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Initial Responsibilities and Liabilities of Personal Representatives

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[8] Chapter 7: Initial Responsibilities and Liabilities of Personal Representative[1]

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Chapter 7: INITIAL RESPONSIBILITIES AND LIABILITIES OF PERSONAL REPRESENTATIVE

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§ 7.1 SCOPE OF LAWYER'S REPRESENTATION OF PERSONAL REPRESENTATIVE

§ 7.1-1 Personal Representative Is the Client

"Under Oregon law, a lawyer for a personal representative represents the personal representative and not the estate or the beneficiaries as such." OSB Formal Ethics Op No 2005-62; *see also* OSB Formal Ethics Op No 2005-119. The lawyer is employed to assist the personal representative in the administration of the estate, and "to perform acts of administration . . . on behalf of the personal representative." ORS 114.305(18); *see also* ORS 113.135.

The same rule applies to lawyers representing trustees. "[W]hen an attorney undertakes to represent a fiduciary, he or she represents only the fiduciary and does not, at the same time, maintain an attorney-client relationship with those to whom the fiduciary-client owes a duty." *Roberts v. Fearey*, 162 Or App 546, 553, 986 P2d 690 (1999). The lawyer may represent the personal representative in their fiduciary capacity and in their individual capacity as a beneficiary, even if the personal representative's interest as a beneficiary is in conflict with the interests of other beneficiaries. OSB Formal Ethics Op No 2005-119; *see The Ethical Oregon Lawyer* § 5.3-4 (OSB Legal Pubs 2015) (identifying the lawyer's client in the estate context).

A lawyer representing the personal representative may also represent one or more beneficiaries, if doing so does not create a current-client conflict under Oregon RPC 1.7. *See* OSB Formal Ethics Op No 2005-119, n 2.

PRACTICE TIP

A lawyer should be careful not to blur the lines of representation by accidentally appearing to represent estate or trust beneficiaries other than the fiduciary. *See Roberts*, 162 Or App at 553. Blurring the lines of representation can be a problem if beneficiaries call the personal representative's lawyer with questions about the estate. The lawyer should advise the beneficiaries in the first written communication about the estate that the lawyer represents the personal representative, and not the beneficiaries or the estate itself. Reminders may be necessary if beneficiaries appear not to understand.

PRACTICE TIP

The Oregon State Bar Professional Liability Fund has dealt with claims regarding lawyers that worked with personal representatives who allowed their personal goals as beneficiaries to interfere with their duty to the estate. Lawyers should remind the personal representative of the personal representative's fiduciary duties in that situation.

In *Reynolds v. Schrock*, 341 Or 338, 340, 142 P3d 1062 (2006), the Oregon Supreme Court held that a lawyer may not be held jointly liable with a client for the client's breach of a fiduciary duty "unless the third party shows that the lawyer was acting outside the scope of the lawyer-client relationship."

See § 7.1-2 to § 7.1-3.

§ 7.1-2 Clear Division of Responsibilities

Early in the process of the administration of an estate, the lawyer should discuss with the personal representative the division of responsibilities, including the role of other professionals, such as accountants and investment advisors. The summary of duties mailed by the probate court to each individual fiduciary may provide a useful framework for discussing the personal representative's duties and the hidden pitfalls. Personal representatives who fail to follow basic fiduciary principles are a frequent cause of conflict in probate administration. *See* § 7.1-3 (lawyer's instructions).

The lawyer should confirm whether there is any local requirement for a nonprofessional personal representative to attend a class outlining the fiduciary role and duties of a personal representative. *See, e.g.*, Multnomah Supplementary

Local Rule (SLR) 9.076 (requiring a nonprofessional fiduciary to register for an education program within 15 days of appointment and to complete the class within 60 days of appointment); Clackamas SLR 9.076 (register within 15 days and complete class within 90 days); Lane SLR 9.093 (requiring nonprofessional guardians and conservators, but not personal representatives, to participate in an educational program).

§ 7.1-3 Lawyer's Instructions for Personal Representative

Generally, the lawyer should discuss the following matters with the personal representative:

(1) *Outline Obligations.* The lawyer should explain the major obligations of a personal representative: (a) to discover, preserve, and collect income from all assets; (b) to notify all interested persons; (c) to pay appropriate obligations and taxes; (d) to distribute the assets in accordance with the decedent's will or the laws of intestate succession; and (e) to close the estate.

(2) *Division of Responsibilities Regarding Assets.* The lawyer should discuss with the personal representative the division of responsibilities between the lawyer and the client, and with other professionals, with respect to locating assets, preparing the inventory, preparing income tax returns, preparing estate tax returns, determining values, and deciding whether appraisers are to be employed.

(3) *Commingling of Assets.* Many personal representatives, particularly a personal representative who is the major beneficiary, will not understand the need to strictly segregate the estate's funds from the personal representative's own funds. The lawyer should stress that courts look harshly on commingling assets and emphasize the need to keep funds separate.

(4) *Bank Accounts.* The estate will need a separate bank account or accounts, and all of the decedent's bank accounts should be transferred to the estate account. The bank will require certified copies of the letters testamentary and a taxpayer identification number to open the new account(s). Banks and savings institutions will usually permit withdrawal of savings certificates and certificates of deposit without penalty following the death of the depositor. However, the personal representative should be certain of the institution's policy before withdrawing time deposits.

PRACTICE TIP

Asking the accountant who will be filing the estate's fiduciary income tax return to obtain the taxpayer identification number for the estate will get the accountant involved early in the process, allowing the accountant to make tax-planning suggestions that the personal representative can use to the estate's advantage when planning the administration of the estate.

PRACTICE TIP

Because of the importance of maintaining accurate records for preparing the final account, it is good practice for the lawyer to keep the checkbook for the personal representative, to handle all deposits, to write checks for the personal representative's signature, and to set up the account to prohibit the issuance of a debit card, use of counter checks, or ATM access by the personal representative. Setting up the accounts in this way will make it less likely that the personal representative could commingle funds and will simplify the preparation of any required accountings, because the lawyer will have access to account information and a full catalog of checks written.

(5) *Income Tax Returns.* The personal representative should locate and review at least the last three years of the decedent's income tax returns for future use. *See* § 7.6-2 to § 7.6-3(a).

The lawyer should also remind the personal representative of the tax accounting responsibilities during the probate period and discuss the estate with the accountant to address any tax problems that can reasonably be anticipated.

PRACTICE TIP

The lawyer should advise the personal representative to consider hiring the decedent's accountant to prepare the decedent's final income tax return. The Oregon State Bar Professional Liability Fund has dealt with claims in which it is alleged that the accountant did not have clear instructions to file the decedent's final return.

(6) *Life Insurance Claims.* The personal representative has no direct responsibility for collecting life insurance proceeds payable to named beneficiaries, because life insurance policies are not assets of the estate. However,

the personal representative is often the person best positioned to know what policies exist, to find records of the contracts, and to render assistance in collecting any insurance proceeds. Insurance payable to the estate (either because there is no beneficiary or because the estate is named) will be treated as any other probate asset.

Because IRS Form 712 (Life Insurance Statement), issued by the insurance company, must be filed if a federal or Oregon estate tax return is required, the personal representative or lawyer should request Form 712 from the life insurance company, in writing, to ensure receipt in a timely manner. Most insurance companies will not issue Form 712 unless requested to do so. *See* § 12.3-12(e) (Schedule D—Insurance).

PRACTICE TIP

If the estate or personal representative is not a beneficiary of a policy, the insurance company likely will not discuss the policy with the personal representative, and Form 712 should be requested by a beneficiary. If this is the case, the personal representative should send the company a death certificate and contact information for the named beneficiaries.

(7) *Other Insurance.* The personal representative should examine the decedent's other insurance policies, such as fire, theft, casualty, liability, health, and accident policies. When appropriate, the personal representative should make insurance claims. In general, coverage of assets passing into the hands of the personal representative must be maintained, and increased when inadequate. Among the matters to be determined are

(a) whether the insurance is for replacement cost and, if not, whether the coverage should be changed to replacement cost;

(b) if the policy is for replacement cost, whether the amount of insurance is sufficient for the replacement cost provision and, if the amount is insufficient, whether it should be increased;

(c) whether the homeowners' insurance policy will be continued if the home is vacant (the decedent's policy will address coverage after vacancy; some policies will cancel the insurance after the property has been vacant for a specified period of time);

PRACTICE TIP

Many policies covering vacant property exclude coverage for damage from vandalism, malicious mischief, or broken glass. Most policies also exclude coverage for damage to or resulting from any plumbing, heating, air-conditioning, or sprinkler system while the dwelling is vacant or unoccupied, unless reasonable care has been used to maintain the heating system or to shut off the water supply and drain the system and appliances of water. The personal representative should discuss the policy terms with the insurance agent, including the policy's definition of *vacant* and, if necessary, change policies or add a rider providing better coverage.

(d) whether earthquake and flood insurance should be obtained;

(e) what the policy limits are for property such as silver, jewelry, furs, guns, etc. (if coverage is inadequate, the personal representative should determine whether such items should be specially insured or moved to safer storage);

(f) whether liability policies, such as the automobile policy, should be continued;

(g) whether any umbrella policy should be continued or, if none exists, whether one should be obtained; and

(h) whether business interests, commercial properties, or other special interests require consultation with the insurance adviser.

PRACTICE TIP

The inventory (*see* § 7.4-1 to § 7.4-5) should be assembled quickly, even if values are not yet finally established, so that the insurance coverage can be reviewed again in light of the property discovered. The personal representative should keep in mind that fair market value and replacement cost are not the same.

Some insurers automatically extend coverage under the homeowners' policy to the legal representative of the deceased, but only with respect to the premises and property of the deceased covered under the policy at the time of death. Some policies define *insured* to include the person with proper temporary custody of the property until appointment and qualification of a legal representative.

The personal representative should immediately notify the insurance carriers of the decedent's death, and have them substitute the personal representative as the insured. The personal representative should also consider whether the provisions of ORS 114.215(1) (regarding the immediate vesting of title in the heirs or devisees) suggest that the heirs or devisees should also be named as insureds.

PRACTICE TIP

The personal representative should cancel policies of insurance that cover risks that ended with the death of the decedent, such as health and accident, medical and dental, and errors and omissions policies. The personal representative should also stop any automatic withdrawals of premiums from the decedent's bank account, and apply for the refund of any unearned premiums.

(8) *Social Security.* In addition to the Social Security benefits that may be payable to survivors, there may also be medical, hospital, and funeral benefits payable to the personal representative or the surviving spouse.

PRACTICE TIP

If a decedent's Social Security benefit payment is received for a month following the month of death of the decedent, it must be returned. When Social Security payments are deposited directly to an account, it is prudent to leave the account open long enough, and with enough funds, for any superfluous payment to be returned to the Social Security Administration. In most cases, the funeral home will notify the Social Security Administration of the decedent's death.

(9) *Mail (Physical and Electronic).* Arrangements should be made for forwarding the decedent's mail to the personal representative. Important information concerning assets and liabilities may be lost if the mail is not forwarded. For the decedent's online activities, the personal representative may attempt to access the decedent's email and other online accounts, but the terms of service for online accounts may restrict access by someone other than the decedent.

(10) *Outline of Estate Plan.* It is useful for the attorney to prepare an outline of the dispositive terms of the will early in the process, especially if there are specific or general devises, tax-planning trusts, or other complicating factors. Preparing the

outline may uncover issues that would otherwise be missed. The outline becomes a useful guide during administration, as well as for explaining the will to the personal representative and devisees. The earlier an outline is prepared, the more useful it will be. Understanding and planning the administration of the estate at a very early date improves efficiency and avoids mistakes.

(11) *Cash Flow.* Many estates experience cash flow problems. It is helpful to determine as early as possible the cash needs of the estate, and to develop a strategy to generate that cash. The personal representative should consider bills, court fees, support needs, income and estate taxes, and any other cash needs that may arise.

(12) *Asset Sales.* Specifically devised property cannot be sold without authorization in the will or a court order. ORS 114.325(2)(b). The personal representative should consider avoiding the sale of certain property that family members may want if other property is available to sell. The Oregon State Bar Professional Liability Fund has received claims because the personal representative sold property that family members wanted, or conducted a sale without giving the beneficiaries a chance to bid on the property.

