

OREGON STATE BAR
Legislative Proposal
Part I – Legislative Summary

RE: HB 2313 Clarification of ambiguity as to the description of a “trust or estate” in Oregon Statutes

Submitted by: Real Estate and Land Use Section

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1. Does this amend current law or program? Yes

This bill would amend ORS 59.015 (14); 60.001 (14); 62.015 (17); 63.001 (9); 67.001 (11); 70.005 (19); 65.001 (18); 130.010 (11); and 461.010 (6).

2. PROBLEM PRESENTED (including level of severity):

A number of Oregon statutes have erroneous or misleading language regarding description of trusts and estates.

These statutes refer to a trust or an estate as a “legal person” and instead should refer to a trustee of a trust or a “personal representative” of an estate.

A trust is an agreement, not a legal person capable of owning an asset.

An estate is an entity created by the court and a personal representative is appointed by the court to act in its behalf. Neither a trust nor an estate should be referred to as a person.

At present, the parties named would not be capable of suing or being sued. As amended the parties named would be capable of suing and being sued.

3. SOLUTION:

- Amend “a trust” to read “a trustee of a trust,”
- Amend “an estate” to read “personal representative of an estate.”

4. PUBLIC POLICY IMPLICATION of this proposed legislative change:

The law would be made more clear as to who needs to act on behalf of a trust or an estate.

5. Could the problem be addressed through a NON-LEGISLATIVE SOLUTION, such as administrative rule or education? No.

6. COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL? If so, have you suggested it to the section or group?

No. While the changes affect a number of different groups, they also affect the vesting and conveyance of real property. It is appropriate for the Real Estate Section to recommend these law improvements.

7. IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED or interested in this change. Who would support it and who would oppose it?

The group most impacted would be those dealing with corporations, cooperatives, LLCs, nonprofit corporations, partnerships and LLPs, and trusts. It is not anticipated that there would be any opposition to fine tuning these laws.

8. Has this been introduced in a prior session? Not to our knowledge.