. Effect of transfer on death deed at transferor’s death. (1) Except as provided otherwise in the transfer on death deed and subject to ORS 107.115, 112.455 to 112.555 or 112.570 to 112.590 and ORS 93.981, 93.983 and 93.985, when a transferor dies, the following rules apply to property that is subject to a transfer on death deed and owned by the transferor at death:

(a) A designated beneficiary’s interest in the property:
   (A) Is transferred to the designated beneficiary in accordance with the deed if the designated beneficiary survives the transferor; or
   (B) Lapses if the designated beneficiary does not survive the transferor.

(b) If the transferor has identified multiple designated beneficiaries to receive concurrent interests in the property:
   (A) Concurrent interests are transferred to the designated beneficiaries in equal and undivided shares with no right of survivorship; and
   (B) The share of a designated beneficiary that lapses or fails for any reason is transferred to the remaining designated beneficiaries in proportion to the interest of each designated beneficiary in the remaining part of the property held concurrently.

(2) A beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens and other interests to which the property is subject at the transferor’s death, including a claim or lien by a state authorized to seek public assistance reimbursement if assets of the transferor’s probate estate are insufficient to pay the amount of the claim or lien.

(3) If a transferor is a joint owner and is:
   (a) Survived by one or more joint owners, the property subject to a transfer on death deed belongs to the surviving joint owners with a right of survivorship.
   (b) The last surviving joint owner, the transfer on death deed is effective.

(4) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.
93.971 URPTDA 14. Disclaimer. A beneficiary may disclaim all or part of the beneficiary’s interest as provided by ORS 105.623 to 105.649.

93.973 URPTDA 15. Liability for creditor claims and statutory allowances. (1) A transferor’s estate may enforce a liability against property transferred at the death of the transferor by a transfer on death deed to the extent that the probate estate of the transferor is insufficient to satisfy:
   (a) A claim allowed or established by summary determination or separate action under ORS 114.505 to 114.560 or under ORS chapter 115 against the probate estate; or
   (b) A statutory allowance to a surviving spouse or child under ORS 114.015.
   (2) If the same transferor transfers multiple properties by one or more transfer on death deeds, the liability under this section is apportioned among the transferred properties in proportion to the net value of each transferred property at the transferor’s death.
   (3) A proceeding must be commenced not later than 18 months after the transferor’s death to enforce the liability under this section.

93.975 URPTDA 16. Form of transfer on death deed. ORS 93.948 to 93.979 govern the effect of an instrument used to create a transfer on death deed. The following form may be used to create a transfer on death deed:

TRANSFER ON DEATH DEED
(ORS 93.948 to 93.979)

NOTICE TO OWNER

You should carefully read all information on this form. You may want to consult a lawyer before using this form.

This form must be recorded before your death or it will not be effective.

TAX STATEMENT

Until a change is requested, the county clerk shall send tax statements to the following address:

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:
Printed name: _________
Mailing address: _________
Printed name: _________
Mailing address: _________

Legal description of the property:

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me:

Printed name: _________
Mailing address, if available:
ALTERNATE BENEFICIARY
(Optional)

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me:

Printed name: 
Mailing address, if available:

TRANSFER ON DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above. Before my death, I have the right to revoke this deed.

SPECIAL TERMS
(Optional)

RETURN OF DEED

After recording, the county clerk shall return the deed to:

SIGNATURE OF OWNER OR OWNERS
MAKING THIS DEED

Signature: 
Date: 
Signature: 
Date: 
State of 
County of 
This instrument was acknowledged before me on (date) by . (name(s) of person(s))

(Signature of notarial officer)
(Seal, if any)

Title (and Rank)
My commission expires:

93.977 URPTDA 17. Form of instrument revoking transfer on death deed. ORS 93.948 to 93.979 govern the effect of an instrument used to revoke a transfer on death deed. The following form may be used to create an instrument revoking a transfer on death deed:

INSTRUMENT REVOKING
TRANSFER ON DEATH DEED
NOTICE TO OWNER

This instrument revoking a transfer on death deed must be recorded before you die or it will not be effective. This instrument is effective only as to the interests in the property of the owner who signs this instrument.