(13) *Disclaimers.* Disclaimers are powerful postmortem planning tools if used properly. To be effective for gift tax purposes, most disclaimers must be made within nine months after the decedent's death. *See* IRC § 2518(b)(2). Property becomes ineligible for a disclaimer if the disclaimant has accepted the benefits of the property. IRC § 2518(b)(3). The Oregon Uniform Disclaimer of Property Interests Act, ORS 105.623–105.649, does not impose a time limit on disclaimers. *See* ORS 105.645. For a more complete discussion of disclaimers, see § 8.3-2(a) to § 8.3-2(f), § 12.2-5(f)(4) (marital-deduction disclaimers), § 12.3-3 (disclaimer procedures), and § 12.4-4(f) (generation-skipping transfer disclaimer). The Oregon State Bar Professional Liability Fund has dealt with claims concerning disclaimers that were not filed within the time limits imposed by IRC § 2518(b)(2).

(14) *Environmental Hazards.* As early as possible, the lawyer should try to determine whether any property belonging to the decedent has been environmentally contaminated. *See* § 7.2-4(a)(3); § 10.8-4 to § 10.8-4(d).

PRACTICE TIP

Under OAR 340-122-0140, only financial institutions serving in a fiduciary capacity, but not individuals serving as personal representatives, are protected from potential personal liability if the estate includes contaminated property. Therefore, the nominated individual personal representative should consider declining the appointment if the estate might contain contaminated property. In light of the favorable treatment given to banks and trust companies by the rule, it may be wise to nominate a bank or a trust company as the personal representative.

(15) *S Corporation Stock.* If the decedent owned stock in an S corporation, the lawyer should immediately consider the effect of the decedent's will on the S election. The transfer of shares to an ineligible shareholder, such as a corporation, partnership, nonresident alien, and certain trusts, can cost the corporation its S election. *See* IRC § 1361(b)(1); *see also* 1 *Advising Oregon Businesses* § 13.2-5(b) to § 13.2-5(c)(6) (OSB Legal Pubs 2017) (regarding eligible shareholders of a subchapter S corporation). In addition, care must be taken to avoid having more than 100 shareholders. IRC § 1361(b)(1)(A).

(16) *Bond Requirements.* Generally, the personal representative must obtain a bond by a surety "qualified under ORCP 82 D to G." ORS 113.105(1)(a). No bond will be required if the will provides for waiver of the bond, or if the personal representative is the sole heir or devisee, although a court may nonetheless require a bond in either case for good cause, such as the protection of creditors. ORS 113.105(2)(a)–(b). Corporate personal representatives are exempted from the bond requirement by ORS 113.105(6), as are certain other persons described in ORS 113.105(2)(c).

The court has discretion to waive the bond requirement upon the personal representative's request, if the request states the reasons why waiver is requested and describes the known creditors of the estate. ORS 113.105(4).

The court also has discretion to waive or reduce the bond if it receives written confirmation that a financial institution holding estate property can distribute it only by court order, or if the court has restricted distribution of property without court approval. ORS 113.105(5). Local practice in some counties is to require a bond of out-of-state personal representatives.

COMMENT

Under prior law (ORS 113.105(4) (2015)), the court had authority to waive the bond only when all devisees and heirs consented. The authority of the court to waive the bond has become more general, and potentially broader. Although the consent process among heirs and devisees is no longer explicitly mentioned, written consent by such parties will still be compelling supporting evidence to include in a request to waive the bond under ORS 113.105(4) when setting forth the reasons why a waiver is requested.

The personal representative's own liability insurance company may be a source for the bond. The personal representative must make sure that the bond is large enough to cover all estate assets and any increase from income. *See* ORS 113.105(1)(b).

PRACTICE TIP

Some bonding companies may attempt to make the lawyer jointly liable by asking the lawyer to cosign the bond or verify the personal representative's financial status. Lawyers should refuse to do so.

(17) *Investment Options.* The lawyer should alert the personal representative to the investment obligations under the Oregon Uniform Prudent Investor Act (ORS 130.750–130.775). *See* *Administering Trusts in Oregon* ch 9 (OSB Legal Pubs 2018) (trust investments). Hiring an appropriate investment adviser to assist the personal representative with investment decisions, in compliance with ORS 130.680(1), will help protect the personal representative from liability. *See* ORS 130.680(3).

(18) *Elective-Share Claims.* If the decedent left a surviving spouse, the personal representative should consider whether an elective-share claim by the spouse under ORS 114.600 to 114.725 is possible. If it is, then as early as possible the personal representative should calculate the value of the augmented estate (*see* ORS 114.630) and the value of assets passing to the surviving spouse to determine whether an elective-share claim can succeed. If a claim appears to be possible, the personal representative should look for any evidence of a waiver of the elective-share right by the spouse. *See* ORS 114.620.

(19) *Parental Neglect.* If a parent is an intestate heir of the deceased, the personal representative should consider whether the parent may be deemed to have predeceased the decedent under the parental-neglect statute. ORS 112.047.

PRACTICE TIP

The lawyer should send a letter to the personal representative summarizing the basic items of instruction outlined above, as well as summarizing the basic provisions of the will.

§ 7.2 LIABILITIES OF PERSONAL REPRESENTATIVE

§ 7.2-1 Fiduciary Duties

The personal representative is a fiduciary and should understand the implications of that fact. ORS 114.265; *see* ORS 114.395. Among other things, the personal representative is under a duty to follow the testator's intent as expressed in the will (*see* ORS 112.227); to collect income from property of the estate; and to preserve, settle, and distribute the estate "with as little sacrifice of value as is reasonable under the circumstances." ORS 114.265.

Although the Oregon Uniform Trust Code is not directly applicable to personal representatives, the rules applicable to trustees under the Uniform Trust Code should be followed by the personal representative. *See* ORS 114.395. The Uniform Trust Code provides that a fiduciary has the following duties: (1) a duty of good faith, ORS 130.650; (2) a duty of loyalty, ORS 130.655; (3) a duty of impartiality, ORS 130.660; (4) a duty of care, ORS 130.665; (5) a duty to administer the trust at reasonable cost, ORS 130.670; (6) a duty to use any special skills or expertise that the fiduciary has or represents that they have, ORS 130.675; (7) a duty to keep accurate records, ORS 130.695; (8) a duty to enforce and defend claims, ORS 130.700; and (9) a duty to inform and report to beneficiaries, ORS 130.710.

A fiduciary is not required to be an expert in every aspect of estate administration and, therefore, is able to delegate certain duties, notably for investment decisions, as long as the fiduciary exercises due care in the selection of the delegatee. ORS 130.680(1).

If the personal representative breaches a fiduciary duty, the personal representative is liable "for resulting damage or loss to the same extent as a trustee of an express trust." ORS 114.395; *see Moser v. Van Winkle*, 103 Or App 398, 402–03, 797 P2d 1063 (1990); *see also* ORS 130.800 (remedies for breach of

trust); ORS 130.805 (damages for breach of trust). The court may surcharge the personal representative for "any loss caused by any breach of duty and deny in whole or in part the right of the personal representative to receive compensation." ORS 116.123. Several specific instances in which a personal representative might be personally liable are listed in ORS 116.063. *See* § 10.4-1(c)(1) to § 10.4-1(c)(3) (liability regarding investment of estate funds).

In *Estate of Grove v. Selken*, 109 Or App 668, 676–77, 820 P2d 895 (1991), *rev den*, 312 Or 676 (1992), the probate court imposed a surcharge on the personal representative for loss caused by his breach of a fiduciary duty. The lawyer who drafted the decedent's will became the personal representative. In his capacity as personal representative, the lawyer found a document purporting to create a joint tenancy between the decedent and the lawyer's wife as to part of the decedent's extensive book collection. *Estate of Grove*, 109 Or App at 671. The lawyer assumed that the books passed to his wife by operation of law, but did not disclose the existence of the document or of his assumption about its impact until the final accounting. A devisee objected to the final accounting. The probate judge surcharged the lawyer as personal representative for the value his wife had received from the sale of the books, and for excessive payments that he made to his relatives and to himself as lawyer for the estate. *Estate of Grove*, 109 Or App at 672–73.

The Oregon Court of Appeals affirmed, agreeing that, as personal representative, the lawyer had breached his fiduciary duty when he (1) failed to notify the devisees about the document regarding the books within a reasonable time; (2) decided to accept the document at face value, despite the conflict of interest; (3) acted as his wife's agent in the book sale; and (4) commingled estate property with property that he thought belonged to his wife. *Estate of Grove*, 109 Or App at 675–76. The Court of Appeals also affirmed that ORS 116.123 gives the probate court authority to enter a personal judgment against a personal representative for breach of a fiduciary duty. *Estate of Grove*, 109 Or App at 676.

§ 7.2-2 Removal of Personal Representative

A personal representative who has been "unfaithful to or neglectful of the trust" may be removed. ORS 113.195(2); *see* § 5.2-9(a) to § 5.2-9(b). Removal can be a difficult goal to achieve. In *Roley v. Sammons*, 215 Or App 401, 412, 170 P3d 1067, *rev den*, 343 Or 690 (2007), the court agreed that removal is justified "when

the personal interests of the personal representative conflict with a substantial and legitimate interest of a beneficiary of the estate." However, on the facts, the Court of Appeals found that the personal representative's self-serving (and incorrect) conclusion that he was the sole devisee of the residue of the estate was "merely a difference of opinion [between him and the other devisee] about the meaning of the will." Therefore, the Court of Appeals reversed the probate court's removal of the personal representative. *Roley*, 215 Or App at 412.

§ 7.2-3 Personal Liability to Persons Interested in the Estate

Under ORS 114.395, ORS 116.063(3), and ORS 116.123, the personal representative is liable for the breach of a fiduciary duty to the extent of the loss or damage caused. Any person who seeks to impose personal liability on the personal representative must prove some loss or damage. The personal representative will be liable for the breach of a fiduciary duty to the same extent as the trustee of an express trust in similar circumstances would be liable. ORS 114.395; *see Moser v. Van Winkle*, 103 Or App 398, 403, 797 P2d 1063 (1990) (the personal representative was liable for the costs and attorney fees incurred in investigating a breach-of-duty claim).

§ 7.2-4 General Principles of Liability

The principles regarding a trustee's liability do not apply directly to personal representatives, but personal representatives, like trustees, are fiduciaries, so the principles applicable to trustees are analogous and provide guidance for personal representatives. *See* ORS 114.395; *see also* ORS 130.650–130.910. The general principles of trustee liability are spelled out in the *Restatement (Second) of Trusts* §§ 201–226A (1959), as supplemented by the *Restatement (Third) of Trusts* §§ 90–92 (2007) (Prudent Investor Rule). For an in-depth commentary on the *Restatement*, see Austin Wakeman Scott, William Franklin Fratcher & Mark L. Ascher, 3 *Scott and Ascher on Trusts* ch 24 (5th ed 2007).

In general, a trustee is in breach of the trust if the trustee intentionally or negligently violates a duty owed to a beneficiary. In some situations, however, a trustee can be liable even though not personally at fault, because of a mistake of law. *See Restatement (Second) of Trusts* § 226, cmt b.

§ 7.2-4(a) Specific Situations

§ 7.2-4(a)(1) Basis for Liability

A personal representative is responsible for, and is chargeable in the personal representative's accounts for, the entire estate of the decedent that comes into the personal representative's possession at any time, including income. ORS 116.063(1). The personal representative may also be responsible for any property that is not part of the estate, if the personal representative commingles it with the assets of the estate, and for any property received in the personal representative's capacity under a duty imposed by law. ORS 116.063(2).

The personal representative may be liable for any loss to the estate arising from neglect or unreasonable delay in collecting assets, neglect in paying over money or delivering property of the estate, failure to pay taxes as required by law, or failure to close the estate within a reasonable time. ORS 116.063(3)(a)–(c). In a case that preceded the Probate Code, *Fitchard v. Estate of Hirschberg*, 128 Or 317, 330, 272 P 906 (1928), *reh'g den*, 128 Or 338, 274 P 505 (1929), the court stated that, under some circumstances, delay in closing an estate may make a personal representative liable to the beneficiaries for interest on funds denied to the beneficiaries.

The personal representative may also be liable for (1) embezzlement, (2) commingling estate assets with other property, (3) unauthorized self-dealing, (4) wrongful acts or omissions of a copersonal representative that the personal representative could have prevented by exercising ordinary care, and (5) "[a]ny other negligent or willful act or nonfeasance in the administration of the estate by which loss to the estate arises." ORS 116.063(3)(d)–(g).

See *Hughes v. White*, 289 Or 13, 18, 609 P2d 365 (1980), in which the personal representative's obligation to properly manage a claim for wrongful death was included under ORS 116.063(2)(b) (property received in the personal representative's capacity under a duty imposed by law).

See also *Restatement (Second) of Trusts* §§ 205–206 (1959), under which a trustee may be surcharged for any loss or depreciation in value of trust property, when the trustee violates the duty of loyalty or is otherwise in breach of trust.

The personal representative is not personally liable for (1) "[d]ebts due the decedent or other assets of the estate that remain uncollected without the fault of the personal representative," or for (2) "[l]oss by the decrease in value or

destruction of property of the estate if the loss is caused without the fault of the personal representative." ORS 116.073.

