

OREGON STATE BAR
Legislative Proposal
Part I – Legislative Summary

RE: **Affidavit of claiming successors**

Submitted by: **Oregon State Bar, Elder Law Section**

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This bill would amend ORS Statute(s): 723.466 and 708A.430

1. PROBLEM PRESENTED (including level of severity): Currently, access to financial assets belonging to a deceased person are controlled by a series of mechanisms: (1) probate administration; (2) affidavit of claiming successor (small estate); and (3) affidavits of heirship under ORS 708A.430(a) and 723.466(a). Using an affidavit of heirship, the heir of a decedent may reach accounts in the name of the decedent without the need for a formal probate or a small estate. The subject statutes already reflect a clear public policy position preferring surviving spouses over other creditors. However, the banking practice has become a preference of the Oregon Department of Human Resources, Estate Recovery Unit over the surviving spouse. Many banks will not allow a surviving spouse to access the account with an affidavit of heirship until the Estate Recovery Unit has had an opportunity to make a claim on the funds. The proposed language simply clarifies procedure and priorities already established by the Legislature by defining the specific timelines during which classes of heirs or the Estate Administration Unit may access the account of the decedent with an affidavit of heirship. If there is a conflict regarding the right of an heir or claim of the Estate Administration Unit, this amendment would provide ample time to file either a formal probate or a small estate proceeding, and allow a court to make the final determination.

SOLUTION: Clarify the sequence of claimants to these assets and restoring predictability to the system.

2. PUBLIC POLICY IMPLICATION of this proposed legislative change: None, it clarifies existing policy and unifies the statutory system for administration of decedent’s estates.

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

4. **COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL?** If so, have you suggested it to the section or group? No.

5. **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 Oregon Department of Human Resources, Estate Administration Unit may oppose this, as it will delay that agency's ability to make a claim on a decedent's account using an affidavit of heirship. However, any claim of the Estate Administration Unit would remain valid, and there should be not fiscal impact or reduction in recovery.

Banking, Financial Services, and Credit Unions would likely support this as a clarification of the timelines associated with the use of an affidavit of heirship.

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Legislative Proposal
Part II – Legislative Language

708A.430 (1) shall be amended to read as follows:

(1) On the death of a depositor of a financial institution, if the deposit is \$25,000 or less, the financial institution may, upon receipt of an affidavit from the person claiming the deposit as provided in subsection (2) of this section, pay the moneys on deposit to the credit of the deceased depositor

(a) To the surviving spouse on demand of the surviving spouse;

(b) If there is no surviving spouse, to the Department of Human Services, on demand of the department [*within 60 days*] no less than forty-six days and no more than 75 days from the date of death of the depositor where there is a preferred claim arising under ORS 411.708, 411.795, 414.105, or if there is no claim by the department, to the surviving children 18 years of age or older,

(c)...

ORS 723.466(1) shall be amended to read as follows:

(1) On the death of a member of a credit union, if the deposit to the credit of the deceased member is \$25,000 or less, the credit union may, upon receipt of an affidavit from the person claiming the deposit as provided in subsection (2) of this section, pay the moneys on deposit:

(a) To the surviving spouse on demand of the surviving spouse within 45 days from the date of death of the member;

(b) If there is no surviving spouse, to the Department of Human Services, on demand of the Department of Human Services [*within 60 days*] no less than forty-six days and no more than 75 days from the date of death of the member when there is a preferred claim arising under ORS 411.708, 411.795, 414.105, or if there is no claim by the Department of Human Services, to the surviving children 18 years of age or older;

(c)....