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Instrument of Revocation:
Printed name: __________
Mailing address: __________
Printed name: __________
Mailing address: __________

Legal description of the property:

REVOCATION

I hereby revoke all my previous transfers of this property by transfer on death deed.

RETURN OF INSTRUMENT

After recording, the county clerk shall return the instrument to: __________

SIGNATURE OF OWNER OR OWNERS
MAKING THIS DEED

Signature: __________
Date: __________

Signature: __________
Date: __________

State of __________
County of __________
This instrument was acknowledged before me on ___ (date) by __________. (name(s) of person(s))

(Signature of notarial officer)
(Seal, if any)

Title (and Rank)
My commission expires: __________

93.981 Effect of divorce or annulment on transfer on death deed. Unless a transfer on death deed provided for under ORS 93.948 to 93.979 evidences a different intent of the transferor, the divorce or annulment of the marriage of the transferor after the recording of the transfer on death deed revokes all provisions in the transfer on death deed in favor of the former spouse of the transferor and the effect of the transfer on death deed is the same as though the former spouse did not survive the transferor.

93.983 Transfer to parent who deserted or neglected transferor. (1) Property that would pass by transfer on death deed under ORS 93.948 to 93.979 from a deceased transferor to a parent of the deceased transferor shall pass and be vested as if the parent had predeceased the transferor if the transferor was an adult when the transferor died and:
   (a) The parent of the transferor willfully deserted the transferor for the 10-year period immediately preceding the date on which the transferor became an adult; or
   (b) The parent neglected without just and sufficient cause to provide proper care and maintenance for the transferor for the 10-year period immediately preceding the date on which the transferor became an adult.

(2) Property that would pass by transfer on death deed under ORS 93.948 to 93.979 from the deceased transferor to a parent of the deceased transferor shall pass and be vested as if the parent had predeceased the transferor if the transferor was a minor when the transferor died and:
   (a) The parent of the transferor willfully deserted the transferor for the life of the transferor or for the 10-year period immediately preceding the date on which the transferor died; or
   (b) The parent neglected without just and sufficient cause to provide proper care and maintenance for the transferor for the life of the transferor or for the 10-year period immediately preceding the date on which the transferor died.

(3) For the purposes of subsections (1) and (2) of this section, the court may disregard incidental visitations, communications and contributions in determining whether a parent willfully deserted the deceased transferor or neglected without just and sufficient cause to provide proper care and maintenance for the transferor.

(4) For the purposes of subsections (1) and (2) of this section, in determining whether the parent willfully deserted the deceased transferor or neglected without just and sufficient cause to provide proper care and maintenance for the deceased transferor, the court may consider whether a custodial parent or other custodian attempted, without good cause, to prevent or to impede contact between the transferor and the parent whose transfer would be forfeited under this section.

(5) The transfer of property, as defined in ORS 93.949, to a parent of a deceased transferor may be forfeited under this section only pursuant to an order of the court entered after the filing of a petition under ORS 93.985. A petition filed under ORS 113.035 may not request the forfeiture of a transfer by a transfer on death deed of a parent of a deceased transferor under this section.

93.985 Forfeiture of transfer by parent who deserted or neglected transferor. (1) A petition may be filed in probate proceedings to assert that the interest in property, as defined in ORS 93.949, transferred by a transfer on death deed to a parent of a deceased transferor is subject to forfeiture under ORS 112.047. A petition may be filed under this section only by a person who would be benefited by a forfeiture of the parent’s share.

(2) A petition under this section must be filed not later than:
   (a) Four months after the date of delivery or mailing of the information described in ORS 113.145 if that information was required to be delivered or mailed to the person on whose behalf the petition is filed; or
   (b) Four months after the first publication of notice to interested persons if the person on whose behalf the petition is filed was not required to be named as an interested person in the petition for appointment of a personal representative.

