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Senate Bill 88 adds consumer protections to long term care insurance

By Jeannette Holman, Attorney at Law

Long term care insurance covers a variety of medical, personal, and social services for people who are ill or have disabilities and can no longer take care of themselves. Once people start using their long term care benefits, they are typically elderly or seriously injured or ill, making them some of Oregon's most vulnerable citizens. Prior to passage of Senate Bill 88 (chapter 69, Oregon Laws 2011) (SB 88), long term care insurance did not have the same consumer protections as other types of health insurance. There was no requirement that insurance companies pay long term care claims promptly. When a claim was denied, consumers with long term care insurance did not have the same grievance or appeal rights as consumers with other types of health insurance.

For the three-year period ending December 31, 2010, the Department of Consumer and Business Services Insurance Division (DCBS) received 291 complaints related to long term care and home health care. More than half of those complaints involved claims handling. The number of complaints prompted DCBS to introduce SB 88 to address deficiencies in Oregon's regulatory structure.

SB 88 makes two changes to current law to protect consumers who buy long term care insurance. The changes will apply to policies issued or renewed on and after July 1, 2012. The delayed applicability allows insurers sufficient time to change policies and avoids any potential interference with contract issues.

The first protection added by Section 2 of SB 88 requires DCBS to adopt by rule[1] prompt payment requirements for long term care insurance. The Insurance Division's proposed rules require an insurer to:

- Pay a "clean claim" within 30 days of receiving the claim or
- Send a written notice acknowledging receipt of the claim. The insurer must either deny payment (with specific reasons for the denial) or request additional information to determine whether all or part of the claim is payable. The insurer must also specify what additional information is needed.

The proposed rules define claim as "a request for payment of benefits under an in-force policy, regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met." Clean claim is defined as "a claim that has no defect or impropriety, including any lack of required substantiating documentation, such as satisfactory evidence of expenses

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incurred, or particular circumstance requiring special treatment that prevents timely payment from being made on the claim."

The second consumer protection in SB 88 requires DCBS to include procedures for a consumer to appeal an insurer's determination about whether the conditions for a benefit trigger have been met. The rules must outline procedures for both internal and external review of the determination. ORS 743.655, as amended by section 5, chapter 69, Oregon Laws 2011.

As with the prompt pay provisions, the proposed rules for internal and external review are based on the National Association of Insurance Commissioners (NAIC) model regulations. The rules will address five key areas of the internal and independent review process:

1) the role of an authorized representative of the insured
2) notice requirements imposed on the insurer related to a benefit trigger determination
3) the internal review process
4) the independent review process
5) certification, record retention, and reporting requirements applicable to independent review organizations

First, the rules require the involvement of an authorized representative of an insured at all stages of the review process, if applicable. The authorized representative may be identified by the insured, a family member of the insured if the insured is unable to provide consent, or a person authorized by law to provide substituted consent for the insured. Not only do the rules provide for the authorized representative to appear on behalf of the covered person at review proceedings, but the insurer is also required to provide all notices to the authorized representative as well as the covered person. This assures that if the covered person is unable to respond on his or her own behalf, the authorized representative will be alerted and able to respond. Under the proposed rules, the authorized representative may act as the covered person's personal representative within the meaning of 45 CFR 164.502(g) promulgated by the Secretary of the U.S. Department of the Department of Health and Human Services under the Health Insurance Portability and Accountability Act. Authorized representative means:

- A person to whom a covered person has given express written consent to represent the covered person in an external review;
- A person authorized by law to provide substituted consent for a covered person; or
- A family member of the covered person or the covered person's treating health care professional only when the covered person is unable to provide consent.

The second provision of the rules requires the insurer to provide notice to the insured and the authorized representative, if applicable, of the right to an internal appeal of a determination that the benefit trigger for long term care has not been met. Additionally, if the internal appeal upholds the determination of the insurer, the rules allow the insured to request an independent review of the determination. This notice must be in writing and must be provided to the insured and the insured's authorized representative at the time the insurer notifies the insured that the benefit trigger has not been met.[2]

The third major provision in the rules is the internal appeal. The internal appeal is conducted by an individual or group of individuals designated by the insurer. However, the individuals making the internal appeal decision may not be the same individual or group of individuals who made the initial benefit determination. If the insurer's original decision is upheld upon appeal, the insurer must provide a written description to the insured of any additional internal appeal rights offered by the insurer, the insured's right to request an independent review of the determination, and if the insurer does not believe that the decision is eligible for independent review, the insurer must inform the insured, the insured's authorized representative and the director of that

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decision and explain why the decision is not eligible for independent review.

Fourth, the rules set out the requirements for the independent review process. This review is conducted by an independent organization certified or approved by DCBS. The organization must have no conflict of interest with the insurer, the insured, or the insured's authorized representative. The costs of the independent review are borne by the insurer.

The final piece of the rules sets out the requirements an organization must satisfy to qualify as an independent review organization and the ongoing reporting and record-keeping requirements that apply to a certified independent review organization.

SB 88 directs the Director of DCBS to adopt rules to implement both the prompt pay requirement and the internal and external review process. This direction is consistent with the existing statutory framework for long term care insurance. (See ORS 743.650 to 743.664 and OAR 836-052-0500 to 836-052-0790.) Because of the changing nature of long term care insurance, many of the details are included in administrative rules rather than statutes. This allows some flexibility to adapt to changes in the industry. Most of the statutory provisions and the administrative rules are taken from provisions in a model act and model regulation on long-term care insurance adopted by the NAIC.[3] The Insurance Division of DCBS expects to have final rules adopted by early January 2012.

On a final note, another bill passed by the 2011 Legislative Assembly will likely provide some advantages for consumers who purchase long term care insurance in Oregon. With passage of HB 2095 (chapter 520, Oregon Laws 2011), Oregon joined the Interstate Insurance Product Regulation Compact (IIPRC). Under this compact, insurers may file insurance products for approval by the compact rather than in each individual state. The product may be marketed in all member states, adding uniformity to compact-approved insurance contracts. Long term care is one type of insurance product that is included within the scope of the IIPRC approval process.

