

Instructions for Filing Small Estates
Multnomah County Circuit Court
Fourth Judicial District

1. ELIGIBLE ESTATES

A small estate affidavit may be filed if:

- A. \$75,000 or less of the fair market value of the estate of from personal property, and
- B. \$200,000 or less if 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, such as mortgages, home equity loans and liens.
 - *“Real property”* is land or interests in land, such an easement or timber or mineral rights.
 - *“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 or accounts with beneficiary designations.) **Please note that the limitations listed above are for the decedents who died on or after January 1, 2010.** *When filing a small estate affidavit for someone who passed away prior to 1/1/2010, please contact probate court staff at 503-988-3022 opt. 4 to determine the small estate limitations in effect as of the date of death.*

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 or assets with beneficiary designations, unless the decedent’s estate is the designated beneficiary).
- D. Heirs: The “heirs” are the people who would inherit the decedent’s estate if the decedent did not leave a will. The heirs are determined by Oregon’s laws of intestacy, ORS 112.015 to 112.115.

- E. Devises: The “devises” are the people named in the will to receive the decedent’s estate. Charities and trustees of trusts can also be devises. If the decedent died without a will, there are no devises. The devises may or may not be the same people as the heirs.

3. WHO CAN FILE

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

4. HOW TO FILE

- A. Fill out the form. **Do not leave any part blank.** If a part does not apply, please indicate “none.”
- B. **Have your signature notarized**
- C. Get a **certified copy** of the death certificate. You may order death certificates from the Department of Vital Statistics by calling 503-988-3745 (for deaths within the last 6 months) or 971-67.-1190 (for deaths that occurred more than 6 months ago).
- D. If the decedent had a will, you must get the **original will (not a copy)**. The original will was assigned by the decedent. If you only have a copy of the will, you cannot file a small estate affidavit.
- E. File the affidavit, death certificate, and original will (if any) at room 224 of the Multnomah County Courthouse (Probate Department), 1021 SW Fourth Avenue, Portland, Oregon 97204. **A filing fee of \$124.00 is required.** Please make check payable to the “State of Oregon.”

- F. Often banks or other financial institutions will require a court certified copy of the small estate affidavit you filed with the court. You may order a court certified copy of the affidavit for an additional fee. The fee for a certified copy is \$5.00 plus .25 per page and the certified copy must include everything you filed with the court (affidavit, death certificate, and will (if there was a will)). For example, if your small estate affidavit packet is 6 pages, the fee for one certified copy would be \$6.25 (6 pages x .25 = \$1.50 + \$5.00 = \$6.50).

5. WHEN TO FILE

The affidavit cannot be filed until 30 days after the death of the decedent. However, if you are filing as a creditor, you must wait 60 days.

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 not surviving children or grandchildren: everything would go to the spouse.
2. A spouse and children:
 - a. Everything would go to the spouse if all 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)

Oregon's laws of intestate succession are at ORS 112.015 to 112.115. Note that persons of the half-blood inherit the same share that they would if they were of the whole blood ORS 112.095. Also see ORS 112.175(10), which provides that adopted persons have the same status as natural children

- 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, the "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 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, or
- C. Any county in which any property of the decedent was located at death or when the affidavit was 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)(d) and ORS 114.545E. If the assets of the estate are insufficient to pay all claims and expenses in full, they must be paid in the order set out in ORS 115.125.
- D. File any required tax returns, such as the decedent's final personal income tax returns, and pay any taxes owed.
- E. After four months have passed from the date the affidavit was filed (if no personal representative has been appointed for the estate), and the expenses and claims (including any taxes owed) have been paid, the affiant should transfer the estate property

to the heirs or devisees. Before the four months is up, the affiant may transfer or sell property as allowed by ORS 114.545(1)(f) and (g).

9. CLAIMS AGAINST THE ESTATE

See ORS 114.540.

Note that claims against the estate may be presented to the affiant within four months after the affidavit was filed. If an amended or supplemental affidavit is filed, claims may be presented within four months after the amended or supplemental affidavit is filed.