§ 7.2-4(a)(2) Continuation of Decedent's Business

If the decedent was engaged in any business or venture at the time of death, the Probate Code authorizes the personal representative to (1) continue the business or venture to preserve its value, (2) incorporate or otherwise change the business form of the business or venture, or (3) discontinue and wind up the business or venture. ORS 114.305(21)–(23).

If the personal representative chooses to operate the business, the personal representative must comply with payroll tax laws and other statutory requirements of the business. The failure to do so could result in personal liability.

For a more detailed discussion of issues with continuing the decedent's business, see § 10.10-1 to § 10.10-4(d)(2).

§ 7.2-4(a)(3) Environmental Concerns

Under both federal law and state law, an owner or operator of contaminated property may be personally liable for the costs of cleaning up the contamination. *See generally* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC §§ 9601–9675; ORS ch 465 (hazardous waste and hazardous materials). Both federal law and Oregon law make exceptions for owners who acquire the property by inheritance or bequest. 42 USC § 9601(35)(A)(iii); ORS 465.255(3)(b). These exceptions would not apply if the person is also an operator of the property as defined in the statutes.

Congress has limited the personal liability of fiduciaries for environmental contamination, as long as negligence by the fiduciary does not cause or contribute to the contamination. 42 USC § 9607(n)(3)–(4). Similar protection is provided with respect to underground storage tanks under 42 USC § 6991b(h)(9)(B).

In Oregon, under rules established in accordance with ORS 465.440 (granting administrative authority to specify when property held by a fiduciary is exempt from environmental liability), no such protection is available for individuals serving as fiduciaries. The Department of Environmental Quality defined by rule (OAR 340-122-0140) instances in which a bank or trust company holding property in a fiduciary capacity can be exempt from personal liability for environmental contamination, but the rule does not include individuals.

PRACTICE TIP

Given that ORS 465.440 protects only corporate fiduciaries, and not individuals who act as fiduciaries, and that a claim of environmental contamination may arise long after the estate assets have been distributed, lawyers should warn personal representatives about the risks associated with environmentally contaminated property.

For a discussion of a trustee's potential liability as the owner of real property with environmental contamination, see *Administering Trusts in Oregon* § 19.3-3(a), § 19.3-4 to § 19.3-4(e) (OSB Legal Pubs 2018) (liability as an owner; the fiduciary exemption). For an overview of the major issues raised in real estate transactions as a result of the statutes that impose strict liability on property owners for the cleanup of hazardous substances, see 4 *Oregon Real Estate Deskbook* ch 40 (OSB Legal Pubs 2015) (environmental considerations in real estate transactions). *See also* 1 *Damages* ch 19 (OSB Legal Pubs 2016) (invasions of real property including environmental damage).

§ 7.2-4(a)(4) Search for Claimants

The personal representative's obligation to search for, and provide notice to, persons who may have a claim against the estate is detailed in ORS 115.003 to 115.004. *See* § 7.3-3(a) to § 7.3-3(b). The search for claimants is necessary due process to allow the bar on claims not asserted within the short time periods provided in the Probate Code. *See Tulsa Professional Collection Services, Inc. v. Pope*, 485 US 478, 487–88, 108 S Ct 1340, 99 L Ed 2d 565 (1988). The failure to diligently follow these procedures may result in personal liability for the personal representative. ORS 115.004(1). However, persons who receive distributions or other payment from the estate indemnify the personal representative and the surety to the extent that the distribution or payment would have been reduced if the personal representative had properly handled the claims procedure. The indemnity may extend to the attorney fees and other costs for defending against allegations that the personal representative handled the claims improperly. ORS 115.004(3)–(4).

Claims against the estate are discussed more fully in chapter 9.

§ 7.2-4(a)(5) Copersonal Representatives

The relationship between copersonal representatives and the rights of third parties dealing with one personal representative is described in ORS 114.415. A

personal representative may be liable for the "[w]rongful acts or omissions of copersonal representatives that the personal representative could have prevented by the exercise of ordinary care." ORS 116.063(3)(f).

§ 7.2-4(b) Defenses to Liability

§ 7.2-4(b)(1) Discharge after Partial Distribution

The distribution of estate assets in accordance with an order of partial distribution is a full discharge of liability of the personal representative for all property properly covered in the order, except as otherwise provided in the Probate Code. ORS 116.033.

§ 7.2-4(b)(2) Approval of Final Account and Discharge

The court's approval of the personal representative's final account relieves the personal representative from liability for the administration of the estate. ORS 116.123. *But see* ORS 116.213 (described below). The court's approval is conclusive as to persons interested in the estate.

After the personal representative files receipts for the distribution of assets as ordered in the general judgment, the court will enter a supplemental judgment discharging the personal representative. The discharge bars most actions against the personal representative. ORS 116.213.

However, a release and discharge of the personal representative are subject to the right of appeal; the right of certain claimants to bring an action against the personal representative within two years of the decedent's death (ORS 115.004(5)); the power of the court to vacate its final orders (ORS 116.123); and the power of the court to allow an action against the personal representative within one year after discharge, if the supplemental judgment of discharge was obtained through fraud or misrepresentation by the personal representative, or if the claim was based on mistake, inadvertence, surprise, or excusable neglect of the claimant (ORS 116.213).

§ 7.2-4(b)(3) Laches

Because a probate proceeding is equitable in nature, the equitable defense of ignoring a stale claim may be available. *See In re Webster's Estate*, 74 Or 489, 494, 145 P 1063 (1915). Long delay by a claimant in raising objections against a personal representative can render the claim invalid, even when there is evidence of questionable actions on the part of the personal representative. *Taylor v. Rubey*, 2 Or App 277, 287, 467 P2d 132 (1970).

However, in *Dahlhammer v. Schneider*, 197 Or 478, 497, 252 P2d 807 (1953), the Oregon Supreme Court declined to allow a laches defense when the plaintiff's delay did not result in any disadvantage to adverse parties. The plaintiff in the *Dahlhammer* case brought an action to cancel conveyances by the administrator to herself six years after the administrator's death and 10 years after the plaintiff became of age. The court found that the plaintiff was "entirely ignorant as to the proceedings in the estate of her deceased father and as to [her] guardianship proceedings until after she had conferred with her attorney" years later. *Dahlhammer*, 197 Or at 497. Based on the promises of the administrator (who was the plaintiff's mother) and assurances given to her by her stepfather that "she would in the future receive her full interest in her deceased father's estate, [the plaintiff] was in a way lulled into a false sense of security." *Dahlhammer*, 197 Or at 497. Considering all the facts and circumstances, the court declined to say that the plaintiff's claim was barred by laches. *Dahlhammer*, 197 Or at 497–98.

§ 7.2-4(b)(4) Consent, Waiver, and Estoppel

A beneficiary may waive the beneficiary's rights to bring an action against a personal representative by acquiescing in, or having actual knowledge of, acts constituting a breach, and thus will be estopped from asserting the beneficiary's rights. *Lelek v. Hemshorn*, 184 Or 364, 376–77, 198 P2d 597 (1948). In *Lelek*, 184 Or at 376, a beneficiary was barred from objecting to the manner in which the decedent's business continued to be operated, because she was fully aware of the business's operation for years without raising any objection.

§ 7.2-4(c) Liability to Third Persons

§ 7.2-4(c)(1) Liability in Contract

In dealing with third parties, the relationship between the personal representative and the estate "is that of an agent for a disclosed principal." ORS 114.405(1). The "personal representative is not personally liable on contracts properly entered into in the fiduciary capacity in the course of administration of the estate." ORS 114.405(2). However, the personal representative may, by agreement, become liable on such contracts. ORS 114.405(2).

A person who deals with the personal representative without having actual knowledge that the personal representative is exceeding the personal representative's authority is protected under ORS 114.385. The protection afforded third parties by this statute is very broad. The third party is not required to

determine whether the personal representative has the power to act. A third person is not protected under the statute if the third person had actual knowledge of (1) a limitation on the personal representative's authority, (2) an improper exercise of the personal representative's power, (3) a term of the will limiting authority, or (4) a defect in the qualification of the personal representative. ORS 114.385. The broad protection provided by the statute is needed to implement one of the basic goals of the Probate Code: to permit the personal representative to administer the estate without constantly seeking court approval.

A personal representative's contractual relationship with the attorney for the estate does not require the personal representative to appeal if the court disallows some of the attorney's requested fees. "[I]n the absence of bad faith or fraud to deprive the attorney of reasonable attorney fees, the personal representative is not liable for refusing to appeal" an award of attorney fees deemed inadequate by the lawyer for the estate. *Smith v. U.S. National Bank of Oregon*, 47 Or App 967, 976, 615 P2d 1119 (1980), *rev den*, 290 Or 302 (1981).

§ 7.2-4(c)(2) Liability in Tort

The personal representative is not personally liable for torts committed during the course of administering the estate "unless the personal representative is personally at fault." ORS 114.405(3).

If an injury is caused by the negligence of an employee hired by the personal representative, the personal representative is not personally liable unless the personal representative failed to exercise "due prudence" in hiring the employee or negligently performed some other duty. *Ellman v. Hammond (In re Chandler's Estate)*, 136 Or 128, 135, 297 P 841 (1931).

Tort actions may be allowed against the estate whether or not the personal representative is personally liable. ORS 114.405(4).

§ 7.2-4(d) Self-Dealing

§ 7.2-4(d)(1) Purchase of Estate Property

The personal representative may purchase or encumber estate property if all of the interested persons consent, the will expressly authorizes the transaction, or the transaction complies with a statute or with a contract executed by the decedent. ORS 114.355(1). In the absence of one of these factors, the purchase or encumbrance is voidable, not void. The same rule applies to transactions between the estate and the personal representative's spouse, agent, or lawyer "or any

corporation or trust in which the personal representative has more than a one-third beneficial interest." ORS 114.355(1).

Any title received by a bona fide purchaser for value is protected, unless the purchaser should have known of the circumstances that would make the sale by the personal representative voidable. ORS 114.355(2).

§ 7.2-4(d)(2) Transactions with Beneficiaries

No rule voids transactions between the personal representative and the beneficiaries of the estate. Given the permissive nature of ORS 114.355, such transactions should be allowed if the personal representative has fully disclosed to the beneficiary all of the relevant facts regarding the transactions and the transactions are objectively fair.

§ 7.3 NOTICES

§ 7.3-1 To Heirs, Devisees, and Interested Persons

§ 7.3-1(a) Generally

Upon appointment, the personal representative must deliver or mail information to the devisees, heirs, and other interested persons. The contents and required recipients of the notice are detailed in ORS 113.145(1). Additional language must be provided to any person who challenges the will, or who has been identified in the petition for appointment as contending that a parent of the decedent willfully deserted the decedent or failed to provide proper care. *See* ORS 113.145(1)(g)–(h). The notice to such persons must contain a statement that the person's rights may be barred unless the notice recipient, within four months of the delivery or mailing of the notice, proceeds as provided in ORS 113.075 (for persons challenging the will) or ORS 112.049 (for persons alleging forfeiture of a parent's share). *See* § 2.5 to § 2.5-3 (notice time and manner); § 5.2-8 (notices); Form 5-10 (information to heirs and devisees in testate estates); Form 5-11 (information to heirs and devisees in intestate estates).

PRACTICE TIP

Although not expressly required by statute, it is good practice to voluntarily supply copies of the will to persons who are substantially interested in its contents. In any event, copies can be obtained from the court by those sufficiently interested to procure them.

Within 30 days after appointment, the personal representative must file proof of delivery or mailing of the notice required by ORS 113.145. A copy of the notice and the names (but not the addresses) of the persons to whom the notice was delivered or mailed must be included in the affidavit. ORS 113.145(4); *see* Form 5-12 (affidavit of proof of mailing or delivery).

If at any time before the filing of the final account the personal representative has actual knowledge that the petition for appointment failed to name any person nominated as personal representative, or any heir, devisee, or person required to be named as challenging the will (*see* ORS 113.035(8)), or a parent who deserted the decedent (*see* ORS 113.035(9)), the personal representative must promptly deliver or mail the notice described in ORS 113.145(1) to that person, and file with the court proof of compliance with this requirement. ORS 113.145(5); *see* ORS 111.215 (method of giving notice); *see also* § 2.5 (notice); § 2.5-4 (proof of notice); § 5.2-8 (notices).