After January 1, 2012, an Oregon resident who purchases a long term care product approved under the IIPRC process can be assured that the same provisions and protections in the policy purchased in Oregon will apply in all member states. For a product like long term care insurance, this assurance that the product is "portable" to other states is a benefit to consumers in our mobile society. ■

Footnotes

1. The proposed rules and information about the rulemaking will be available after October 15, 2011 on the Insurance Division's Web site at: **www.cbs.state.or.us/ins/rules/prop_admin_rules.html**
2. All stages of the review process are subject to timelines established in the rules. The insured, the insured's authorized representative, and the practitioner should review these timelines whenever considering an appeal of the benefit trigger determination.
3. The statutory provisions applicable to long term care insurance are nearly identical to provisions in the NAIC Model #640, "Long Term Care Insurance Model Act." Most of the provisions of the NAIC Model #641, "Long Term Care Insurance Model Regulation" have been incorporated into Oregon administrative rules at OAR 836-052-0500 to 836-052-0790.)

Legislative update for estate planners

By Jeffrey M. Cheyne, Attorney at Law

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Thanks to the work of members of the Oregon Law Commission (OLC), the OSB Estate Planning Section, and the Oregon Bankers Association, a number of bills passed this year that will affect the estate planning community. This update covers the following bills:

- Real Property Transfer on Death Act
  SB 815 – Effective January 1, 2012
- Healthcare Representative Bill
  SB 579 – Effective June 23, 2011
- Safe Deposit Contents Access Bill
  SB 414 – Effective June 17, 2011
- Oregon Uniform Principal and Income Act Revisions
  SB 387 – Effective June 9, 2011
- Marital Gift Presumption Bill
  SB 386 – Effective January 1, 2012
- Elective Share Technical Corrections Bill
  SB 385 – Effective June 9, 2011
  (including Other Tax Related Changes:
  SB 301 – Effective September 29, 2011)
- Oregon Estate Inheritance Tax Bill (including Natural Resource Property election updates)
  HB 2541- Effective January 1, 2012

Real Property Transfer on Death Act: SB 815

Background. Some individuals look for ways to transfer their property at death without having to go through probate. Oregon law currently provides "pay-on-death" designations for securities (ORS 59.535 – 59.585) and bank accounts (ORS 708A.455 – 708A.515). Prior to this bill there was no way to transfer real property in Oregon with a "pay-on-death" designation. Joint tenancy, tenancy by the entirety, and life estate deeds vested in named beneficiaries with unintended property rights are subject to redistribution through divorce, bankruptcy, torts, and creditor claims. Also, these transfers could have unintended gift tax consequences and transfer disputes.

Uniform Act. Most of the provisions of SB 815 were taken from the Uniform Real Property Transfer on Death Act, which was reviewed and edited by a workgroup of the OLC. One of the goals of this bill is to provide a reliable and inexpensive probate-avoidance tool to allow a person to execute and record a Transfer-on-Death Deed (TODD), which will transfer title to the designated beneficiary when the owner dies. An owner may designate a primary and alternate beneficiary, but all beneficiaries must be specifically named. A class or group cannot be designated as a beneficiary. A TODD is revocable at any time until the owner dies. The owner's capacity to execute a TODD and to make a will is the same.

Owner rights while living. Unlike a deed with right of survivorship provisions, the designated beneficiary does not acquire any interest in the owner's property until the owner dies. While the owner is alive the TODD does not affect any interest or right of the owner, and it does not create any legal or equitable interest or right for a beneficiary. The TODD does not affect the rights of the owner's creditors.

Beneficiary rights after owner dies. After the owner dies the property described in the TODD is then transferred to the designated beneficiary, if living, or transferred equally to a group if multiple beneficiaries are designated. The property is transferred subject to all encumbrances, liens, and restrictions. It is not known whether lenders will be willing to waive a "due-on-sale" provision in a trust deed and allow a transfer under a TODD.

18-month cloud on title. While a TODD represents an effective way to transfer property without needing a probate, creditors and claimants have 18 months following the owner's death to set aside the TODD. If the probate or small estate has insufficient property to pay allowed claims and allowances, creditors can recover from the property. Other claimants can set aside the TODD on the grounds of capacity, fraud, or undue influence. As a result, the property will be difficult to sell or transfer to a bona fide purchaser for a period of 18 months following the owner's death.

Former spouse and neglectful parent set aside. Sections 20 and 21 of the bill provide that in the event of a property transfer to a parent who willfully deserted or neglected the deceased owner for a 10-year period prior to

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the owner becoming an adult, the transfer can be set aside if an action is brought within four months after publication of a notice. If a former spouse is designated as a beneficiary and the marriage ends in divorce or annulment, that beneficiary designation is revoked.

Form of deed and revocation. The TODD form requirements are contained in Section 16 of the bill, and the requirements for revoking a TODD are found in Section 17. It is expected that TODDs will be useful to avoid probate, avoid gift taxes, and avoid prematurely creating interests in beneficiaries while the owner is alive. TODDs can serve as a means of transferring real property to a trust upon the death of the owner.

Effective date. SB 815 is effective January 1, 2012. Any TODD made before, on, or after January 1, 2012 will be effective for any owner who dies on or after that date.

Healthcare Representative Bill: SB 579

Current situation. Hospitals face a very difficult situation when an incapacitated or unbefriended patient needs medical care and has no known healthcare directive, relative, or friend. Senator Johnson sponsored SB 579 to address this difficult issue, which allows a hospital to appoint a healthcare provider and an ethics committee to make healthcare decisions on behalf of a patient incapable of communicating healthcare decisions.

Hospital can appoint healthcare provider. If a patient lacks the ability to make and communicate healthcare decisions, the hospital has made a reasonable but unsuccessful search to locate friends and relatives, and the hospital has made a reasonable but unsuccessful search to locate any healthcare instructions, the hospital may appoint a healthcare provider. The appointed provider must be trained in healthcare ethics, including identification and management of conflicts of interest and acting in the best interests of the patient, to give informed consent to medically necessary healthcare services on behalf of the patient.

A number of attorneys within the elder law and estate planning communities have expressed concern about the conflicts of interest between the hospital and the patient. However, it remains to be seen how these concerns will be handled by the hospitals and the appointed healthcare providers.

Limits. The designated healthcare provider cannot consent to a patient's mental health treatment, sterilization, or abortion. There is also a prohibition from withholding or withdrawing life-sustaining procedures, nutrition, or hydration, but this exception does not apply if the patient is terminally ill and no spouse, friends, or relatives can be located.

Effective date. A legislative emergency was declared to exist, and the bill became effective on the date of its passage, June 23, 2011.