10. ACCOUNTABILITY OF CLAIMING SUCCESSORS

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

- A. To estate creditors, to the extent of the value of the property received, ORS 114.545(4);
- B. To any personal representative appointed within four months after the affidavit is filed; ORS 114.545(4), 114.555, and
- C. To any omitted heir or devisee.

11. GUIDELINES

Safe Deposit Boxes: See ORS 114.537 for the procedure to obtain an inventory of a safe deposit box before the small estate affidavit is filed.

Vehicles: MUST have year, make, model, estimate of fair market value as of the date of death. SHOULD have VIN and license number, but not required.

Bank and Investments Accounts: MUST have name of bank/brokerage, type of account (ex: checking, savings, IRA, 401 (k), brokerage, etc), and balance on each account (or total balance of all accounts) as of the date of death.

Stocks: MUST have name of company, number of shares, and fair market value on date of death.

Bonds: MUST have description of type of bond and fair market value of the date of death.

Real Estate: MUST have the legal description, and a statement of fair market value as of the date of death (you may use the “real market value” or “RMV” from a property tax assessment statement as of the date of death).

Tangible Personal Property: MUST have the legal description and a statement of fair market value as of the date of death. ORS 114.525(3). Estimating the fair market value may require obtaining professional appraisal.

Manufactured Home: We MUST know if it is real or personal property. A manufacture home on a solid foundation is real property, otherwise generally personal property. We MUST have a description (year, make, model, location). We SHOULD have a serial number.

Property Discovered After the Affidavit is Filed: If additional property is discovered after the small estate affidavit is filed, the affiant must file a supplemental affidavit to include the property not described in the original affidavit. See ORS 114.515(8).

12. 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. You may also inquire about obtaining a listing of low-cost legal services available in Multnomah County from a Probate staff member.

The reference ORS in these instructions are to the Oregon Revised Statutes. You can read these at the law library located in the Multnomah County courthouse or find them on the internet at: https://www.oregonlegislature.gov/bills_laws/ors/ors_114.html (Chapter 114) and https://www.oregonlegislature.gov/bills_laws/ors/ors_112.html (Chapter 112).

CONTACT INFORMATION FOR MULTNOMAH COUNTY PROBATE:

**Multnomah County Courthouse
Probate Department, Room 224
1021 SW Fourth Ave
Portland, OR 97204**

Phone: 503-988-3022 opt. 4

Phone hours: 8:30 AM – 10:30 AM & 1:30 PM – 4:00 PM Mon-Fri

Regular Business Hours 8:00 AM – 4:00 PM Mon-Fri

If filing a new case, please try to arrive before 3:30 PM

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH
1021 SW 4TH AVENUE, PORTLAND OR 97204
PROBATE DEPARTMENT

In the Matter of the Estate of:

(PRINT Name of Deceased)

Case No. _____

**AFFIDAVIT OF CLAIMING
SUCCESSOR**
(Small Estate Affidavit)

Filing Fee: \$124 (ORS 21.145(5))

I swear or affirm that the following statements are true:

1. **The affiant:** My name and address are:

I have authority to file this affidavit because: *(check at least one that applies)*

- I am heir of the decedent, and the decedent left no will.
 I am a devisee of the decedent under the decedent's will.
 I am named the personal representative under the decedent's will.
 I am a creditor and have not paid the full amount owed to me within 60 days of the date of the decedent's death. **Creditors must check the box that applies:**
 The decedent died intestate and without heirs, I have attached written authorization from the Department of State Lands allowing me to file this small estate proceeding, **or**
 Authorization from the Department of State Lands is not required because the decedent died testate or left heirs.

2. **The decedent:**

Name: _____

Age: _____

Address: _____

Date of Death: _____

Place of Death: _____

A certified copy of the death record is attached.

3. **The decedent's estate.** The following property is in the decedent's estate:

<u>Real Property</u> (Land, house, rental property, etc.)	<u>Fair Market Value</u>
<i>[attached a legal description – required]</i>	<i>[maximum total value \$200,000]</i>

Total all Real Property: \$ _____

<u>Personal Property</u>	<u>Fair market Value</u>
<i>[PERS accounts, bank accounts, jewelry]</i>	<i>[maximum total value \$75,000]</i>

Total all Personal Property: \$ _____

["Fair market value" means the value of the property on the open market (between unrelated parties), not reduced to reflect debts owed against the property. Do not include property that transfers automatically to others following death (such as joint bank accounts or insurance policies with specific individuals listed as beneficiaries).]

