**WFG Oregon Underwriting Bulletin**

**WFG National Title Insurance Company**

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**Date:** September 22, 2014

**To:** WFG Oregon Title and Escrow Employees

**Re: SMALL ESTATE AFFIDAVITS**

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**There have been numerous inquiries regarding how the Oregon small estate process works and when that process may be used in lieu of a full probate. The purpose of this Bulletin is to answer those inquiries and provide an overview of the small estate affidavit process.**

As an alternative to a regular, “full” probate, the Oregon probate code provides a procedure for transferring personal and real property, within specified monetary limits, to those who claim the right to succession to the property, by means of an affidavit filed with the probate clerk.

**When Available:** Specifically, a small-estate affidavit is available only if the probate estate contains no more than $75,000 of personal property, no more than $200,000 of real property (without any offset for liens or debt), and no more than $275,000 in the aggregate. Estates within these limits may be transferred by filing an affidavit with the court. This approach is usually faster and cheaper than a full probate, albeit somewhat riskier to WFG because of the lack of court oversight.

**Contents of Affidavit:** A small-estate affidavit must contain certain statutorily-required information, including (1) the decedent’s name, age, domicile, post office address, and social security number; (2) the date and place of the decedent’s death (with a certified copy of the death); (3) a description and the fair-market value of all property to which the affidavit is to apply, including a legal description of any real property; (4) the value of the contents of any safe-deposit box if the affiant is aware of a safe deposit box; (5) a statement that no application or petition for the appointment of a personal representative has been granted in Oregon; (6) a statement as to whether the decedent died testate or intestate (if testate, the original will must be attached); (7) a list of all the decedent’s heirs and their addresses, and a statement that a copy of the affidavit will be delivered or mailed to each heir; (8) if the decedent died testate (i) a list of the devisees of the decedent and their addresses, and (ii) a statement that a copy of the will and a copy of the affidavit will be delivered or mailed to each devisee; (9) a statement of the interest in the property described in the affidavit to which each heir or devisee is entitled and the interest, if any, that will escheat; (10) a statement that reasonable efforts have been made to ascertain creditors of the estate; (11) a list of any expenses of and claims against the estate that remain unpaid or on account of which anyone is entitled to reimbursement from the estate, including the amounts thereof, the creditors’ names and addresses, and a statement that a copy of the affidavit will be delivered or mailed to each creditor who has not been paid in full; (12) a list of the name and address of each person known to the affiant to assert a claim against the estate that the affiant disputes, the amount of the claim, and a statement that a copy of the affidavit will be delivered or mailed to each such person; (13) a statement that a copy of the affidavit will be mailed or delivered to the Oregon Department of Human Services and the Oregon Health Authority (by administrative rule, notice to the Department of Human Services constitutes notice to the Health Authority); (14) a statement that claims against the estate that are not listed in the affidavit or that are in amounts larger than those listed in the affidavit may be barred unless (i) a claim is presented to the affiant within four months of the filing of the affidavit, or (ii) a personal representative of the estate is appointed within four months after the filing of the affidavit; and (15) if the affidavit lists one or more claims that the affiant disputes, a statement that any such claim may be barred unless (i) a petition for summary determination is filed within four months of the filing of the affidavit, or (ii) a personal representative of the estate is appointed within four months after the filing of the affidavit.

Given the statutorily-required information and the importance of the affidavit in areas that go far beyond title insurability only, WFG personnel should not prepare these affidavits or provide a “form” affidavit to customers (who may then take it and not consult an attorney about their duties in completing it) without prior underwriting approval.

**Who may File and Who Must Sign the Affidavit:** The probate code provides that any of the following persons may file a small-estate affidavit: (i) one or more of the claiming successors of the decedent (“claiming successors” include heirs and devisees and a creditor not paid within 60 days of the decedent’s death); (ii) if the decedent died testate, any person named as personal representative in the decedent’s will; (3) if the decedent received certain public assistance or received care at an institution described in ORS 179.010 and it appears that the assistance or the cost of the care may be recovered from the estate of the decedent, the Director of Human Services, the Director of the Oregon Health Authority, or a lawyer approved by either director; or (4) if the decedent died intestate and without heirs and the estate appears to be insolvent, a creditor of the estate who has requested and received authorization to file a small-estate affidavit from an estate administrator of the Department of State Lands.