Safe Deposit Contents Access Bill: SB 414

Current Problem. Prior to SB 414 there was no provision under Oregon law authorizing a financial institution to release the contents of a safe deposit box to the affiant of a small estate affidavit. Banks took the position that they do not own the contents of the safe deposit box and do not know the identity and value of the contents. Thus, affiants were generally unable to gain possession of safe deposit box contents. The Oregon Bankers Association sponsored this bill to try to resolve the problem.

Inventory. Under SB 414, the affiant must first request that the bank provide an inventory to identify the contents of the safe deposit box pursuant to ORS 708A.655. The affiant must include the inventoried contents of the safe deposit box and the affiant's estimate of the value of those contents in his or her small estate affidavit. Ten days after the small estate affidavit has been filed with the court, the affiant may deliver a certified copy of the affidavit to the bank in order to gain access to the safe deposit box. If a safe deposit box is discovered after an affidavit has already been filed, the affiant may request an inventory from the bank and amend the document.

Possession of contents. After being presented with a filed affidavit, the bank must allow the affiant to take possession of the contents of the box. Upon compliance with these statutes, the bank is released from liability or responsibility for the transfer of the property.

Effective date. A legislative emergency was declared, and this bill became effective on the date of its passage: June 17, 2011.

Oregon Uniform Principal and Income Act Revisions: SB 387

This bill addresses some trust income accounting issues. It reads like a tax law change, but it is not. SB 387 was introduced by the Estate Planning Section and co-sponsored by the Oregon Society of Certified Public Accountants and the Oregon Bankers Association. ORS 129.355 and 129.420 were amended to adopt the 2008 revisions by the Uniform Law Commission to the Uniform Principal and Income Act.

IRS Safe Harbor. ORS 129.355 (Uniform Law Section 409) was amended to address IRS criticisms concerning a marital deduction issue for IRAs and retirement accounts payable to a marital trust. The amended statute adopts the safe harbor directive of Revenue Ruling 2006-26.

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If a trust does not meet the IRS safe harbor requirements, it could lose its "marital deduction" status and thus cause additional estate taxes to be assessed. With the amendment to ORS 129.355, an unnecessary IRS challenge can now be avoided.

Right to demand income. Under the amended statute the surviving spouse is given the right to demand all of the income from each IRA and each retirement plan payable to a trust that qualifies for a marital deduction. Alternative accounting rules are provided to determine how the internal income from each IRA or retirement plan can be separately tracked and accounted for by the trustee.

Partial distributions of taxable income from entity. ORS 129.420 (Uniform Law Section 503) was amended to resolve the problem encountered by trustees who receive a cash distribution from an entity, such as a partnership, a limited partnership, an LLC, an S-Corp, or other pass-through entity, that is not sufficient to pay the trust income tax liabilities and satisfy the trust requirement to distribute all of the income to the income beneficiary. These entities often choose to distribute only enough cash to the trust to pay the trust's tax liability attributable to its distributive share of the entity's Schedule K-l income. The reported income is often higher for income tax reporting purposes than the actual cash distribution received by the trust. The problem for the trustee is that the trust requires all of the income to be distributed to the income beneficiaries. In such cases the trustee faces the dilemma of inadequately satisfying fiduciary responsibilities to both the income beneficiary and the remainder beneficiary. This circumstance is further complicated by the fact that a trust receives an income distribution tax deduction for net income distributions to the income beneficiary.

Distributions to income beneficiary. The amended ORS 129.420 makes it clear that a trustee of a mandatory income trust may, in fact, pay some or all of the tax liability on the trust's share of the entity's taxable income from income or principal receipts from the pass-through entity. Under the amended law the trustee is required to increase current year income distributions to the income beneficiary to the extent that the trust's income tax liability is reduced by distributing the corresponding income receipts to the beneficiary.

Official commentary. The Uniform Law Commission official comments to the Section 505 revision (ORS 129.420) contain an algebraic formula that can be utilized when the trust's tax liability and the amounts distributed to the beneficiary are interrelated. The formula, when properly implemented, after deducting the proper income distributions paid to the beneficiary, supports the trustee's determination that the remaining cash is sufficient to satisfy the trust's tax liability on its share of the entity's taxable income as reduced by the tax deduction of the income distribution(s).

Effective date. A legislative emergency was declared, and this bill became effective on the date of its passage, June 9, 2011, and, generally, is retroactive to January 1, 2011.

Marital Gift Presumption Bill: SB 386

Current law. ORS 107.105(1)(f) currently provides that property acquired during a marriage is deemed marital property. This statute provides a rebuttable presumption that both spouses have equally contributed toward the acquisition of marital property. In the absence of evidence to the contrary, the division of marital property between divorcing spouses should generally be equal.

***Olesberg* case**. In the case of *Olesberg v. Olesberg*, 206 Or App 496, 136 P3d 1202 (2006), rev den 342 Or 633 (2007), the Oregon Court of Appeals held that a husband's inheritance was marital property subject to the rebuttable presumption of equal contribution. The court held that the husband must provide affirmative evidence that his wife was not the object of his mother's donative intent. Because the husband could not prove that his mother did not intend to include his wife in a bequest only to him, the presumption of equal contribution was not rebutted, and the court held that the inherited property should be divided equally. This is true even though the husband's mother never named her daughter-in-law in the will.

A number of estate planning lawyers believe that the decision in *Olesberg* does not address the overwhelming desire of estate planning clients to leave property to their children and not to their daughters- and sons-in-law, unless they specifically provide otherwise.

Change in equal contribution presumption. SB 386 was co-sponsored by the Estate Planning and the Family Law Section of the Oregon State Bar and was drafted in response to the Olesberg decision. It removes property received by gift, devise, bequest, operation of law, beneficiary designation, or inheritance from the presumption of equal contribution under ORS 107.105(1)(f). The bill does not alter the court's authority to divide property in a method that is "just and proper." Property acquired by inheritance or gift and held separately is not subject to the presumption of equal contribution, although the court still has discretion to determine the just and proper division of assets.

Effective date. SB 386 applies to any domestic relations proceedings pending or commenced on or after January 1, 2012.

Note. The gift/inheritance presumption change under SB 386 only applies in domestic relations proceedings. It does not alter a surviving

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spouse's elective share rights under ORS 114.600 to 114.725. Thus, a surviving spouse can under certain circumstances elect to take a share of gifted or inherited property held by the deceased spouse as part of the augmented estate.