(3) The petitioner has the burden of proving the facts alleged in a petition filed under this section by clear and convincing evidence.
708A.430 Disposition of deposit on death of depositor. (1) On the death of a depositor of a financial institution, if the deposit is $25,000 or less, the financial institution may, upon receipt of an affidavit from the person claiming the deposit as provided in subsection (2) of this section, pay the moneys on deposit to the credit of the deceased depositor:

(a) To the surviving spouse on demand of the surviving spouse at any time after the death of the depositor;

(b) If there is no surviving spouse, to the Oregon Health Authority or the Department of Human Services, on demand of the authority or the department no less than 46 days and no more than 75 days from the death of the depositor when there is a preferred claim arising under ORS 411.708, 411.795 or 416.350;

(c) If there is no surviving spouse and no authority or department claim, to the depositor’s surviving children 18 years of age or older;

(d) If there is no surviving spouse, authority claim, department claim or surviving child 18 years of age or older, to the depositor’s surviving parents; or

(e) If there is no surviving spouse, authority claim, department claim, surviving child 18 years of age or older or surviving parent, to the depositor’s surviving brothers and sisters 18 years of age or older.

(2) The affidavit shall:

(a) State where and when the depositor died;

(b) State that the total deposits of the deceased depositor in all financial institutions in Oregon do not exceed $25,000;

(c) Show the relationship of the affiant to the deceased depositor; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased depositor out of the deposit to the full extent of the deposit if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.

(3) In the event the depositor died intestate without known heirs, an estate administrator of the Department of State Lands appointed under ORS 113.235 shall be the affiant and shall receive the moneys as escheat property.

(4) The financial institution shall determine the relationship of the affiant to the deceased depositor. However, payment of the moneys in good faith to the affiant discharges and releases the transferor from any liability or responsibility for the transfer 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 deceased depositor.

(5) A probate proceeding is not necessary to establish the right of the surviving spouse, authority, department, surviving child, surviving parent, surviving brothers and sisters or an estate administrator of the Department of State Lands to withdraw the deposits upon the filing of the affidavit. If a personal representative is appointed in an estate where a withdrawal of deposits was made under this section, the person withdrawing the deposits shall account for them to the personal representative.

(6) When a financial institution transfers moneys under subsection (1) of this section, the transferor may require the transferee to furnish the transferor a written indemnity agreement, indemnifying the transferor against loss for moneys paid to the extent of the amount of the deposit.

(7) This section is subject to the rights of other parties in the account under ORS 708A.455 to 708A.515.

708A.470 Multiple-party accounts; disposition of deposit upon death of party or trustee; effect of will. (1) Sums remaining on deposit in a bank at the death of a party to a joint account are rebuttably presumed to belong to the surviving party or parties as against the estate of the decedent. If there are two or more surviving parties, their respective ownerships during their lifetimes shall be in proportion to their previous ownership interests under ORS 708A.465 augmented by an equal share for
each survivor of any interest the decedent may have owned in the account immediately before death. The right of survivorship continues between the surviving parties.

(2) If the account is a P.O.D. account:

(a) On the death of one of two or more original parties, the rights to any sums remaining on deposit are governed by subsection (1) of this section.

(b) On the death of the sole original party or the survivor of two or more original parties, any sums remaining on deposit belong to the P.O.D. payee or payees, if surviving, or to the survivor of them if one or more die before the original party. If two or more P.O.D. payees survive, there is no right of survivorship in the event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(3) If the account is a trust account:

(a) On the death of one of two or more trustees, the rights to any sums remaining on deposit are governed by subsection (1) of this section.

(b) On the death of the sole trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a contrary intent. If two or more beneficiaries survive, there is no right of survivorship in the event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(4) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account, other than to transfer the rights of the decedent as part of the estate of the decedent.

(5) A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will.

(6) The rebuttable presumption under subsection (1) of this section may be overcome by evidence establishing that:

(a) The deceased party intended a different result; or

(b) The deceased party lacked capacity when the joint account was established.

(7) A bank is not liable for distributing sums remaining on deposit at the death of a party to a joint account to a surviving party or parties in accordance with the account agreement unless, prior to distributing sums to a surviving party or parties:

(a) The bank has received notice of an adverse claim under ORS 708A.435; and

(b) The adverse claimant proceeds as required under ORS 708A.435.