

Instructions for Filing Small Estates

For County Circuit Courts

1. ELIGIBLE ESTATES

A small estate affidavit may be filed if the fair market value of the estate is \$275,000 or less, and:

- A. Not more than \$75,000 of the fair market value of the estate is from personal property, and
- B. Not more than \$200,000 of the fair market value of the estate is from real property.

“Estate” is the decedent’s property that is subject to administration by a court.

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

“Real property” is land or interests in land, such as life estates.

“Personal property” is all other property that is not real property, including contracts for the sale of real property, bank accounts, vehicles, and so on.

The dollar limits do not include any property that transfers without probate or the small estate process (such as bank accounts or real property held with right of survivorship).

2. DEFINITIONS THAT APPLY TO THE PROCESS

- A. Affiant: The person signing this affidavit is the “affiant.” The affiant has specific legal duties under ORS 114.505 to 114.560.
- B. Decedent: The “decedent” is the person who died leaving an estate that needs to be paid to creditors or transferred to heirs or devisees.
- C. Estate: The “estate” means all of the decedent’s property that is subject to administration by a court in Oregon. This does not include property that transfers automatically to others following death (such as joint bank accounts).
- D. Heirs: The “heirs” are the people who would inherit the decedent's estate under Oregon's laws of intestacy, ORS 112.017 to 112.115.
- E. Devisees: The “devisees” are the people named in the will to receive the decedent’s estate. Charities can also be devisees.

3. WHO CAN FILE

- A. If the decedent died intestate (did not leave a will), the heirs entitled by law to the decedent’s estate, or the Division of State Lands if there are no heirs.

- B. If the decedent died testate (with a will) the devisees of the estate.
- C. Any creditor of the estate who has not been paid the full amount owed within 60 days of the decedent's death. Note: If the decedent died intestate and without heirs, a creditor cannot file without first receiving authorization from the Division of State Lands. See ORS 114.520. Check the box under item 1 of the affidavit indicating that you are a creditor and that the decedent died intestate and without heirs. Attach your written authorization from the Division to the affidavit.

4. HOW TO FILE

- A. Fill out the form. Do not leave any part blank. If a part does not apply, write in "does not apply" or "none."
- B. **Have your signature notarized.** A court clerk can also certify your signature provided you sign in front of the clerk. Bring proper identification with you.
- C. Get a **certified copy** of the death record.
- D. Get the **original will**, if one exists. The original will was signed by the decedent (not a copy).
- E. Have the affidavit, death record, and original will (if any) reviewed at the Information window on the first floor of the Courthouse and then file at the Accounting window on the first floor of the Courthouse. A filing fee is required.

5. WHEN TO FILE

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

6. PART 10 OF THE FORM -- WHO GETS WHAT?

Part 10 of the form deals with who gets what property. This is the interest that each heir or devisee is to receive from the estate. If the decedent did not leave a will, the property passes to the heirs according to the laws of intestate succession. If the decedent left a will, the property goes according to the will.

Examples:

- A. **If the decedent left no will** and had the following relatives survive:
 - 1. A spouse but no surviving children or grandchildren: everything would go to the spouse.
 - 2. A spouse and children:
 - a. Everything would go to the spouse if all of the surviving children (and deceased children who left children) were also children of the spouse.
 - b. Half would go to the spouse and half would go to the children if any of the surviving children (or deceased children who left children) were not also the children of the spouse.

3. No spouse but three children (no deceased children): each child would receive one-third of the estate.
4. No spouse but two surviving children and one deceased child who left two children: the two surviving children would receive one-third each and the children of the deceased child would receive one-sixth each (they share the deceased child's share).

B. **If the decedent left a will**, each person who is named to receive property would be listed, with the property to be received described next to each name under "property to be received."

1. If five people are to receive the estate in equal shares, then "one-fifth" should be written under "property to be received," next to each name.
2. If Joe Smith is to receive the decedent's house on Elm Street, that should be written in under "property to be received" next to Joe Smith's name.

7. WHERE TO FILE

The affidavit can be filed with the circuit court for:

- A. The county in which the decedent died,
- B. Any county in which the decedent lived or had a home at death, or
- C. Any county in which any property of the decedent was located at death or when the affidavit is filed.

8. DUTIES OF THE AFFIANT

The affiant has the following duties under the law:

- A. Mail or deliver a copy of the affidavit showing the date of filing to the parties listed in the affidavit. This must be done within 30 days after filing the affidavit.
- B. Take control of the property of the estate. See ORS 114.535.
- C. From the estate property, pay estate expenses and claims as provided in ORS 114.545(1)(c).
- D. After four months from the date the affidavit is filed (if no personal representative is appointed for the estate), the affiant should transfer the estate property to the heirs or devisees. Before the four months is up, the affiant may transfer property as allowed by ORS 114.545(1)(e) and (f).
- E. Pay any taxes owed.

9. CLAIMS AGAINST THE ESTATE

See ORS 114.540.

10. ACCOUNTABILITY OF CLAIMING SUCCESSORS

The affiant and any other claiming successor who receives property under the small estate statute is personally answerable and accountable:

- A. To estate creditors, to the extent of the value of the property received, ORS 114.545(2);
- B. To any personal representative appointed within four months after the affidavit is filed; ORS 114.545(2), 114.555; and
- C. To any omitted heir or devisee.

11. QUESTIONS

The court staff is not allowed to give legal advice.

If you have questions about handling a small estate, or whether a small estate is the right process for you to use, you should contact a lawyer. The Oregon State Bar Lawyer Referral Service can provide names of lawyers in your area who accept referrals in this area. The number for the referral service is 1-800-452-7636.

The references to ORS in these instructions are to the Oregon Revised Statutes. You can read these at the law library or find them on the internet at:

<http://www.leg.state.or.us/ors/114.html> (Chapter 114) and
<http://www.leg.state.or.us/ors/112.html> (Chapter 112).