Notice must also be mailed or delivered to the Department of Human Services (DHS) and the Oregon Health Authority (OHA) within 30 days after the personal representative's appointment. ORS 113.145(6). Although many experienced attorneys recommend sending notice to both agencies as required by the statute, notice to the DHS is sufficient to provide notice to the OHA. OAR 943-001-0020(2)(e). If the personal representative is aware that the OHA has a claim, the personal representative should also provide notice to the OHA under ORS 115.003(2) and not rely on notice under ORS 113.145 to start the running of the claims' period. *See State ex rel. Oregon Health Authority v. Cue*, 268 Or App 350, 358–61, 342 P3d 98 (2014), *rev den*, 357 Or 324 (2015).

§ 7.3-1(b) Effect of Failure to Notify

The personal representative's failure to provide notice constitutes a breach of fiduciary duty to the persons concerned, but "does not affect the validity of the personal representative's appointment, duties or powers or the exercise of duties or powers." ORS 113.145(3).

§ 7.3-2 Publication of Notice to Interested Persons

§ 7.3-2(a) Generally

This section discusses the need to give notice to potential creditors. For a discussion of the claims process, see chapter 9.

Upon appointment, the personal representative must notify all the interested persons of the estate proceeding by publishing a specific notice in a newspaper published in the county where the proceeding is pending or, if no newspaper is published in that county, a newspaper designated by the court. ORS 113.155(1); *see* Form 5-15 (notice to interested persons). The term *interested person* includes "a decedent's heir, devisee, child, spouse or creditor" if that person has "a property right in or claim against the decedent's estate." ORS 111.005(19)(b). The required contents of the notice are detailed in ORS 113.155(2). The personal representative must file proof of publication, including a copy of the notice, with the court. ORS 113.155(4); *see* ORS 111.218(3) (proof of publication must be made in the form required by ORCP 7 F); *see also* § 2.5-4 (proof of notice); Form 5-16 (affidavit of publication). The publishing newspaper will usually provide the affidavit, particularly if asked to do so at the time that the advertising copy is submitted.

Caveat

For probate proceedings commenced before January 1, 2024, the notice must be published "once in each of three consecutive weeks." ORS 113.155(1) (2021); Or Laws 2023, ch 18, §§ 1, 11.

If no heir or devisee can be identified or found "after diligent search and inquiry that is appropriate to the circumstances, taking into account the value of the decedent's estate," the intestate estate escheats to the State of Oregon. ORS 112.055(1); *see* § 4.1-2(g). The State Treasurer is entitled to the same notice as would have been given to the missing heir or devisee. ORS 112.055(3)(c)(B).

Under ORS 112.058(1)(b), a missing person whose death cannot be proved, or who cannot be presumed dead under the rules of that statute, is presumed to have lived to age 100. An heir whose death is presumed is also presumed to have two children, in addition to any known children, unless the presumption of death arises under certain specific circumstances. ORS 112.058(2). The share of the missing person and the share of the missing person's presumed children escheat to the State of Oregon. ORS 112.055(2).

Practice Tip

Estate planners may wish to include language in their wills to avoid an unintended escheat that will occur if an heir or devisee cannot be identified or found. For instance, a will could provide that "any devisee or heir who

cannot be identified or found, as that phrase is used in ORS 112.055, will be deemed to have predeceased me without issue."

§ 7.3-2(b) Effect of Failure to Publish

The personal representative's failure to publish the required notice is a breach of duty to the persons concerned, but it does not affect the validity of the representative's appointment or the exercise of the personal representative's duties or powers. ORS 113.155(3). The failure to publish the required notice under ORS 113.155(1) was one of several examples of lawyer misconduct cited in *In re Gresham*, 318 Or 162, 166, 864 P2d 360 (1993), leading to the suspension of the lawyer in the case.

§ 7.3-2(c) Successor Personal Representative

When a successor personal representative is appointed within four months after publication of the notice required in ORS 113.155, the successor must publish a new notice to interested persons in slightly different form, as set forth in ORS 113.225(1).

NOTE

If the original notice was published weekly over a period of three consecutive weeks (for proceedings commenced before January 1, 2024), the four-month period runs from the first date of publication of the notice. Or Laws 2023, ch 18, §§ 6, 11.

§ 7.3-3 Diligent Search for and Notice to Claimants

§ 7.3-3(a) Generally

Because the Probate Code allows the claims of creditors to be cut off if not asserted within a short period of time (45 days after direct notice or four months after published notice, ORS 115.005(2)), the personal representative must search for claimants entitled to notice. ORS 115.003(1).

NOTE

If the original notice was published weekly over a period of three consecutive weeks (for proceedings commenced before January 1, 2024), the four-month period runs from the first date of publication of the notice. Or Laws 2023, ch 18, §§ 8, 11.

During the three months after appointment, unless the court allows a longer time period, the personal representative must (1) "make reasonably diligent efforts to investigate the financial records and affairs of the decedent," and (2) "take such further actions as may be reasonably necessary to ascertain the identity and address of each person who has or asserts a claim against the estate." ORS 115.003(1); *see* § 9.3-3 (personal representative's notice requirements).

The personal representative may request, and the court must allow, a longer time if the personal representative "cannot complete reasonably diligent efforts to identify persons with claims" during the three-month period. ORS 115.003(1). The court may allow another extension if the search cannot be completed within the first extension. ORS 115.003(1).

Not later than 30 days after expiration of the time to search for claimants, including any extensions, the personal representative must give notice "to each person known by the personal representative during such period to have or assert a claim against the estate." ORS 115.003(2). The contents of the notice are described in detail in ORS 115.003(3). The notice has the effect of cutting off creditors' claims if not asserted within 45 days. ORS 115.005(2)(b).

It is not necessary "to give notice on account of a claim that has already been presented, accepted or paid in full or on account of a claim that is merely conjectural." ORS 115.003(2).

If a claimant is discovered after the expiration of the period allowed to search for claimants, including any extensions, the personal representative may cause the notice to be given to the discovered claimant. ORS 115.003(2).

Within 60 days after the expiration of the period allowed to search for claimants, including any extensions, the personal representative must file proof of compliance with the statute. ORS 115.003(4). The proof must include a copy of the form of the notice, the date of delivery or mailing of the notice, and the name and address of each person given notice. ORS 115.003(4); *see* ORS 111.218 (proof of notice).

Practice Tip

Local practices may vary; in Lane County, the local practice is to require that the affidavit of compliance include a list of the steps taken to comply with the requirements of ORS 115.003. *See* Form 9-4.

§ 7.3-3(b) Failure to Make Search or Give Notice

The personal representative's failure to make reasonably diligent efforts to ascertain claims or to cause notice to be delivered or mailed is a "breach of duty to the persons concerned, but does not affect the validity of appointment, duties or powers or the exercise of duties or powers." ORS 115.003(5); *see* § 9.3-3 (the failure to give actual notice to known creditors violates the Due Process Clause of the United States Constitution).

A claimant who was not given the required notice has a cause of action against the personal representative and the surety for the amount that the claimant would have been paid from the estate if all of the claims not barred from payment had been timely presented and had been allowed by the personal representative. Any payment by others reduces the claim against the personal representative by a like amount. ORS 115.004(1).

The claimant also has a cause of action against each interested person who received a distribution or other payment from the estate, to the extent that payment of the claim would have reduced payment to that person. ORS 115.004(2).

The personal representative and surety are indemnified against liability on such a claim, to the extent that the payment received by the interested persons would have been reduced by the payment of the claim. ORS 115.004(3).

To the extent that the interested persons indemnify the personal representative, they also indemnify for costs, including attorney fees, if the personal representative prevails against the claimant. If the claimant prevails, the indemnity is for costs that could have reasonably been incurred by the estate on disallowance of the claim if it had been timely presented. ORS 115.004(4).

Except as provided in ORS 115.004(6), an action against the personal representative, the surety, or an interested person must "be commenced within two years after the death of the decedent or within the statute of limitations applicable to the claim, whichever is earlier." ORS 115.004(5).

Under ORS 115.004(6), an action for indemnity must be brought within the time period for an action against the personal representative described above, except that the time for such an action is extended during the pendency of an underlying action, if

(1) the person seeking indemnity gives notice to each party from whom indemnity is sought within 180 days after being served with the complaint in the underlying action; and

(2) the action for indemnity is commenced within one year after the judgment in the underlying action becomes final and not subject to further appeal.

§ 7.4 REPORTING ASSETS

§ 7.4-1 Identifying Assets

Generally, the personal representative is responsible for identifying and locating the decedent's assets. The personal representative should review the decedent's mail, tax returns, filing system, computer records, and other sources of information to identify and locate assets. As financial institutions move toward paperless records, access to the decedent's computer and computer passwords will be of increasing importance. The personal representative can also search for the decedent's unclaimed property in any state by going to the website for the National Association of Unclaimed Property Administrators, https://unclaimed.org.

For a discussion of managing estate assets, see chapter 10.

§ 7.4-2 The Inventory

§ 7.4-2(a) Filing the Inventory

Within 90 days after appointment, unless the court extends the time, the personal representative must file an inventory listing all of the property of the estate that has "come into the possession or knowledge of the personal representative." ORS 113.165. Assets of the estate include, among other assets, tangible and intangible personal property of an Oregon domiciliary, regardless of where the property is situated. ORS 111.005(15)(b). The inventory must show estimates of the fair market values of the assets as of the date of the decedent's death. ORS 113.165; *see* § 7.4-2(c) (appraisal of property). *Fair market value* means the gross value of the assets, not net equity. Any debt against assets is not deducted in arriving at fair market value. *See* 0 (inventory of estate property).

PRACTICE TIP

The duty to file an inventory within 90 days runs from the date of the appointment of the personal representative, not from the date that letters testamentary or letters of administration are issued. ORS 113.165. If a personal representative has been appointed, but a bond is required, letters

testamentary or letters of administration will not be issued until the bond is filed. ORS 113.125(1); *see* § 5.2-6(a) (necessity of bond; court discretion). Gathering needed information to complete the inventory may be difficult before the letters are issued. To avoid problems completing the inventory within the statutory time period, it is helpful to discuss the availability of a bond with the bonding company before petitioning for appointment. That way, the bonding company will be ready to issue the bond as soon as it receives a copy of the order appointing the personal representative. It will also be known early in the process whether or not the proposed personal representative is bondable.

PRACTICE TIP

The following property is not part of the probate estate and should not be listed in the inventory: property held with right of survivorship or in a tenancy by the entirety, passing to the surviving joint tenant; life insurance and other property passing outside of the estate; and property subject to ancillary probate in another state. Listing such property is required on estate tax returns, but the property's existence and value does not need to be reported on the inventory for the Oregon probate.

PRACTICE TIP

When personal property either has significant economic value or is specifically devised, it should be itemized separately in the inventory. Otherwise, it is common practice to lump together similar kinds of items.

PRACTICE TIP

The personal representative need not include in the inventory any of the decedent's pets valued at less than $2,500. ORS 114.215(3).

Aside from meeting the statutory requirements for an inventory described in ORS 113.165, the personal representative should consider the following when preparing the inventory:

(1) The inventory identifies the decedent's assets. The function of the probate estate is to transfer title from the decedent to the heirs and devisees; that transfer cannot be accomplished without identifying the decedent's assets in the court proceedings.

(2) The inventory is a guide in managing and administering the estate. The fair market values determined for inventory purposes are relevant in determining the amount of insurance coverage needed, as well as asking prices for the property to be sold. The inventory, therefore, is helpful for planning the cash flow of the estate and determining what insurance protection is appropriate.

(3) The inventory helps establish the tax basis of the decedent's assets for income tax purposes. *See* IRC § 1014. A detailed itemization of the decedent's assets with the fair market value of those assets helps with income tax returns.

(4) The inventory gives an early indication of whether federal or Oregon estate tax returns must be filed. For a discussion of when estate tax returns must be filed, see § 7.6-4(b). *See also* chapter 12 (federal estate tax, generation-skipping transfer tax), chapter 14 (Oregon estate tax).

As with other deadlines and filing requirements, the lawyer should work to ensure timely action by the personal representative. *See In re Hartfield*, 349 Or 108, 116, 239 P3d 992 (2010) (a lawyer was sanctioned for, among other things, failing to file an inventory or an accounting in a conservatorship).

§ 7.4-2(b) Supplemental Inventory

The personal representative must file a supplemental inventory within 30 days after receiving possession or knowledge of property belonging to the estate that was not included in the inventory, or include the property in the next accounting. ORS 113.175; *see* 0.

PRACTICE TIP

If the time for the annual or final accounting is closed, the personal representative can include later-discovered property in an amended inventory filed with the accounting.

PRACTICE TIP

A careful lawyer will distinguish between an "amended inventory" (*see* 0), which corrects the information in the inventory filed, and a supplemental inventory, which adds omitted property to the inventory.