Elective Share Technical Corrections Bill: SB 385

Background. In 2009 the Oregon Legislative Assembly passed HB 3077, making a sweeping change to the laws governing a surviving spouse's elective share rights. Among other things, the new law eliminated the ability of one spouse to disinherit the other merely by putting assets into a trust or designating a beneficiary other than the surviving spouse. It did this by creating the concept of an "augmented estate." The augmented estate includes the assets of both the deceased spouse and the surviving spouse. The elective share right provides that the surviving spouse may obtain at least a specified percentage of the augmented estate, ranging from 5 percent to 33 percent, depending on the length of the marriage. The change in the elective share was proposed by the OLC and enacted during the 2009 session. HB 3077 is now codified at ORS 114.600 to 114.725 (the Elective Share Law or ESL).

Technical corrections. As could be expected with such a major change to the ESL, estate planning attorneys have identified issues in the new statutes that may have unintended consequences. The Estate Planning Executive Committee collected a list of such issues and introduced SB 385 to make some technical corrections. The OLC participated in drafting SB 385, which also includes a change proposed by Legislative Counsel to improve its clarity.

Augmented estate. One of the important provisions of the ESL is the concept of the augmented estate, which generally includes the worldwide assets of both spouses. However, some assets were identified that should not be included in the augmented estate. As a result, ORS 114.635 was amended to add two more exceptions. The augmented estate does not include property irrevocably transferred prior to the death of the first spouse nor any property that is held by either spouse solely in a fiduciary capacity. Also, ORS 114.665(3) was amended to provide that the non-probate estate does not include any powers of appointment held by the decedent in which the decedent could not have designated the decedent or the surviving spouse as a beneficiary.

Valuation of non-probate estate. ORS 114.650 provides that the value of the probate estate is the amount available for distribution after payment of claims and expenses of administration. However, ORS 114.660 does not have a similar provision for non-probate assets. In order to be consistent with the value calculations of the probate estate, ORS 114.660 was amended to provide that the non-probate estate value is also reduced by all debts and liabilities and costs of administration not paid out of the probate estate.

Augmented estate and surviving spouse estate clarification. Legislative Counsel suggested changes to ORS 114.630 (SB 385 § 4) and ORS 114.675 (SB 385 § 5) to clarify what property is included in the augmented estate and what property is included in the surviving spouse's estate. ORS 114.675(1) was amended to include non-probate transfers from a deceased spouse as part of the surviving spouse's estate.

Valuation of provision for other spousal beneficiary trusts. Several estate planning attorneys noticed that some trusts, such as an Oregon Special Marital Property Trust (ORS 118.013), which allows for discretionary distribution of income to a surviving spouse, do not meet the valuation criteria of ORS 114.675(2)(a)-(d). A new provision was added to ORS 114.675(2) to provide valuation criteria of the surviving spouse's beneficial interest in any other trust based on federal estate and gift taxation valuation laws.

Decedent's will or trust can direct payment priority. Under the current law, if the surviving spouse makes an elective share claim, and the surviving spouse's estate is not sufficient to fully fund the elective share, then the remaining unpaid portion of the elective share claim is to be paid proportionately from the probate and non-probate shares of the deceased spouse's estate. A number of estate planning attorneys observed that the proportional claim recovery from all of the probate and non-probate assets of the deceased spouse's estate could cause unintended consequences, such as reducing or disqualifying charitable distributions and triggering unexpected income tax consequences for the non-spousal beneficiaries of the decedent's IRAs and retirement plans. One way to resolve this issue is to allow the decedent to specify the order and priority for the payment of the remaining elective share claim. As a result, ORS 114.700(3) was amended to allow the decedent's will or trust to direct the order in which any elective share claim is to be paid.

Effective date. A legislative emergency was declared, and this bill became effective on the date of its passage, June 9, 2011.

Practice note: Because the statutory provision allowing a decedent's will or trust to specify the order and priority for the payment of an elective share claim is effective now, consideration should be given to adding a payment priority clause for the wills and trusts of married couples and domestic partners to address this issue.

Other tax-related changes: SB 301

As a general principal, legislators and regulators try to match the Oregon income tax provisions with their counterpart federal income tax provisions so that there is as much compatibility as possible between

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the two tax codes. Early in the 2011 legislative session, the House and Senate passed SB 301, which contained provisions tying a number of the 2010 federal tax changes to the 2010 Oregon income tax laws. In the area of estate planning there were two changes of note.

Filing date for some 2010 IT-1s extended. The filing date for the Oregon Form IT-1 for 2010 estates that are also filing a 2010 federal estate tax return was extended to September 19, 2011, but no extension was allowed for the payment of the Oregon inheritance tax, which remains due nine months after the date of death (SB 301 § 33).

Oregon income tax basis matches federal for 2010 estates. The Oregon income tax basis rules are tied to the Internal Revenue Code as of December 31, 2010. Thus, for 2010 estates with taxable values over $5 million who are electing not to pay federal estate tax, the modified carryover basis rules of IRC 1022 apply. For 2010 estates with taxable values either less than $5 million or more than $5 million where the estate elects to file a federal estate tax return, the basis adjustment rule is the fair market value as of the date of death under IRC 1014. These tax basis rules will be followed for Oregon purposes. For 2011 estates Oregon will follow the federal basis rules of adjusting basis to the fair market value as of the date of death (SB 301 § 27).

Effective date. This tax bill became effective September 29, 2011, but the Oregon Department of Revenue treated these law changes as if they were effective earlier.

Oregon Estate Tax Bill: HB 2541

Background. At the conclusion of the 2009 legislative session, the Senate and House Revenue Committees asked the OLC to conduct a law reform project regarding Oregon's highly confusing and out-of-date inheritance tax laws. One of the directives from both committees was that all tax changes had to be approximately revenue-neutral. The OLC work group held a number of meetings beginning in October 2009 and concluding in March 2011 with its final amendments to HB 2541. Many of the changes were technical, such as changing the name of the tax from "inheritance tax" to "estate tax," but some were not.

Exemption increased, then not increased. The OLC work group proposed increasing the exemption from $1 million to $1.5 million, but the Legislative Revenue Office determined that rate increases maxing out at 19.8 percent would be necessary to make the $1.5 million exemption revenue-neutral. On May 10, 2011, the House passed the bill with the $1.5 million exemption and the 19.8 percent maximum tax rate. Under this version of the bill Oregon's exemption was still lower than Washington state's $2 million exemption, but the maximum tax rate would be slightly higher. Washington and Oregon are the only states in the western 13 states with estate taxes.

