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PROBATE EXPLAINED

DUTIES OF PERSONAL REPRESENTATIVE. When a death occurs, the personal representative named in the decedent's Will has the following obligations to the Court and the estate beneficiaries:

1. Discover and value all assets of the decedent;
2. Notify all interested persons of the personal representative's appointment and commencement of administration of the estate;
3. Pay all obligations and taxes of the decedent and the estate;
4. Properly account to the court and to those persons interested in the estate for all funds and property received and disbursed by the personal representative; and,
5. After obtaining court approval, distribute the estate assets to those entitled to the property and close the estate.

Petition. The probate begins with filing a Petition for the appointment of a Personal Representative with the Oregon Circuit Court, together with original last Will of the decedent. Within two weeks or so after the petition is filed, the judge signs an order approving the petition, and the court issues letters testamentary certifying the appointment of the personal representative, who is then legally authorized to deal with all matters of the estate, including controlling all personal and real property, securing death benefits, paying creditors' claims, and managing or liquidating real property for sale.

Notice to Creditors. After filing the petition, and as required by law, notice is published in the local newspaper regarding probate of the Will. This puts creditors on notice that they have four months within which to file claims against the estate for payment of their accounts.

Notice to Heirs and Devisees. As also required by law, notice is sent to all heirs at law and the individual and charitable devisees named in the Will, together with a copy of the decedent's

Will, advising them of the appointment of the personal representative and informing them about how to obtain information about the estate.

Asset Inventory. All probate and non-probate asset are identified and valued. An Estate Inventory must be filed within 60 days of the appointment as personal representative.

Non-Probate Assets. Life insurance, annuities and retirement accounts pass at death according to a beneficiary designation and are therefore not part of the Estate Inventory. Other non-probate assets include assets owned jointly “with right of survivorship” and “payable on death” accounts. While these assets are not part of the probate estate, they are part of the “taxable estate” and must be reported on the federal estate tax return, if a federal estate tax return is necessary.

Estate Accounting. The personal representative must keep accurate records of all estate activities, including expenses paid and income received from the date of the decedent’s death until the assets are distributed. Creditors must waive late fees and interest on the decedent’s debts.

Estate Distribution. Following the expiration of the four-month creditor claim period referred to above, and payment of all debts, the personal representative can apply for court approval for payment of the personal representative’s fee, the attorney’s fee and for final distribution of the estate assets to the devisees named in the Will.

TAX RETURNS. The personal representative is responsible for filing the following tax returns:

Final Personal Income Tax Returns. The decedent’s final personal income tax returns for the period January 1, through the date of death, are due April 15, of the next year.

Federal Estate Tax Return and Oregon Inheritance Tax Return. For decedent’s dying in 2007, a federal estate tax is necessary if the decedent’s total assets exceed \$2 million and an Oregon inheritance tax return is necessary if the decedent’s total assets exceed \$1 million. These returns, and any taxes due, are due nine months from the date of the decedent’s death.

Fiduciary Income Tax Returns. An estate income tax return must also be filed for the period from the date of death to the date of distribution. Typically, an estate will pay no income tax as the assets (and the interest and dividends earned during the period of administration) will be distributed to the estate devisees in one tax year. The devisees must report their prorata share of income on their personal income tax returns.

COSTS OF PROBATE. Currently, probate costs consist of: 1) a one-time court filing fee, publication costs, and minor miscellaneous costs of approximately \$600 - \$1,000; 2) the fees for the personal representative, who has legal responsibility and personal liability for the payment of all tax returns and distribution of the estate; and 3) the fee for the attorney who represents the personal representative and assists that person or entity in carrying out those tasks.

Personal Representative's Fee. The statutory fee for the personal representative is based upon the estate property accounted for as follows:

- 7% of the first \$1,000;
- 4% of the next \$9,000;
- 3% of the next \$40,000;
- 2% of the amount in excess of \$50,000; and,
- 1% of property subject to estate taxes (excluding life insurance)

In addition, the court may allow extraordinary fees for unusual services performed by the personal representative. NOTE: Since the fee is taxable income when paid to the personal representative, it is occasionally advantageous to waive this fee, especially if the personal representative is a spouse or other family member who will receive an inheritance from the estate.

Attorney's Fee. Oregon statutes authorize payment from the estate of reasonable attorney fees based on the following factors: counsel's experience in probate matters; the skill displayed; the excellence of the result obtained; the time invested; the amount of responsibility assumed by counsel considering the total value of the estate; and customary fees in the community for like services.

Neither the personal representative's fee nor the attorney's fee may be paid until approved by the court at the time the estate is ready for distribution. Court oversight ensures that the decedent's assets are properly identified, valued and accounted for, that creditors are notified and paid and that the estate is properly distributed.

TIMEFRAME TO ADMINISTER AN ESTATE. The probate process generally takes a minimum of six months and frequently longer in large or complex estates. Because the personal representative has personal liability for payment of estate taxes from the estate or trust assets, distribution of the estate may be delayed until the IRS approves the tax returns as filed. In these circumstances, we recommend the personal representative obtain court approval for a partial distribution of estate assets, holding a reserve account in the event of an IRS audit.