PRACTICE TIP

If joint property (for example, a joint bank account) is disclaimed by the surviving joint owner, the disclaimed interest in the property becomes

part of the probate estate. The personal representative should file a supplemental inventory listing the disclaimed property. See § 8.3-2(a) to § 8.3-2(f) for discussions of disclaiming property.

§ 7.4-2(c) Appraisal of Property

The personal representative may employ an appraiser to assist "in the appraisal of any property of the estate the value of which may be subject to reasonable doubt." ORS 113.185(1). In lieu of an appraisal, the personal representative is obliged to show in the inventory "estimates" of the "respective fair market values" of all of the property as of the date of the decedent's death. ORS 113.165. In addition, ORS 118.100(6) requires that an executor filing an Oregon estate tax return explain "how the reported values were determined and attach copies of any appraisals."

The court has discretion to direct that all or any part of the estate property be appraised by one or more court-appointed appraisers. ORS 113.185(2). The appraisal must be in writing and must be signed by the appraiser(s). ORS 113.185(3). The appointed appraisers are entitled to be paid a fee from the estate for their services and to be reimbursed from the estate for expenses they have incurred. ORS 113.185(4).

PRACTICE TIP

Appraisal fees should be agreed on in advance of the appraisal. The fees should be based on the complexity of the appraisal, rather than on the value of the property appraised.

§ 7.4-2(d) Requirements for Tax Purposes

Because the decedent's property is given a new income tax basis at death equal to its fair market value under IRC § 1014, the personal representative should establish the fair market value as of the date of the decedent's death. In some estates involving decedents dying in 2010, the personal representative was allowed to allocate only a limited basis increase to the estate's assets. *Former* IRC § 1022, *repealed by* Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub L 111-312, § 301(a), 124 Stat 3296, 3300. *See* chapter 12 (federal estate tax and generation-skipping transfer tax).

For taxable estates, IRC § 2031 and Treasury Regulation § 20.2031-1(b) require that the value of every item of property be included at its fair market value

as of the date of the decedent's death, unless the alternative valuation date is selected under IRC § 2032, or unless the special valuation provisions of IRC § 2032A are used.

The alternate valuation date and the special valuation provisions are discussed in § 12.2-3 to § 12.2-3(b) and § 12.3-5(e). If the alternate valuation date under section 2032 or the special valuation provisions under section 2032A are used, the devisee's tax basis in the property is determined by those values. IRC § 1014(a). An estate that is not required to file a federal estate tax return, but that is subject to the Oregon estate tax, may use the alternate valuation date. ORS 118.010(8)(a).

Real property that is subject to a conservation easement may have some of its value excluded under section 2031(c).

Penalties are provided under IRC § 6662(g) for valuation understatements for the purposes of estate and gift taxes. Also, overstatements of value may give rise to income tax penalties. IRC § 6662(e)(1)(A).

See chapter 12 for a more complete discussion of estate taxation.

§ 7.4-3 Form of the Inventory

The inventory should be in a form that sufficiently describes the decedent's assets so that it is clearly identified, and the personal representative or a third party (for example, a stock transfer agent or title officer) is able to quickly and accurately identify property to be transferred. Items listed on the inventory may be in a format that is easily tied to items appearing on the federal or Oregon estate tax return, if required. *See* § 7.6-4(b) (filing requirements); *see also* chapter 12 (federal estate tax, generation-skipping transfer tax), chapter 14 (Oregon estate tax). The inventory should set forth sufficient information so that a tax auditor can verify the information submitted without having to ask additional questions. For example, the account number and tax lot information from the property tax statement should be included, because in an audit, it is common practice for auditors to verify the assessed values. For general guidelines, see Treasury Regulation §§ 20.2031-1 to 20.2031-8. A sample inventory is included in 0.

PRACTICE TIP

If each inventory item is listed by number, later reports to the court, such as the annual or final accounts, can refer to the item by number, and thus be easier to follow.

§ 7.4-3(a) Real Property

The inventory should list real property with a correct legal description, as well as the county's tax account number and tax lot number. The inventory should report the full value of the property, not merely the decedent's equity in the property. *See* § 12.3-12(a) to § 12.3-12(b)(4).

PRACTICE TIP

A subnote should show any encumbrances on the property so that heirs and devisees are not misled about the estate's net value. *See* 0 (inventory of estate).

§ 7.4-3(b) Stocks and Bonds

The inventory should give a precise description of the stocks and bonds and show the number of shares or bonds. *See* 0. The inventory should list the value of publicly traded stocks and bonds by using the mean between the highest and the lowest quoted selling prices on the valuation date. *See* Treas Reg § 20.2031-2(b)(1). If the valuation date is on a weekend or holiday, or if no sales took place on the valuation date but sales occurred within a reasonable time before and after that date, a weighted average is used to determine value. *See* Treas Reg § 20.2031-2(b)(1). If a stock is trading ex-dividend, and the date of record for payment is after the valuation date, the amount of the declared dividend is added to the ex-dividend quotation. *See* Treas Reg § 20.2031-2(i). If the valuation date is after the record date but before payment, the dividend is listed as a separate item. *See* Treas Reg § 20.2033-1(b). For more information on stocks and bonds see § 12.3-12(c) to § 12.3-12(c)(7).

The valuation of shares of stock in a closely held corporation or other business entity is a complex matter that is beyond the scope of this chapter. *See* § 12.3-12(c)(3) (stock in closely held businesses).

§ 7.4-3(c) Mutual Funds

Mutual funds are generally valued at the last public redemption price of the shares on the date of the decedent's death. Treas Reg § 20.2031-8(b); *see* 0. *See* § 12.3-12(c)(7) (mutual fund valuation).

§ 7.4-3(d) Mortgages, Notes, and Contracts

Notes and contracts receivable are normally valued at their unpaid principal balance, plus accrued interest to the date of the decedent's death. Under some

circumstances, however, the value might be lower. *See* Treas Reg § 20.2031-4; Rev Rul 67-276, 1967-2 CB 321.

If a note for money loaned is reported at less than face value, ordinary income may be recognizable each time a principal payment is received. *See* 0. For more information on valuation of mortgages, notes, and contracts, see § 12.3-12(d)(1).

§ 7.4-3(e) Cash and Bank Accounts

Bank accounts reported in the inventory should be listed and itemized separately, with the name of the bank, the branch, and the account number. A joint or beneficiary account should not be listed in the inventory unless it is turned back to the estate, or the decedent's interest is disclaimed by the joint owner or beneficiary. *See* 0. *See also* § 12.3-12(d)(2).

§ 7.4-3(f) Household Goods and Personal Effects

In general, household goods and personal effects can be lumped together in the inventory without a detailed itemization of each and every piece. *See* 0. *But see* Treas Reg § 20.2031-6(a) (if the estate is taxable, the IRS considers it desirable to list items room by room on the estate tax return).

§ 7.4-3(g) Antiques, Art Work, Coins, Jewelry, Etc.

If an estate is subject to estate tax, an appraisal is necessary to assess items with significant artistic or intrinsic value if the value is in excess of $3,000. *See* Treas Reg § 20.2031-6(b). After appraisal, the personal representative should ensure that insurance coverage is adequate. *See* § 7.1-3 (item (7)); *see also* 0.

§ 7.4-3(h) Community Property in Name of Decedent

Property of the decedent located in Oregon may be treated as community property if the property was acquired in a community-property state, or is traceable to that community property. ORS 112.715(1). If titled in the decedent's name, community property should be shown on the inventory at its full value, which allows the court the ability to set aside a surviving spouse's share if appropriate. Neither the personal representative nor the court has a duty to discern whether property is community property, so if the surviving spouse believes that property titled in the decedent's name is community property, then the surviving spouse may make a written demand to perfect title for the survivor's share of the community property. ORS 112.745. Otherwise, absent treatment as community property, all of the decedent's property is subject to testamentary or intestate succession distribution. *See* 0.

If the surviving spouse holds title to community property, neither the court nor the personal representative is required to determine whether part of that property should pass with the decedent's estate, unless written demand is made by an heir, devisee, or creditor. ORS 112.755. For discussion of community property, see § 4.3 to § 4.3-5.

§ 7.4-3(i) Cemetery Lots

The cemetery lot in which the decedent is buried need not be shown on the inventory. A vacant cemetery lot owned by the decedent, however, should be listed. *See* Treas Reg § 20.2033-1(b); *see also* 0.

§ 7.4-3(j) Annuities, Life Estates, and Remainders

Annuities, life estates, and remainders should be valued using the tables provided by the IRS. *See* Treas Reg § 20.2031-7; *see also* 0. Many of such assets are not assets of a probate estate, since beneficiaries are usually designated by the governing documents.

§ 7.4-4 Assets outside Oregon

Oregon courts have jurisdiction over a resident decedent's personal property wherever it is located. ORS 14.030. If the decedent was an Oregon resident, the only asset that could be outside of Oregon, for probate purposes, would be real estate. Real estate outside of Oregon is not part of an Oregon probate, and should not be listed in the inventory.

For financial assets in California sought by an Oregon personal representative, California financial institutions may refuse to deliver personal property to an Oregon personal representative if that property exceeds $184,500 (as of April 1, 2022) in value. Instead, those assets will need to be probated in California. *See* Cal Prob Code § 12570; § 13100; Judicial Counsel of California Form DE-300, https://www.oregon.gov/dor/forms/pages/default.aspx; *Robertson v. U.S. National Bank*, 235 Cal App 2d 63, 44 Cal Rptr 871 (Cal Ct App 1965) (California bank was liable for funds it delivered to an executor in Florida before going through probate in California). See § 6.6-1(a) to § 6.6-6 for a discussion of estates of nonresident decedents.

If the decedent was not an Oregon resident, the only property to be listed in the inventory would be Oregon real estate.

§ 7.4-5 Incomplete Inventory

If all of the information required cannot be compiled by the deadline for filing an inventory, an incomplete inventory may be filed listing what is known. In this situation, the personal representative should list the property in the inventory and indicate that the value has not yet been established. Difficulties can be created on audit if one value has been reported on the inventory and a different value is reported on the estate tax return. The inventory should be amended when the value is finally determined. *See* 0.

PRACTICE TIP

The court may grant an extension of the time for filing an inventory if the personal representative files a petition within 90 days after the appointment as personal representative, stating specific reasons why the inventory cannot be completed within the 90-day period required by the statute. *See* ORS 113.165.

§ 7.4-6 Ancillary Probate

Unlike some other states, Oregon does not have a separate ancillary probate process for nonresident decedents. The probate of Oregon assets of a decedent who resided in another jurisdiction is handled in the same manner that a probate of an Oregon resident is handled, but only the Oregon real property should be listed on the inventory. Any debt against the Oregon real property should be listed in a subnote on the inventory. See § 6.6-1(a) to § 6.6-6 for further discussion of ancillary administration.

§ 7.5 PROVIDING FOR SPOUSE AND CHILDREN

§ 7.5-1 Occupancy of Family Home

§ 7.5-1(a) Generally

A decedent's surviving spouse or dependent children (or both) who were occupying the decedent's principal dwelling at the time of the decedent's death may continue to occupy the dwelling for one year after the decedent's death, or until the earlier termination of a lease or an interest in the property if the interest is less than a fee interest. ORS 114.005(1). This right is superior to the personal representative's duty under ORS 114.225 to take possession of the estate. The right of occupancy requires no action by the family or court to make it effective.

NOTE

For good cause shown, the court may waive or alter the right of the decedent's spouse and dependent children to occupy the decedent's principal dwelling under ORS 114.005(1). ORS 114.005(3).

The home is exempt from execution to the extent that it was exempt during the decedent's lifetime. ORS 114.005(2)(d). The home remains subject to the rights of a holder of a security interest in such property. ORS 114.005(2)(e).

§ 7.5-1(b) Duties of Occupants

The duties of the spouse or children remaining in possession of the family home are described in ORS 114.005(2)(a)–(c) as follows:

(1) they may not commit or permit waste to the dwelling, or permit liens to attach to it;

(2) they must "pay the cost to keep the dwelling insured, to the extent of the fair market value of the improvements, against fire and other hazards within the extended coverage provided by fire insurance policies, with loss payable to the estate"; and

(3) they must pay property taxes and improvement liens.

§ 7.5-2 Support of Spouse and Children

The surviving spouse or any dependent child may petition the court for support, or the personal representative may submit the petition on their behalf. ORS 114.015. Temporary support may be allowed by order of the court pending the hearing on the petition. ORS 114.035. The petition for support need not await the filing of an inventory. The procedure for obtaining support and the contents of the petition are discussed in § 6.2-1 to § 6.2-4.

PRACTICE TIP

If temporary support has been requested pending the hearing, the lawyer should advise the court of this fact and submit appropriate orders.

PRACTICE TIP

The petition should also describe the nature of the support desired and the suggested means of financing the support.