4. **Affidavit should be filed in Multnomah County.** This small estate affidavit should be filed in Multnomah County because *[check at least one that applies]:*

- The decedent died in Multnomah County.
- At death, the decedent lived in or had a home in Multnomah County.
- The decedent had property located in Multnomah County at death or when his affidavit is filed.

Thirty days or more have passed since the decedent died.

5. **No probate estate exists.** No application or petition for the appointment of a personal representative has been granted in Oregon. *[This means that no Oregon court has opened a probate estate for the decedent.]*

6. **Is there a will?** *[Check the one that applies]*

- The decedent died testate (**did** leave a will). **The original will (not a copy) is attached.**
- The decedent died intestate (**did not** leave a will).

7. **The heirs.** The heirs of the decedent, and their addresses, are:

Name of each heir Relationship to decedent Last known address

8. **The devisees.** *[This part only applies if the decedent left a will. If the decedent did not leave a will, write "none."]*

Name of each devisee Last known address

9. **Notice to heirs and devisees.** I promise to give to each heir and devisee, if any, (1) a copy of this affidavit showing the date of filing and (2) a copy of the will, if the decedent died testate. I will this by delivering or mailing the papers to the heirs and devisees at the last known addresses. I will do this within 30 days after this affidavit is filed with the court.

10. **Who gets what?** The following people are entitled to the following property:

Name of heir or devisee Property to be received

[If a will exists, the will governs who gets what. If no will exists, the laws of intestacy apply (see the instructions). If one person is to receive the entire estate, state "entire estate" or "100% of residue" under "Property to be received." If, for example, three people share the estate equally, state "1/3 of residue" under "Property to be received."]

11. **Creditors.** Reasonable efforts have been made to ascertain the creditors of the estate. The following expenses of or claims against the estate remain unpaid (including reimbursement owed to someone who paid claims or expenses):

<u>Creditor's name</u>	<u>Last known address</u>	<u>Type of claim & estimate amount</u>
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[If the estate has no creditors, please write "none."]

12. **Disputed claims.** I, as affiant, dispute the following claims against the estate:

<u>Creditor's name</u>	<u>Last known address</u>	<u>Type of claim & estimate amount</u>
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[If the estate has no creditors making claims disputed by the affiant, write "none."]

13. **Notice to creditors.** I promise to give each creditor listed in parts 11 and 12 above a copy of this affidavit showing the date of filing. I will do this by delivering or mailing the papers to the creditor at the last known address. I will do this within 30 days after this affidavit is filed with the court.

14. **Notice to State.** Within 30 days after this affidavit is filed with the court, I promise to mail or deliver a copy of the affidavit showing the date of filing to the Department of Human Services (SHS) and the Oregon Health Authority at the following address:

Department of Human Services
Estate Administration Unit
PO Box 14021
Salem, OR 97309-5024

(Pursuant to OAR 943-001-015(1)(h), mailing notice to DHS as the address above is considered giving notice to the Oregon Health Authority.)

15. **Claims may be barred.** Some claims against the estate may be barred unless specific things happen.
- Claims against the estate not listed in this affidavit or in amount larger than those listed in this affidavit may be barred unless:
 - A claim is presented to the affiant within four months of the filing of the affidavit at the address stated in part 1 of this affidavit; or
 - A personal representative of the estate is appointed within the time allowed under ORS 114.555

b. If this affidavit lists one or more claims which the affiant disputes, any such claim may be barred unless:

- 1) A petition for summary determination is filed within four months of the filing of this affidavit; or
- 2) A personal representative of the estate is appointed within the time allowed under ORS 114.555

I have read this affidavit. The statements it contains are true and correct to the best of my knowledge.

Affiant (sign in front of Notary Public)

Telephone Number: (____) _____

State of OREGON

County of MULTNOMAH

Signed and sworn before me on _____, 20____

By _____

Notary public

My commission expires:_____