Since any small estates in which WFG is involved necessarily implicate title to real property, WFG requires that all claiming successors join in and sign the small estate affidavit, even though the probate code itself does not require that all of the decedent’s claiming successors execute the affidavit.

**When and Where the Affidavit may be Filed:** The affidavit cannot be filed earlier than 30 days after the death of the decedent and may be filed with the clerk of the probate court of any county where (i) the decedent had a domicile, (ii) the decedent had “a place of abode” at the time of death, (iii) the decedent had real or personal property at the time of death, (iv) the decedent had real or personal property at the time the proceeding is commenced, or (v) the decedent died.

After filing a small-estate affidavit, the affiant is authorized to take control of the property of the estate coming into the possession of the affiant.

**Creditors of the Estate:** The statutes governing the small-estate process protect creditors by, among other things, allowing them to present claims against the small estate within four months after the affidavit (or an amended or supplemental affidavit) was filed. Any heir or devisee who received payment, delivery, or transfer of the decedent’s property pursuant to a small-estate affidavit is personally answerable and accountable to the decedent’s creditors who present their claims to the affiant within four months after the filing of the affidavit.

Claims go to the affiant who, without court oversight, allows or disallows them. Any claim presented on time and not expressly disallowed by the affiant within 60 days of presentation is deemed allowed. If the affiant timely disallows a creditor claim, the creditor may file a petition for summary determination with the probate court within 30 days of mailing date of the disallowance notice. After a summary proceeding, the court will enter an order allowing or disallowing the claim, in whole or in part.

**Oregon DHS:** When Medicaid recipients die, their estates are required to pay back to the State of Oregon some or all of the medical assistance received during life from the State of Oregon or any Oregon county. In Oregon, Medicaid is administered by the Oregon Department of Human Services (“DHS”). If the estate fails to pay back any amounts owing, the DHS has the authority to set aside any subsequent transfer of real or personal property, other than to a bona fide purchaser for value.

The branch of DHS tasked with administering Oregon’s estate recovery program is the Estate Administration Unit. Therefore, whenever we are asked to rely on an affidavit of heirship, it is necessary for escrow to contact DHS to see if DHS is claiming any amount owing from the decedent’s estate.

**BFP Protection:** Any conveyance to a purchaser in good faith and for valuable consideration made by the affiant and the heir or devisee succeeding to the interest conveyed during the 4-month period, or made by the heir or devisee succeeding to the interest conveyed after completion of the 4-month period, conveys the interest stated in the conveyance free of any interest of claiming successors, and the purchaser has no duty with respect to application of the consideration paid for the conveyance.

**Personal Representative:** If a personal representative of the decedent’s estate is appointed within four months after the filing of a small-estate affidavit, then the personal representative is entitled to take control of the decedent’s property and proceed with probating the estate. The administration of the estate through the probate court then takes precedence over the previous small estate affidavit filing.

If no personal representative is appointed within four months after the filing of a small-estate affidavit, the interest of the decedent in all of the property described in the affidavit is transferred to the person or persons shown by the affidavit to be entitled thereto, and any other claims against the property are barred, except certain limited claims outlined in the statutes.

**Deed of Real Property:** With respect to the real property involved in a small-estate proceeding:

If the conveyance is to the heirs or devisees, be sure to consult WFG senior underwriters since insuring such a conveyance will ordinarily not be possible, given the fact that such parties do not qualify for bona fide purchaser status. If underwriters nevertheless approve insuring a conveyance to the heirs and devisees, the deed is executed and acknowledged by the affiant, whether during or after the 4-month administration period.

If the conveyance is to a third party BFP and occurs during the 4-month period, both the affiant and all heirs or devisees succeeding to the interest conveyed must execute and acknowledge the deed.

If the conveyance is to a third party BFP and occurs after the 4-month period, only the heirs or devisees succeeding to the interest conveyed must executed and acknowledge the deed.

With respect to the proceeds of any sale transaction based on a small estate affidavit, the claiming successor should open an estate checking account and the proceeds paid to the estate.

If you have any questions related to this Bulletin, please contact your local WFG underwriting personnel.

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