When HB 2541 reached the Senate the resulting rate increases were too difficult for a number of legislators to agree with. Several people, both conservative and liberal, testified that Oregon would have the second highest estate taxes in the nation if the House version was adopted, so the bill was amended to reduce the exemption to $1 million, and the top tax rate was capped at 16%. All of these changes are effective beginning on January 1, 2012. Also, after January 1, 2012, Oregon's inheritance tax will now be known as Oregon Estate Tax (OET).

Rate changes. For estates with a gross estate value of $1 million or less, no tax returns will be due. For Oregon taxable estates, as defined under the new law, of $1 million or less, no tax will be due. A new single tax rate schedule will start at 10 percent for the first dollar over $1 million and increase to a maximum rate of 16 percent for estate values over $9.5 million. For Oregon taxable estates under $2 million the new rates will result in lower taxes when compared to current taxes. For estates over $2 million the new rates will be higher.

Intangible personal property change. The confusing and vexing provisions for determining the taxability of intangible personal property of non-residents will be repealed, and such property will no longer be subject to tax. The work group acknowledged that a nonresident could easily avoid OET by transferring real or personal property located in Oregon to a limited liability company, but the complexities of determining how to fairly distinguish between larger entities with multiple owners holding properties in multiple states and smaller family entities proved too difficult to determine. Thus, intangible personal property of non-resident decedents will no longer be subject to tax. Intangible personal property of Oregon residents remains subject to tax unless it is taxed in another jurisdiction.

Natural resource property. Significant clarifications were made with the natural resource property election. ORS 118.140 was amended to include within the statute the various types of property that qualify as natural resource property. No more than $7.5 million in value can be claimed as natural resource property. Rather than using the current rate table, the new credit will be determined as a fraction of the OET based on the value of the natural resource property proportional to the adjusted gross estate.

Operating allowance clarified. Natural resource property can include a cash or cash equivalent operating allowance of up to the lesser of 15% of the claimed natural resource property or $1 million. Most, but not all, sales or transfers of natural resource property followed by replacement with natural resource property qualify and are not subject to the disposition tax.

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Use requirement and disposition tax. Family members who inherit natural resource property must continue to use the property for farm, forestry, or fishing business for five out of eight calendar years following the decedent's death. If natural resource property is sold or its use ceases prior to satisfying the five-out-of-eight-years requirement, a disposition tax will be due six months after the disposition event.

Taxpayers who make a natural resource property election will have to continue to report the status of their natural resource property on an annual basis.

Procedural changes. HB 2541 made a number of procedural changes, including the following:

- The Internal Revenue Code tie-in date is amended from December 31, 2000, to December 31, 2010.
- There will be no more confusing Table A/ Table B calculations, and adjusted taxable gifts will no longer be relevant.
- A single tax rate table is adopted with the tax rates starting at the first dollar of an Oregon taxable estate over $1 million.
- In order to determine the OET, all decedent estates, both resident and non-resident, start by determining the federal taxable estate increased by the state death tax deduction under IRC 2058 and any applicable state marital property included in the decedent's estate, and reduced by any state marital deductions and any other exclusions or deductions to determine the Oregon taxable estate.
- The OET for Oregon resident decedents will be based on the taxable value of their worldwide assets. If a resident decedent has real or tangible personal property located outside of Oregon or intangible personal property that is subject to tax by another state or country, then the OET will be based on a ratio of the value of property subject to Oregon tax (the numerator) over the value of the gross estate (the denominator).
- If a non-resident decedent has real or tangible personal property located in Oregon then the OET will be based on a ratio of the value of real and personal property located in Oregon (the numerator) over the gross estate (the denominator).
- The definition of the term "beneficiary" in the Oregon special marital property elections was changed to the "permissible distributee" definition from the Oregon Uniform Trust Code. This definitional change was made in order to more precisely define who must consent to an Oregon special marital property election.
- Elections taken on the OET return can be different from elections on the Federal Estate Tax return. For example, in a case of a family farm all or a significant portion of the property passing to the surviving spouse over $5 million could be in the form of a QTIP Trust. Before this law change the Oregon Department of Revenue required that the taxpayer be bound by the marital deduction election on the federal estate tax return, notwithstanding the fact that the same property may be eligible for a natural resource credit on the OET return. The new law permits differing elections.
- Because of the new IRC tie-in date of December 31, 2010, the qualified family-owned business interest deduction under IRC 2057 is terminated as of the effective date of the bill.
- Installment payment plans with the Oregon Department of Revenue will have a reduced interest rate of 5 percent rather than the current 9 percent.
- The Oregon taxable disclaimer statute (ORS 105.645) was amended to change the Internal Revenue Code reference date to December 31, 2010, and this change is effective retroactive to January 1, 2010.

Effective date. Except for the revisions to the disclaimer statute, all of the other provisions apply to estates of decedents who die on or after January 1, 2012. Thus, current law still applies for 2011 decedents.

Gift loophole. Oregon law regarding the non-taxability of lifetime gifts has been made more clear. After 2011 Oregon does not "add back" gifts made while a person is alive in determining the OET. As long as the federal exemption remains higher than $1 million, there is an opportunity for taxpayers to reduce their OET exposure without incurring federal gift taxes. Each gift reduces the OET. For example, if Joe dies holding assets valued at $2.5 million with no deductions, his estate will pay an OET of approximately $152,500. But if Joe had given away $1.5 million before his death, his estate tax would have been zero, and his federal gift tax would have been zero.

This gifting opportunity appears to be attractive, but one must determine the income tax basis of the assets that are being gifted. If the gifted assets have a low tax basis, the donee will acquire the gifted assets at the same low basis. Later, when the donee sells the gifted property, the OET savings may be exceeded by Oregon and federal income taxes.

Many Oregon decedents will never pay federal estate tax, but quite a few will have to pay OET. With the relatively low exemption of $1 million, many Oregon residents will continue to have to include OET planning in their estate plans, and some Oregon residents may be enticed to consider moving to one of the 11 western states that have no estate taxes. ■

The full text of the enrolled bills can be found on the Oregon State Legislature Web site at **www.leg.state.or.us/bills_laws**.

HB 2543: Significant changes to property tax deferral program

By Andrea N. Ogston, Legal Aid Services of Oregon

In response to the weakening housing market, the 2011 Oregon Legislature passed House Bill 2543, which will sunset the property tax deferral program in 2021. It also limits the number of new participants each year to 105 percent of the number of the prior year's participants, and limits payment of deferred taxes to availability of funds. There are many additional restrictions that will further reduce the number of eligible participants. Most striking is that the Oregon Department of Revenue has taken the position that the new law bars any home with a reverse mortgage from participation in the program.