PRACTICE TIP

Amounts paid for the support of the surviving spouse and children under ORS 114.015 are in addition to the elective-share rights of the surviving spouse. ORS 114.600(2).

§ 7.5-2(a) Considerations in Determining Support

In determining "necessary and reasonable provision from the estate" (ORS 114.015) for support of the surviving spouse and children, the court takes into account the following considerations:

(1) the assets of the estate and the assets of the spouse and dependent children, taking into account the solvency of the estate, property available for support other than estate property, and property inherited by or devised to the spouse and children, ORS 114.055(2);

(2) whether the estate would be rendered insolvent after provision for support, ORS 114.065; *see* § 6.2-4 (limitations on support), § 6.4-1 to § 6.4-2 (insolvent estates); and

(3) whether the spouse has waived rights to support, *see* ORS 114.620; *see also Simmons v. Simmons*, 82 Or App 540, 544–45, 728 P2d 921 (1986) (a valid marital agreement may have the effect of waiving rights to support).

Although ORS 114.015(3) requires that notice must be given to persons whose distributive shares may be diminished by the granting of a petition for support, no statute directs the court to refuse or to limit support if the distributive shares would be diminished. Creditors are not entitled to notice, but their rights are taken into consideration by reason of the need for judicial attention to the solvency of the estate. ORS 114.055(2).

§ 7.5-2(b) Priority

Support of the decedent's surviving spouse and dependent children has priority over administration expenses and over legacies and devises. ORS 114.075. Support is deducted along with administration expenses to determine the net estate under ORS 111.005(23), but temporary support may not be deductible for estate tax purposes. *See* Treas Reg § 20.2056(b)-1, example (8). Support payments ordered by the court under ORS 114.015 are "not charged against the distributive share of the person receiving support." ORS 114.075. See § 6.2-4 and § 6.4-1 to § 6.4-2,

regarding insolvent estates. Support is in addition to the surviving spouse's elective-share rights. ORS 114.600(2).

§ 7.5-2(c) Modification and Termination of Support

The court has authority to modify or terminate an order for the support of the decedent's surviving spouse and dependent children. ORS 114.045. The statute does not specify the procedure for securing a modification or termination. It would presumably be based on the petition of an interested party and a further hearing and notice, if the court so required.

§ 7.5-3 Setting Apart the Entire Estate

After the time for filing claims against the estate has expired (four months after publication of the notice), the entire net estate may be set apart for the spouse or dependent children or both, when necessary for the reasonable support of the spouse and dependent children, and the estate is thereafter closed. ORS 114.085. See § 6.3-1 to § 6.3-3, for further discussion.

NOTE

For probate proceedings commenced before January 1, 2024, notice must be published once in each of three consecutive weeks. In that case, the four-month period runs from the date of the first publication. Or Laws 2023, ch 18, §§ 1, 7, 11.

§ 7.6 INITIAL TAX MATTERS

§ 7.6-1 Introduction

Section 7.6-2 to § 7.6-6(p) below are not intended to be a complete discussion of federal and Oregon estate tax issues, but are intended to guide lawyers in the early stages of dealing with tax issues. Discussion of estate taxation can be found in chapters 12 to 14.

§ 7.6-2 Gathering Information

The tax preparer should review copies of the decedent's federal and Oregon income tax returns for at least the last three years. The returns provide information about the decedent's assets, as well as the status of tax matters. If the returns cannot be located among the decedent's papers or obtained from the decedent's accountant, the lawyer can request copies from the Internal Revenue Service, starting with a request for a transcript on IRS Form 4506-T (Request for Transcript of Tax Return), https://www.irs.gov/forms-pubs/about-form-4506-t.

In addition to obtaining prior income tax returns, the probate lawyer should

(1) contact the decedent's tax adviser and review the status of estimated income tax payments of the decedent;

(2) obtain copies of any gift tax returns; and

(3) gather information about property taxes.

PRACTICE TIP

Title companies or the assessor's office can provide printouts indicating the real market and assessed values of real property, a legal description or a reference to a deed, and the status of the property taxes.

§ 7.6-3 Notices and Applications

§ 7.6-3(a) Income Taxes

The personal representative will usually need to apply for a taxpayer identification number for the estate, using IRS Form SS-4 (Application for Employer Identification Number). The number is not needed if the estate holds no income-producing assets and does not expect to file an income tax return. Form SS-4 is available as an electronic fill-in form on the IRS website, https://www.irs.gov/pub/irs-pdf/fss4.pdf. Getting the accountant to obtain the taxpayer identification number will assist in involving the accountant early in the process of tax planning. The taxpayer identification number is used on the fiduciary income tax returns, but not on the estate tax returns. It should be furnished to anyone who is holding estate funds and who is required to advise the IRS of payments made to the estate.

The personal representative should also file IRS Form 56 (Notice Concerning Fiduciary Relationship) to notify the IRS of the personal representative's fiduciary relationship. *See* IRS Form 56, https://www.irs.gov/forms-pubs/about-form-56. No penalties apply to a failure to file this form. If the form is not filed, however, the IRS can send deficiency notices and other communications to the decedent's former address, and it need not advise the personal representative of its actions. The IRS also may fail to act on requests for prompt assessment of taxes if the notice of fiduciary relationship is not filed.

§ 7.6-3(b) Property Tax Exemption for Veterans

The surviving spouse of a veteran who qualified for the property tax exemption described in ORS 307.250 may be entitled to the same exemption. The application for exemption is generally made each year on or before April 1. *See* ORS 307.260; *see also* § 7.6-4(a), item (4).

§ 7.6-4 Due Dates and Filing Requirements

§ 7.6-4(a) Due Dates

The lawyer for the personal representative should enter the following dates in a tickler system:

(1) *Estate Tax Returns.* The federal Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return) must be filed within nine months after the decedent's date of death, and the Oregon Form OR-706 (Oregon Estate Transfer Tax Return) must be filed within one year after the decedent's date of death. IRC § 6075(a); ORS 118.100(1). *See generally* chapter 12 (federal estate tax); chapter 14 (Oregon estate tax). The filing thresholds are discussed in § 7.6-4(b).

PRACTICE TIP

The difference between the filing deadlines for the federal estate tax return versus the Oregon estate tax return can create traps for the unwary. Notwithstanding the Oregon filing deadline (or extension of it), the lawyer should pay careful attention to estate administration steps that track federal timelines, which may be implicated even for an estate that is not subject to the federal filing requirement. These steps may include, among others, qualified disclaimers that must be completed within nine months of the date of death or tax elections that must be timely filed to be effective.

(2) *Estate Tax Alternate Valuation Date.* If the alternate valuation date provided for in IRC § 2032 is elected, then any property still in the estate six months after the date of the decedent's death must be valued as of the date six months after the date of the decedent's death. IRC § 2032(a)(2); *see* § 7.6-6(h); § 12.2-3(a); § 12.3-5(e).

(3) *Property Taxes.* Property taxes are due on November 15 but may be paid in installments. *See* ORS 311.250(1).

(4) *Property Tax Exemption for Veterans.* The surviving spouse of a veteran qualifying for the exemption under ORS 307.250 must file a claim for the exemption "on or before April 1 of the assessment year for which the exemption is claimed, except that when the property designated is acquired after March 1 but prior to July 1 the claim shall be filed within 30 days after the date of acquisition." ORS 307.260(1)(a).

(5) *Decedent's Final Income Tax Returns.* The decedent's final income tax returns are normally due on or before April 15. *See* Treas Reg § 1.6072-1(b); IRC § 443(a)(2); ORS 316.382(1). No return needs to be filed if the decedent had not earned sufficient income for the year by the date of death to require one. The personal representative should keep records documenting the lack of a need to file.

(6) *First Fiduciary Income Tax Returns.* Fiduciary income tax returns must be filed by April 15 if the estate uses a calendar year, or within three months and 15 days following the close of the fiscal year if the estate elects a fiscal year. IRC § 6072(a). The estate may elect to have a fiscal year other than the calendar year. *See* § 7.6-6(d). An estate that has received less than $600 in gross income need not file an income tax return. IRC § 6012(a)(3).

(7) *Estimated Tax Payments.* Quarterly payments are due for any tax year ending two or more years after the decedent's death, depending on the amount of taxable income. This could apply to a tax year beginning as early as one year after the decedent's death, if a short first fiscal year is elected. *See* IRC § 6654(*l*)(2).

§ 7.6-4(b) Filing Requirements

The lawyer for the personal representative should prepare a rough estimate of assets, liabilities, and income to review in view of the following filing requirements:

(1) *Federal Estate Tax.* A federal estate tax return must be filed if the gross estate exceeds the applicable exclusion amount. IRC § 6018(a). The applicable exclusion amounts under IRC § 2010(c)—as amended by various acts, including the act known as the Tax Cuts and Jobs Act of 2017 (Pub L 115-97, § 11061(a), 131 Stat 2054, 2091)—for recent years, after inflation adjustment, are as follows:

Year of Death	Applicable Exclusion Amount
2000–2001	$675,000

Year of Death	Applicable Exclusion Amount
2002–2003	$1,000,000
2004–2005	$1,500,000
2006–2008	$2,000,000
2009	$3,500,000
2010	Unlimited/$5,000,000
2011	$5,000,000
2012	$5,120,000
2013	$5,250,000
2014	$5,340,000
2015	$5,430,000
2016	$5,450,000
2017	$5,490,000
2018	$11,180,000
2019	$11,400,000
2020	$11,580,000
2021	$11,700,000
2022	$12,060,000
2023	$12,920,000

IRS, *What's New - Estate and Gift Tax*, https://www.irs.gov/businesses/small-businesses-self-employed/whats-new-estate-and-gift-tax.

For purposes of the filing requirements, the *gross estate* means the gross value, at the time of death, of all of the decedent's assets, wherever they are located (*see* IRC § 2031(a)), plus the amount of the *adjusted taxable gifts* (as defined in IRC § 2001(b)) since 1976, plus the aggregate amounts of the pre-1977 specific gift tax exemption (under *former* IRC § 2521 (1976), *repealed by* Tax Reform Act of 1976, Pub L 94-455, § 2001(b)(3), 90 Stat 1520, 1849) used between September 8, 1976, through December 31, 1976. IRC § 6018(a)(3).

For estates of decedents dying in 2010, the executor could elect out of the federal estate tax. *See* Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub L 111-312, § 301(c), 124 Stat 3296, 3300. A

discussion of the rules for electing out of the federal estate tax is beyond the scope of this chapter.

(2) *Oregon Estate Tax.* Oregon has had a tax based on assets passing at death in some form dating back to the early 20th century. It was previously referred to as the Oregon inheritance tax. In 2011, the legislature rewrote Oregon's inheritance tax, which, among other things, renamed it the Oregon estate tax and imposed new tax rates. Or Laws 2011, ch 526. No matter the specific timeframe, the concept of such a tax is generally referred to in this chapter as the Oregon estate tax. *See* chapter 14 (Oregon estate tax).

In 2003, the Oregon Legislature reacted to the increases in the federal applicable exclusion amount by "decoupling" the Oregon estate tax from the federal estate tax. Or Laws 2003, ch 806, § 2 (codified at ORS 118.007). As a result, since 2006, if an Oregon decedent's taxable estate exceeds $1,000,000, an Oregon estate tax is payable. ORS 118.160(1)(b)–(c); *see* ORS 118.010(4).

The Oregon estate tax return requires the personal representative to fill out the schedules associated with a federal estate tax return, even if no federal estate tax return is required. For deaths occurring before January 1, 2012, an Oregon Inheritance Tax Return, Form IT-1 is required. For deaths occurring on or after January 1, 2012, Oregon's inheritance tax form (Form IT-1) was replaced by a new estate tax form, Form OR-706, Oregon Estate Transfer Tax Return. Oregon tax forms are available at https://www.oregon.gov/dor/forms/pages/default.aspx.

PRACTICE TIP

Because the Oregon estate tax is based on filling out federal estate tax return schedules, it is relatively easy, in the case of the first spouse to die, to file the federal estate tax return needed to claim the deceased spousal unused exclusion amount under IRC § 2010(c)(4)–(5). *See* § 12.2-2; § 12.2-7(b). Be mindful of the federal filing deadline of nine months versus the Oregon filing deadline of one year (subject to extensions in each case). *See* § 7.6-4(a).

(3) *Decedent's Final Income Tax Return.* The filing requirements vary, depending on the status of the decedent. *See* IRS, Instructions for Form 1040, https://www.irs.gov/forms-pubs/about-form-1040.

(4) *Fiduciary Income Tax Returns.* Form 1041 (U.S. Income Tax Return for Estates and Trusts) is used to file a return if the estate has a gross income of $600 or more, or if there is a beneficiary who is a nonresident alien. *See* IRC § 6012(a)(3), (5); IRS, Instructions for Form 1041, https://www.irs.gov/forms-pubs/about-form-1041; *see also* chapter 13 (fiduciary income tax).

§ 7.6-5 Availability of Deductions and Special Provisions

The probate lawyer should review the will and any trust agreement regarding the following:

(1) qualification for the marital deduction generally, *see* IRC § 2056; *see also* § 12.2-5(f) to § 12.2-5(f)(5);

(2) in a will written before September 12, 1981, if a formula marital bequest is involved, whether the transition rule of section 403(e)(3) of the Economic Recovery Tax Act of 1981 (Pub L 97-34, 95 Stat 172, 301) prohibits use of the unlimited marital deduction;

(3) whether to make a qualified terminable interest property (QTIP) election under section 2056(b)(7); *see* § 12.2-5(f)(3)(iii);

COMMENT

Many bypass trusts, even though not drafted for the purpose, qualify for the QTIP election. See section 2056(b)(7) for the required terms. Making an Oregon QTIP election, as permitted by ORS 118.010(8), with respect to a bypass trust may be useful to avoid Oregon estate tax upon the death of the first spouse. *See* OAR 150-118-0070; *see also* § 7.6-6(k); § 12.2-5(f)(3)(iii). If a QTIP election is not available, the personal representative should determine whether the trust can qualify for the Oregon special marital property election under ORS 118.013. *See* § 14.3-10. Such an election, if available, will allow the trust to qualify for the marital deduction with respect to the Oregon estate tax. *See* § 7.6-6(l); *see also* chapter 14 (Oregon estate tax).

(4) whether a charitable bequest or split-interest gift qualifies for the charitable deduction, *see* IRC § 2055; *see also* § 12.2-5(d)(1) to § 12.2-5(d)(2);

(5) whether a special-use value under IRC § 2032A should be considered, *see* § 7.6-6(h); § 12.3-12(b) to § 12.3-12(b)(4);

(6) whether the estate qualifies for installment payment of taxes under IRC § 6166; *see* § 12.3-7(b)(3);

(7) whether a corporation may redeem stock from the estate without dividend treatment under IRC § 303;

(8) whether there will be any generation-skipping transfers (GST) (a GST tax applies to taxable distributions, taxable terminations, or direct skips that exceed the applicable exclusion amount), *see* IRC §§ 2611–2663; *see also* chapter 12 (federal estate tax and generation-skipping transfer tax); and

(9) whether the will or revocable trust of the decedent overrides the statutory apportionment of estate taxes described in ORS 116.313.

§ 7.6-6 Elections

§ 7.6-6(a) Income Tax Returns

(1) *The Year of Death.* The surviving spouse and the personal representative may elect to file separate income tax returns with respect to the decedent and the decedent's surviving spouse for the year of the decedent's death. The surviving spouse and the personal representative may elect to file a joint return with respect to the decedent and the decedent's surviving spouse for the year of death, reporting the decedent's income to the date of death and the surviving spouse's income for the full tax year. IRC § 6013(a)(3). If a joint return is filed, the preparer may need to allocate the items of income, deductions, and tax between the spouses, so that the deceased spouse's portion of the tax liability will be known, and a deduction for this tax can be claimed for estate tax purposes.

The personal representative should file the final federal income tax return on IRS Form 1040, Form 1040A, or Form 1040EZ (U.S. Individual Income Tax Return), as appropriate. IRS tax forms are available at https://www.irs.gov/forms-instructions. The Oregon return is Oregon Form OR-40 (Oregon Individual Income Tax Return), available at https://www.oregon.gov/dor/forms/pages/default.aspx. The preparer should mark the returns "Final Return" at the top of page 1 and indicate that the taxpayer is deceased and show the date of death. The personal representative should sign the return on behalf of the decedent, irrespective of whether the filing status is joint or individual. A copy of the letters testamentary should be attached to the return. If a refund is due the estate, IRS Form 1310 (Statement of Person Claiming Refund Due a Deceased Taxpayer) also should be

completed and submitted with the federal return, and the similar Oregon Form OR-243 (Claim to Refund Due a Deceased Person) also should be filed.

(2) *The Following Two Years.* If the surviving spouse's home is the principal residence of a dependent child or stepchild, the surviving spouse may qualify to elect to use joint return rates for two years after the decedent's death. *See* IRC § 1(a); IRC § 2(a). The right terminates if the surviving spouse remarries. IRC § 2(a)(2)(A). After the two-year period, the surviving spouse is entitled to file as a head of household if the surviving spouse meets the requirements.

(3) *Payments of Quarterly Estimates.* Estimated taxes for the decedent are not required after the date of the decedent's death. IRC § 6654(*l*)(2). However, if the decedent and the surviving spouse filed jointly, the surviving spouse is still liable for making estimated payments for the tax year. Treas Reg § 1.6654-2(e)(7)(ii). For a general discussion of estimated taxes, see *Estimated Tax*, 581-3rd Tax Mgmt (BNA).

NOTE

Congress repealed *former* IRC § 6015 and IRC § 6153, the statutes that exempted the decedent from estimated tax filings (although section 6015 has since been replaced). Deficit Reduction Act of 1984, Pub L 98-369, § 412(a), 98 Stat 494, 792. The regulations written for repealed section 6015 and section 6153, Treasury Regulation § 1.6015 and Treasury Regulation § 1.6153-1(a)(4), still provide support for the conclusion that estimated taxes need not be paid. Until new regulations under IRC § 6654 are released covering estimated tax payments for a single decedent, most commentators suggest following the regulations under the repealed sections.

For instance, despite the repeal of section 6153, the IRS subsequently applied Treasury Regulation § 1.6153-1(a)(4) to determine that no estimated income tax had to be paid after the death of an individual. Priv Ltr Rul 91-02-010 (Oct 10, 1990). The IRS further noted that there was "no indication of a legislative purpose in enacting section 6654 to change the position set forth in section 1.6153-1(a)(4) of the regulations." Priv Ltr Rul 91-02-010.

PRACTICE TIP

The lawyer should consider filing IRS Form 5495 (Request for Discharge from Personal Liability under Internal Revenue Code Section 2204 or 6905) to allow the personal representative to request discharge from personal liability for the decedent's income taxes. *See* IRC § 6905. The corresponding Oregon form is Oregon Form OR-DECD-TAX (Final Tax and Discharge of a Decedent's Estate), sometimes also referred to as Oregon Form 150-101-151.

§ 7.6-6(b) Disclaimers

The surviving spouse and other beneficiaries may elect to disclaim benefits received by reason of the decedent's death. *See* IRC § 2518 and ORS 105.623–105.649; *see also* § 7.1-3 (item (13)); § 8.3-2(a) to § 8.3-2(f); § 12.3-3. The use of disclaimers as a postmortem planning tool can provide more desirable results in a decedent's estate plan, such as to allow a trust to qualify for the marital deduction, or to allow beneficiaries to redirect assets to those with a greater need. Care is needed to ensure that the disclaimer will have the desired effect. *See Fleenor v. Williamson*, 171 Or App 599, 601, 17 P3d 520 (2000) (an heir who had executed a complete and unconditional disclaimer of an interest in an estate could not later revoke or revise that disclaimer based on a unilateral mistake of law).

§ 7.6-6(c) Personal Representative's Compensation

A personal representative is entitled to compensation for their work on the estate. Compensation (a commission on the whole estate) is set by statute. ORS 116.173(3). However, in the petition for the appointment of a personal representative under ORS 113.035, a petitioner can include "a request for the compensation of the personal representative to be determined by a different method than as provided in ORS 116.173(3)." ORS 113.038(1). The petition must explain why the compensation calculated under ORS 116.173(3) would be inadequate relative to the reasonable value of the services provided. ORS 113.038(1). A petitioner who requests a different method of compensation under ORS 113.038 must give notice as provided in ORS 113.038(2)(a). *See* § 5.2-2(b) (contents of petition); *see also* § 11.6-5(a) (personal representative's fee).

A personal representative who is also a residuary beneficiary may wish to waive compensation. Compensation is taxable income to the personal representative, though it is not subject to self-employment taxes as long as the

personal representative is not a professional fiduciary. Rev Rul 58-5, 1958-1 CB 322. If the personal representative is the sole residuary beneficiary of a taxable estate, the decision depends on a comparison of the estate tax and the personal representative's income tax. When appropriate, the personal representative should promptly waive compensation to avoid being considered, for tax purposes, in constructive receipt of the income. See Rev Rul 66-167, 1966-1 CB 20, providing a safe harbor if the personal representative who wishes to waive compensation does so within six months after appointment.

§ 7.6-6(d) Accounting Method, Fiscal Year

The personal representative may elect either the cash method or the accrual method of accounting for the estate, and may select the fiscal year for the estate. *See* IRC § 441; IRC § 443(a)(2); IRC § 446. The election must be made by the time the first fiduciary income tax return is due (not including extensions). *See* Treas Reg § 1.441-1(c)(1). By choosing a fiscal year other than a calendar year, the personal representative can defer the time when estate income is taxed to the beneficiaries, or divide into two tax years income that would otherwise be bunched into one calendar year. If the trustee elects under IRC § 645 to have the decedent's revocable trust taxed as part of the decedent's estate, the trustee may also elect to use a fiscal year for the trust. *See* chapter 13 (fiduciary income tax).

PRACTICE TIP

The personal representative and the accountant who will prepare the fiduciary income tax return should attempt to identify opportunities to save or defer taxes by selecting a fiscal year end that may be more advantageous than a calendar year.

§ 7.6-6(e) Trust Election to Be Taxed as Estate; 65-Day Rule

Under IRC § 645, the decedent's revocable trust can be treated as part of the decedent's estate for tax purposes (even if there is no probate estate) if the trustee files an irrevocable election as described in section 645(c).

A personal representative may elect, under IRC § 663(b), to treat distributions made within 65 days after the end of the estate's tax year as made on the last day of that tax year for income tax purposes.

§ 7.6-6(f) Medical Expenses

The personal representative may elect to claim a deduction for the decedent's medical expenses paid within one year after death on the decedent's final income tax return if a separate return is filed, or on a joint return if the surviving spouse consents and a joint return is filed. *See* IRC § 213(c). Alternatively, medical expenses that are unpaid at the decedent's death can be claimed as debts for estate tax purposes. *See* IRC § 2053(a).

§ 7.6-6(g) Interest on Savings Bonds

The personal representative may elect to accrue interest to the date of death on U.S. Series E and EE bonds on the decedent's final income tax return. IRC § 454(a); Rev Rul 68-145, 1968-1 CB 203. If that election is not made, the interest will, to the extent it relates to the period before the decedent's death, be taxable to the subsequent owner as income in respect of a decedent. Rev Rul 64-104, 1964-1 CB 223; *see* IRC § 454(a); IRC § 691(a)(1). *See* § 12.3-12(c)(6) (U.S. Savings Bonds).

§ 7.6-6(h) Valuation Elections

For federal estate tax purposes, the personal representative may elect to value the assets of the estate six months after the decedent's death rather than on the date of death. IRC § 2032(a). The election may be made, however, only if both the gross estate and the estate tax are decreased by reason of the election. IRC § 2032(c). The personal representative may make the election for Oregon purposes whether or not a federal estate tax return is filed. ORS 118.010(8)(a).

The personal representative should also consider electing special-use valuation under IRC § 2032A, if the estate consists largely of farm, ranch, or timber property. *See* § 12.3-12(b) to § 12.3-12(b)(4). Such property, and commercial fishing businesses, may also be eligible for the Oregon natural resource credit under ORS 118.140. *See* § 14.2-6(a) to § 14.2-6(d)(3).

§ 7.6-6(i) Administration Expenses

The personal representative may elect to deduct administration expenses and losses during administration on either the fiduciary income tax returns or on the estate tax return. A comparison of the effective rates and the time of payment is necessary. For income tax purposes, the deduction can be taken only for the year in which payment is made. Ordinarily, any such expenses that constitute miscellaneous itemized deductions are deductible only to the extent that they are in

excess of 2 percent of adjusted gross income. *See* IRC § 67(a); *see also* § 12.2-5(b)(3) to § 12.2-5(b)(3)(iii); chapter 13. However, no miscellaneous itemized deduction is allowed for tax years 2018 through 2025. IRC § 67(g).

Some expenses of administration (management) may be deducted from estate income, rather than principal, under the so-called *Hubert* regulations (Treas Reg § 20.2055-3(b)), arising from the United States Supreme Court's decision in *Commissioner v. Estate of Hubert*, 520 US 93, 117 S Ct 1124, 137 L Ed 2d 235 (1997).