HB 2543 removes a prior cap for homes where the basis for the deferral was an individual's disability. Previously the amount of deferred taxes for a person with a disability could not exceed 90 percent of the real market value of the home. Once the cap was reached, deferral of the individual's taxes continued. This provision has been eliminated. Additionally, income is now based on household income rather than filing group. There is no longer a graduated deferral for those individuals who exceed the income cap. The interest rate on deferred taxes has been changed from six percent simple interest to 6 percent compounded annually.

Additional cost-saving measures were included with the hope of saving the program. There is a new cap for participants, which excludes individuals with a net worth in excess of $500,000. Net worth includes all assets and real property. Also excluded are properties with value beyond 100 percent of the county median real market value with increased allowances based on years of occupancy. An individual must live in his or her home for at least five years to be eligible for the program. Deferrals of special assessments will also be phased out. Finally, there is no longer an extension period for transferees. Heirs to a home with deferred taxes are now jointly and severally liable for the deferred taxes and are not eligible for an extension for payment.

Previously, an heir who occupied the home as his or her principal residence could be granted up to a five-year extension to pay the deferred taxes. Now an heir must pay the deferred taxes by August 15 of the year after the homeowner dies, unless they themselves qualify for a deferral. The liability of the heirs is limited to the value of the home.

A new certification program requires participants to certify eligibility every two years. Letters and the forms went out to current participants on June 30, 2011, and were due back to the Department of Revenue on July 25, 2011.

The law took effect the ninety-first day after June 30, 2011. ■

Changes to law about DHS records in protective proceedings

By Michael Schmidt, Attorney at Law

House Bill 2683, which was sponsored by the Elder Law section, was adopted by the 2009 Legislature and became effective June 2, 2011. It amends ORS 125.012 and addresses the ability of the Department of Human Services to share relevant information with the court in guardianship and conservatorship proceedings.

This information is important to determine whether an alleged incapacitated person needs protection and who the court should appoint as the fiduciary. However, this information is often confidential under the Health Insurance Portability and Accountability Act and care must be exercised to prevent unnecessary dissemination.

Prior to this amendment, ORS 125.012 required the court to seal information obtained from DHS, limited access to the information to parties, and allowed the parties only to inspect the information. The statute was not clear as to who was entitled to inspect the information and whether the information could be photocopied.

The amendment clearly defines the term "party" to end confusion as to who is entitled to access the confidential information. It also provides for access through a court order by lawyers considering representation of the respondent or a fiduciary.

In conjunction with the amendment, new UTCR 9.410 has been adopted to create procedures for accessing, handling, and disclosing DHS confidential information. It does not apply to the court visitor, but to the person who submits the DHS information pursuant to ORS125.012. The person who files the confidential information must also submit a proposed order (new UTCR form 9.410.1) for the court's signature that:

- Establishes who is entitled to a copy of the information;
- Prohibits redisclosure except to an expert witness unless otherwise ordered by the court;
- Requires all copies to be returned to the court at the end of the proceeding; and
- Sets parameters for access to the information by unrepresented persons. ■

Health care representatives can now authorize mental health treatment

By Timothy M. McNeil, Attorney at Law

Timothy M. McNeil is a partner in The Elder Law Firm (Davis, Pagnano, McNeil & Vigna). His practice encompasses all the basic elements of elder law, including long term care and estate planning, guardianship and conservatorship, and probate. He was the 2005 Senior Law Project Volunteer of the Year.

Standing in a small room between two locked doors, a visitor awaiting entrance to the psychiatric ward at St. Vincent's Hospital experiences the major difference between mental health care and care administered in other hospital wards. The double doors insure that departure depends upon the consent of the care providers, not upon the free will of the patient. The restrictive nature of mental health treatment convinced Oregon legislators in 1989 to exclude from a health care representative's authority the power to admit or retain a patient in a health care facility for care or treatment of mental illness. This exclusion reflected a concern expressed to legislators and by legislators during the formation of this law: the deprivation of liberty that may occur during the treatment of mental illness was too substantial to occur through the decision of a surrogate without further process.

Now, twenty-two years later, legislators find due process less compelling than the need to secure mental health treatment quickly, and see the need to regard mental health care similarly to physical health care. By passing House Bill 2375, Oregon legislators authorized a health care representative to admit or retain a patient in a facility for mental health treatment. In 2009, Senate Bill 16 passed, allowing a health care representative to consent to hospitalization of the principal for a period not to exceed eighteen days for "treatment of behavior caused by dementia." Although Senate Bill 16 sunsets in January 2012, replaced by the broader authority established in Senate Bill 2375, these laws reflect a trend in which individual due process rights are subordinate to the right of a health care representative to secure mental or physical health care for a patient who needs it.

Oregon case law indicates that this trend may be misdirected. In *Grant v. Johnson* (757 F.Supp 1127 (U.S. District Court, Oregon 1991), a protected person (Grant) argued that a judge (The Honorable Lee Johnson) deprived her of liberty and property and her constitutionally provided right to due process by enforcing Oregon's statute relating to temporary guardianships. Judge Johnson had appointed a temporary guardian for Grant without prior notice to Grant, and the temporary guardian placed Grant in the psychiatric ward at Providence Hospital for two weeks. At times during this placement, Grant was denied visitors, a telephone, and legal counsel. The Federal court agreed that the temporary guardianship statute that allowed this to occur was unconstitutional, stating:

> The statute at issue permits the ex parte appointment of a guardianship without notice to the alleged incapacitated person. The statute dispenses with an appearance by the alleged incapacitated person and fails to afford any opportunity for the alleged incapacitated person to request a hearing prior to the imposition of the guardianship. The statute sets no specific time limit on the length of the temporary guardianship. … The statute requires that the court find that 'an emergency exists' but requires no medical evidence or any independent investigation into the facts to support such a finding.

This decision led to changes in Oregon's temporary guardianship statute in 1995. These changes included a limit on the time of a temporary fiduciary's authority, and specific provisions regarding notice, the role of the court visitor, and reporting requirements.

In 2011, the Oregon legislature focused less upon the patient who needs mental health treatment and more upon a family member who attempts to secure mental health treatment for the patient. Representative Mitch Greenlick shared with House and Senate committees an account of a spouse who, although he was designated health care representative in an advance directive, could not consent to mental health treatment on behalf of his spouse. As a result, he was forced to become his spouse's guardian before he could secure the treatment that his spouse needed but to which she could not consent. Representative Greenlick argued that this was the wrong result, as the law should not regard mental health treatment differently from the treatment of a physical condition. He indicated that fears of a health care representative inappropriately "locking up" a patient in a psychiatric ward were antiquated.

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Mental health treatment

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Disability Rights Oregon (DRO) commented that HB 2375 apparently carried retroactive authority, and that parties signing advance directives in the past did so without knowing that their health care representative had authority to consent to mental health treatment. Representative Greenlick disagreed. He said that he strongly suspected that a person executing an advance directive did not expect that his health care representative could consent to physical health care, but not to mental health care. Rather, Representative Greenlick argued, the person expected that his health care representative could arrange for whatever care was needed.

DRO's concern regarding the retroactive application of the bill was discounted, as was DRO's suggestion that the statutory form for the advance directive should be amended to include a specific opportunity to indicate whether the authority of the health care representative included mental health treatment. By rejecting these concerns and moving forward with the passage of the bill, the legislature made clear its expectation that the new law would not change the statutory form for the advance directive, and that it would apply to directives executed prior to the passage of the bill. HB 2375 passed with one dissenting vote in the House of Representatives and no dissent in the Senate.

Passed in 2009, SB 16 also appeared to be driven by the State Legislature's concern for family members who need to secure psychiatric treatment for loved ones. Dr. Maureen Nash, a geriatric psychiatrist at Tuality Hospital, argued strongly for this bill, having witnessed on numerous occasions the strain on families caused by the need to secure the appointment of a temporary conservator before the hospitalization of a dementia-afflicted family member could be extended without the consent of the patient. SB 16 solved this concern by amending ORS 127.535 to include language authorizing a health care representative "to consent to the hospitalization of the principal for a period not to exceed 18 days for treatment of behavior caused by dementia."

Application of *Grant v. Johnson* reasoning to an HB 2375 or SB 16 scenario presents an uncertain result. Assume that a mother, duly authorized health care representative for her schizophrenic adult daughter, consents to her daughter's hospitalization in a psychiatric ward over her daughter's objection. What notice has her daughter received, prior to this deprivation of her liberty? What is the limit on the term of hospitalization and/or on the mother's authority to consent to it? To whom can the daughter make an effective objection? What, other than the mother's perspective on her daughter's health care needs, justifies the care administered?

Advocates for HB 2375 may argue that when the daughter signed her advance directive, she knowingly and willingly waived her due process rights, in return for the assurance that her mother would manage her care without the cost and anxiety of court intervention. The mother may argue that she was able to secure care for her daughter that was as essential as any heart procedure, and that her daughter should be able to receive such care without the cost and intrusion of civil commitment and/or guardianship.

These issues are less troubling when considered in the context of the Declaration for Mental Health Treatment, which has existed in Oregon Law since 1993. In contrast to the advance directive for health care, the Declaration for Mental Health Treatment enlists the appointed representative to assist specifically with mental health treatment. "Mental health treatment" includes inpatient hospital admission for a period not to exceed seventeen days. The declaration exists for three years or until revoked. Two physicians are required to determine that the principal is incapacitated to the extent that the representative appointed through the declaration should direct mental health care. In an advance directive, the principal's attending physician decides when a health care representative should guide medical care. HB 2375 does not affect Oregon law pertaining to Declarations for Mental Health Treatment.

A principal may choose to add some of the protections of the Declaration for Mental Health Treatment to his advance directive. In fact, Kaiser Hospital has taken that step on behalf of the principal, adding to the advance directive form it offers to patients the same box that DRO proposed to add to the statutory form and that Oregon lawmakers rejected. On Kaiser's form, the principal may initial a box indicating that the appointed representative's authority extends to mental health treatment.

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Mental health treatment

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Curiously, this is inconsistent with the statutory form, and inconsistent with ORS 127.531, which indicates that "the form of an advance directive executed by an Oregon resident must be the same as the form set forth in this section to be valid." Some attorneys warn that the changes in Kaiser's form and any changes to the statutory form created by an attorney or a principal threatens the validity of an advance directive, according to ORS 127.531. Other attorneys argue that clarity in the directive is as important as consistency in the form, and advise changes to the form that establish a clearer directive. No case law exists which examines the effect of an individual amendment on an advance directive.

During committee debate regarding HB 2375, DRO recommended to lawmakers that the statutory form for the advance directive should be changed in a way similar to the new Kaiser form. The legislators, particularly Representative Greenlick, were unpersuaded. The legislature saw no reason to treat mental health care differently from physical health care in an advance directive. Representatives did not discuss the constitutional violation identified in *Grant v. Johnson*. HB 2375 passed because, in contrast to the 1999 legislature, current legislators were more concerned with family members stymied in their effort to secure mental health treatment for a loved one, than with the loved one whose civil rights could be violated during admission to a locked psychiatric unit.

Despite this shift in legislative concern, however, the lock on the unit door persists as a clear distinction between mental health care treatment and physical health care, and creates the possibility of a challenge to the provisions of HB 2375 similar to *Grant v. Johnson*.

Attorneys studying HB 2375 may wish to contact their clients who have signed health care directives to advise them of the expanded authority of the health care representative. Most will likely do nothing at all. A principal who objects to mental health treatment imposed by a representative appointed in an advance directive is likely to undermine the representative's authority and a care facility's faith in that authority sufficiently to trigger a guardianship proceeding. A principal who does not object will receive mental health care more quickly, without the cost and anxiety of a court proceeding. ■

The author thanks Bob Joondeph for providing information regarding Disability Rights Oregon's positions on HB 2375, including written comments offered to the legislature.

Important elder law numbers

as of July 1, 2011

Supplemental Security Income (SSI) Benefit Standards	Eligible individual	$674/month
	Eligible couple	$1,011/month
Medicaid (Oregon)	Long term care income cap	$2,022/month
	Community spouse minimum resource standard	$21,912
	Community spouse maximum resource standard	$109,560
	Community spouse minimum and maximum monthly allowance standards	$1,839/month; $2,739/month
	Excess shelter allowance	Amount above $552/month
	Food stamp utility allowance used to figure excess shelter allowance	$397/month
	Personal needs allowance in nursing home	$30/month
	Personal needs allowance in community-based care	$152/month
	Room & board rate for community-based care facilities	$523.70/month
	OSIP maintenance standard for person receiving in-home services	$675.70
	Average private pay rate for calculating ineligibility for applications made on or after October 1, 2010	$7,663/month
Medicare	Part B premium for those enrolled in 2011	$115.40/month*
	Part B deductible	$162/year
	Part A hospital deductible per spell of illness	$1,132
	Part D premium:	Varies according to plan chosen
	Skilled nursing facility co-insurance for days 21-100	$141.50/day

* For those enrolled in 2010, the premium is $110.50. For those enrolled in 2009, the premium is $96.50. For those enrolled prior to 2009, the premium is $96.40. Premiums are higher if annual income is more than $85,000 (single filer) or $170,000 (married couple filing jointly).