§ 7.6-6(j) Extension of Time to Pay

The personal representative may elect to extend the time for payment of the federal estate tax under IRC § 6161 or, if the estate consists largely of a closely held business, under IRC § 6166, or under both sections, and to extend the time for payment of the Oregon estate tax under ORS 118.225. An extension of time to file may be filed (on IRS Form 4768 (Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes), https://www.irs.gov/forms-pubs/about-form-4768) as late as the due date of the estate tax return. The estate will automatically receive a six-month extension of time to file. However, the tax payment date is not extended unless the estate makes an election under either section 6161 or section 6166.

According to advice from the Oregon Department of Revenue, if an estate is exempt from federal estate tax but is subject to the Oregon tax, the personal representative may file for an extension using IRS Form 4768 marked "For Oregon Only" at the top of the form.

§ 7.6-6(k) Qualified Terminable Interest Property

The personal representative may elect to treat certain property as qualified terminable interest property (QTIP) to obtain a marital deduction for federal estate tax purposes. Many bypass trusts qualify for the QTIP election, even though not originally intended to be QTIP trusts. *See* IRC § 2056(b)(7). Making a partial election with respect to a qualifying bypass trust may allow the estate of a married decedent to escape Oregon estate tax. *See* § 7.6-5; § 12.2-5(f)(3)(iii). The Oregon Department of Revenue has adopted rules allowing an Oregon QTIP election that is separate from any election on the federal estate tax return. *See* OAR 150-118-0070; *see also* § 14.3-11 (Oregon QTIP election).

PRACTICE TIP

Careful use of disclaimers may allow beneficiaries to modify a credit-shelter trust that does not qualify for the QTIP election into a trust that does qualify. *See* Treas Reg § 20.2056(b)-7(h), example (4).

§ 7.6-6(l) Oregon Special Marital Property

Oregon allows bypass trusts that fail to qualify for the qualified terminable interest property (QTIP) election to qualify for the marital deduction, even if the trust allows the accumulation of income, provided that any permissible beneficiaries who are not the surviving spouse make an election described in ORS 118.016(2), releasing all rights to distributions from the property or trust during the lifetime of the surviving spouse.

PRACTICE TIP

The release described in ORS 118.016(2) should be treated as a disclaimer and made only in a manner that will qualify as a disclaimer under IRC § 2518. Otherwise, the consenting beneficiaries may be considered to have made a taxable gift of the released interest. *See* § 7.1-3 (item (13)); *see also* § 8.3-2(c) (qualified disclaimer).

Oregon special marital property consists of any portion of a trust or other property interest

> (a) In which principal or income may be accumulated or distributed to or for the benefit of only the surviving spouse of the decedent during the lifetime of the surviving spouse;
>
> (b) In which a person may not transfer or exercise a power to appoint any part of the trust or other property interest to a person other than the surviving spouse during the lifetime of the surviving spouse; and
>
> (c) For which the executor of the estate of the decedent has made the election described in ORS 118.016(1).

ORS 118.013(2).

If a trust or other property interest would qualify as Oregon special marital property under ORS 118.013(2)

> except that the trust or other property interest allows principal or income to be distributed to other persons in addition to the surviving spouse, the executor may elect

> to set aside a share of the trust or other property interest as a separate share of the trust or property interest or as a separate trust, which shall qualify as Oregon special marital property if:
>
> (a) The executor makes the election described in ORS 118.016(1);
>
> (b) Each permissible distributee [(as defined in ORS 130.010(10))] makes the election described in ORS 118.016(2);
>
> (c) The surviving spouse makes the election described in ORS 118.016(2); and
>
> (d) All statements of election are attached to the estate tax return filed with respect to the estate of the decedent, or are filed or maintained as records as otherwise prescribed by the Department of Revenue by rule.

ORS 118.013(3). *See* § 14.3-10 for an extensive discussion of the Oregon special marital property deduction.

§ 7.6-6(m) Gain or Loss Recognition

In general, estates are not required to recognize gain or loss on distribution of property to residuary beneficiaries. However, a personal representative may elect to recognize gain or loss on distribution of assets in kind in the same manner as if the property had been sold to the beneficiary at its fair market value. *See* IRC § 643(e)(3). Otherwise, the property distributed in kind will have built-in appreciation or depreciation based on the change in value subsequent to the date of death or alternate valuation date, as applicable. *See* chapter 13 (fiduciary income tax).

In deciding whether to make the election, the personal representative should compare the effective income tax rates imposed on the estate and on the beneficiary.

§ 7.6-6(n) Partnership Elections

A partnership may elect to adjust the basis of partnership property to reflect the higher individual basis in the deceased partner's partnership interest. *See* IRC § 754.

§ 7.6-6(o) Review Payout Options

The lawyer should review various payout options from IRAs, profit-sharing plans, 401(k) plans, and other deferred-compensation plans. The Professional Liability Fund has noted the increased frequency of claims about distributions from IRAs. Lawyers should avoid giving financial advice, and defer to a financial

advisor when appropriate, and in any event should consider the complicated tax rules governing IRAs before advising a beneficiary how to handle an IRA.

§ 7.6-6(p) Generation-Skipping Transfers

In estates in which it is possible to use the generation-skipping exemption described in IRC § 2631(a), care must be taken to avoid paying unnecessary tax. *See* § 12.4-5 to § 12.4-5(c)(2).

FORMS

Form 7-1 Inventory of Property of Decedent's Estate

MS Word Download

IN THE _____ COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

[Probate Department]

In the Matter of the Estate of _____, Deceased.	Case No. _____ INVENTORY OF PROPERTY OF DECEDENT'S ESTATE

The personal representative sets forth an inventory of all of the property of the estate that has come into the personal representative's possession or knowledge, with the personal representative's estimate of the fair market value of the property as of the date of death of the decedent, as follows:

			Estimated Value on Date of Death
I.	REAL PROPERTY: Real property and improvements located at 123 Main Street, Eugene, Lane County, Oregon, and further described as Lot 13, Block 4, First Addition to Willamette Heights as platted and recorded in Book 12, page 13, Lane County Oregon Plat Records County tax account no: _____ Tax lot number: _____ 2020-2021 Assessor's RMV Land: Improvements: (Encumbered by a mortgage to National Bank with an unpaid balance at date of death of $25,351.90)	$115,000 280,000	$395,000.00

II.	STOCKS AND BONDS: 150 shares LMNOP Inc. common, selling ex-dividend at $50.25 per share		7,537.50
	LMNOP Inc. Declared but unpaid dividend [note: to be used when decedent dies after ex-dividend but before payment]		75.00
III.	100 shares LMNOP Inc. preferred at $40.00 per share		4,000.00
IV.	$10,000 Portland General Electric 7.8% bond, Series VII, maturing 12/1/2028		9,300.00
V.	100 shares ABC Co. preferred at $35 per share		3,500.00
VI.	599.813 shares ABC Co. common at $25.25 per share		15,145.27
VII.	$50 Series E Bond dated May 2015		223.50
VIII.	Dividend Reinvestment Account No. 1234 at National Bank for LMNOP Inc. dividends, 12.456 shares at $50.25 per share		625.91
IX.	MORTGAGES, NOTES AND CONTRACTS: Vendor's interest in a land sale contract between decedent as seller, and Mary Doe as purchaser, held in escrow at *XYZ* Escrow as its number 1234, in original amount of $100,000 bearing interest at 7% covering Lot 12, Block 2, Third Addition to Oak Heights, in Eugene, Lane County, Oregon Unpaid balance at date of death: Interest accrued to date of death:	55,653.85 32.98	55,686.83
X.	Promissory note in original amount of $100,000 dated 6/25/2020 bearing 10% per annum interest, given by John Jones, secured by a trust deed dated 6/25/2020, recorded at Reel 1234R as instrument number 2020-16543, Lane County Official Records covering: Lot 11, Block 2, Third Addition to Solar Acres, in Eugene, Lane County, Oregon Unpaid balance at date of death: Interest accrued to date of death:	18,757.83 72.98	18,830.81
XI.	CASH: Cash		105.36
XII.	Uncashed checks: *ABC* Company, dividend: Medicare: Car Insurance Co.:	75.00 103.10 25.00	203.10
XIII.	National Bank, Main Branch, Account No. 012 345 678		1,010.56

XIV.	Certificate of Deposit No. XXX issued by National Bank:	10,000.00	
	Interest accrued to date of death:	45.00	10,045.00
XV.	MISCELLANEOUS:		
	Miscellaneous household goods, furnishings, equipment, and all personal jewelry, clothing, and other personal effects located in decedent's residence at 123 Main Street, Eugene, Oregon		2,000.00
XVI.	Stamp collection		5,750.00
	TOTAL INVENTORY VALUE		$529,038.84

DATED: _____, 20___.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

/s/_____
[*name*]
Personal Representative

PERSONAL REPRESENTATIVE:
[*name*]
[*address*]
[*telephone no.*]
[*fax no.*]

LAWYER FOR PERSONAL REPRESENTATIVE:
[*name*]
[*OSB no.*]
[*address*]
[*telephone no.*]
[*fax no.*]
[*email address*]

NOTE: *See* § 7.4-2(a); § 7.4-3 to § 7.4-3(j). *See also* ORS 111.205 (pleadings and mode of procedure).

NOTE: The Uniform Trial Court Rules contain several general requirements regarding the form and format of documents. *See, e.g.*, UTCR 2.010 (form of documents); UTCR 9.030 (probate forms); UTCR 21.040 (format of documents filed electronically).

CAVEAT: This form is illustrative only. Lawyers must depend on their own legal research, knowledge of the law, and expertise in using or modifying this form.

Form 7-2 Supplemental Inventory

MS Word Download

IN THE _____ COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

[Probate Department]

In the Matter of the Estate of _____, Deceased.	Case No. _____ SUPPLEMENTAL INVENTORY

The personal representative sets forth this supplemental inventory of all the property of the estate omitted from the inventory previously filed that has now come into the personal representative's possession or knowledge, with an estimate of the respective fair market values of the property as of the date of death of the decedent as follows:

		Estimated Value on Date of Death
	Total estimated fair market value of estate per inventory filed _____, 20___	$529,038.84
	CASH:	
XVII.	Currency found in home.	$ 1,050.00
	Total supplemental inventory estimated fair market value	$530,088.84

DATED: _____, 20___.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

/s/_____
[*name*]
Personal Representative

PERSONAL REPRESENTATIVE:
[*name*]
[*address*]
[*telephone no.*]
[*fax no.*]

LAWYER FOR PERSONAL REPRESENTATIVE:
[*name*]
[*OSB no.*]
[*address*]
[*telephone no.*]
[*fax no.*]
[*email address*]

COMMENT: *See* § 7.4-2(b). *See also* ORS 111.205 (pleadings and mode of procedure).

NOTE: The Uniform Trial Court Rules contain several general requirements regarding the form and format of documents. *See, e.g.*, UTCR 2.010 (form of documents); UTCR 9.030 (probate forms); UTCR 21.040 (format of documents filed electronically).

CAVEAT: This form is illustrative only. Lawyers must depend on their own legal research, knowledge of the law, and expertise in using or modifying this form.

Form 7-3 Amended Inventory

MS Word Download

IN THE _____ COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

[Probate Department]

In the Matter of the Estate of _____, Deceased.	Case No. _____ AMENDED INVENTORY

The personal representative sets forth this amended inventory of the personal representative's revised estimate of the respective fair market values of the following listed property as of the date of death of decedent:

			Estimated Value on Date of Death
	Total estimated fair market value of estate per inventory filed _____, 20___		$650,510.00
XIV.	11,469.513 shares WXY, Inc. a/c 90100030332		
	Originally reported	$21,233.30	
	Adjusted to	21,792.07	558.77
XV.	2,798.646 shares RSTUV, Inc., a/c 555-0014456-6		
	Originally reported	34,718.52	
	Adjusted to	31,204.90	(3,513.62)
	Total amended inventory estimated fair market value		$647,555.15

DATED: _____, 20___.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

/s/_____
[*name*]
Personal Representative

PERSONAL REPRESENTATIVE:
[*name*]
[*address*]
[*telephone no.*]
[*fax no.*]

LAWYER FOR PERSONAL REPRESENTATIVE:
[*name*]
[*OSB no.*]
[*address*]
[*telephone no.*]
[*fax no.*]
[*email address*]

COMMENT: *See* § 7.4-2(b); § 7.4-5. *See also* ORS 111.205 (pleadings and mode of procedure).

NOTE: The Uniform Trial Court Rules contain several general requirements regarding the form and format of documents. *See, e.g.*, UTCR 2.010 (form of documents); UTCR 9.030 (probate forms); UTCR 21.040 (format of documents filed electronically).

CAVEAT: This form is illustrative only. Lawyers must depend on their own legal research, knowledge of the law, and expertise in using or modifying this form.