New Multnomah County court fee schedule in effect in October 1

Fourth Judicial District State of Oregon Probate Department

Multnomah County Circuit Courthouse, 1021 SW Fourth Avenue, Room #224 Portland, OR 97204

Office hours: 8:00 AM to 5:00 PM Monday–Friday except holidays

Probate Reference Information and Telephone Numbers:

General filing info: copies/delinquency notices/citations 503.988.3022 x 4

Order processing & auditing/set hearings/schedule ex parte 503.988.3545

Office Supervisor 503.988.3538

Filing fees

Estates/Conservatorships of adults or minors

Less than $50,000	240.00
$50,000 but less than $1,000,000	505.00
$1,000,000 but less than $10,000,000	755.00
$10,000,000 or more	1,005.00

Gross (not net) amt of PI settlement value determines fees

Appoint P.R. to initiate/settle wrongful death actions (regardless of recovery) 240.00

Affidavits of claiming successor 105.00

Petitions re Guardianships (adults) ... 105.00

Plus fee of $450 to be tendered into the court's trust account for court visitor fees

Petitions without $450 will be returned to attorney as not filed. ORS 125

Petitions re guardianships (minors) .105.00

Trust petitions or agreements 240.00

ORS 130.045(6) - Obj/1st appearance 240.00

Trust petitions re creditor's claims ... 240.00

ORS 130.400 - Req summary determ 240.00

Other protective proceedings 240.00

Miscellaneous fees

Objection, first appearance, Request for Notice	240.00
Req summary det when PR disallows claim	240.00
Notice request: guardian/conservator not yet appointed	240.00
Affidavit of destruction of will	105.00

Copies, letters and certifications

Letters of administration, testamentary or conservatorship***	5.25
Letters of guardianship***	5.25**
Exemplified certificates (3-way certification)	10.25**
Document certification seal	5.00**
Plain photocopies (per page)	0.25

** Plus a per page charge of 25 cents for any attachment

*** First letters of guardianship, conservator, administration or testamentary are free of charge

Fees for annual/final accountings (probate or conservatorships)

Less than $50,000	30.00
$50,000 but less than $1,000,000	255.00
$1,000,000 but less than $10,000,000	505.00
$10,000,000 or more	1,005.00

Hearing fees

Settlement conferences for probate, protective proceedings, and trust matters (per party, per day)	200.00
Hearing/trial fee on trust matters (partial or full day w/no jury)	125.00
Writ of assistance	35.00

Service fees

MCSO execution of writ of assistance	70.00
MCSO service of process 1–2 parties (same address)	36.00
Add'l per party service of process charge	20.00

ABA adopts policy encouraging expansion of home and community based services as a viable long term care option

At the American Bar Association annual meeting, the House of Delegates approved the following as official ABA policy:

Policy Proposal 106A August 2011

RESOLVED, That the American Bar Association urges Congress, and all federal, state and territorial administrative bodies to continue efforts to expand the availability of home and community based services (HCBS) as a viable long term option by:

1. Making HCBS a mandatory service under Medicaid available to anyone who would otherwise qualify for institutional long term care.
2. Providing comparable financial eligibility standards and procedures for nursing home care and HCBS.
3. Permanently mandating Medicaid spousal impoverishment protections for spouses of HCBS enrollees, as already exist for spouses of institutional long term care.
4. Allowing Medicaid enrollees to retain sufficient income to pay their reasonable living expenses in the community.
5. Initiating and expanding other HCBS efforts to help people with disabilities of all ages to live with dignity in the community.

It is hoped that this policy will urge continuation of efforts to implement the mandate of the *Olmstead* decision. ■

Resources for elder law attorneys

CLE seminars

2011 Oregon Legislation Highlights
October 27, 2011
Oregon State Bar Center, Tigard
www.osbar.org

Communicating Across Cultures and Genders
Oregon Law Institute
November 4, 2011
Oregon Convention Center, Portland
http://law.lclark.edu/continuing_education

Convocation on Equality
A day-long conference sponsored by the OSB Diversity Section
November 4, 2011
Oregon Convention Center, Portland
http://osbdiversity.homestead.com

Advanced Elder Law Boot Camp
November 10–12, 2011
Seaport Hotel, Boston, MA
www.NAELA.org

National Aging and Law Institute
November 10–12, 2011
Seaport Hotel, Boston, MA
www.NAELA.org

Administering the Basic Estate and Trust: Not So Basic Anymore
November 18, 2011
DoubleTree Hotel, Portland
www.osbar.org

Trust Alternatives
OSB CLE Quick Call
November 29, 2011
www.osbar.org

Estate Planning for Retirement Benefits
OSB CLE Quick Call
December 6, 2011
www.osbar.org

NAELA UnProgram
January 20–22, 2012
Grapevine, Texas
www.NAELA.org

OSB Elder Law Section unCLE Program
May 4, 2012
Valley River Inn, Eugene

Elder Law Section Web site

www.osbar.org/sections/elder/elderlaw.html

The Web site has useful links for elder law practitioners, past issues of *Elder Law Newsletter,* and current elder law numbers.

Elder Law Section electronic discussion list

All members of the Elder Law Section are automatically signed up on the list, but your participation is not mandatory.

How to use the discussion list

Send a message to all members of the Elder Law Section distribution list by addressing it to: **eldlaw@lists.osbar.org**. Replies are directed by default to the sender of the message *only*. If you wish to send a reply to the entire list, you must change the address to: **eldlaw@lists.osbar.org**—or you can choose "Reply to all."

Guidelines & Tips

- Include a subject line in messages to the list, for example, "lawyer referral needed" on the topic line.
- Try to avoid re-sending the entire message to which you are replying. Cut and paste the relevant parts when replying,
- Sign your messages with your full name, firm name, and appropriate contact information.
- In the interest of virus prevention, do not try to send graphics or attachments. ■

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Oregon State Bar

Elder Law Section

Newsletter Board

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