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## House Bill 2570 revises attorney fee provisions

By Michael A. Schmidt, Attorney at Law

House Bill 2570 is a substantial revision to the attorney fee provisions for protective proceedings. The bill becomes effective January 1, 2014. It was sponsored by the Elder Law Section because of concerns over whether ORCP 68 procedures applied to attorney-fee requests under ORS chapter 125, and the effect of the Court of Appeals decision in *Derkatsch v. Thorp, et al.*, 248 Or App 185(273 P3rd 204 2012). The decision in *Derkatsch* held that attorney fees for the protected person could not be approved for services performed prior to the court’s decision that the respondent was in fact a protected person.

ORS 125.095 has been amended to change “protected person” to “a person subject to a protective proceeding” in response to the *Derkatsch* decision, so that it is clear that attorney fees incurred while representing the respondent in a protective proceeding can be awarded by the court. This was considered crucial to providing adequate representation for respondents.

Prior court approval is now required for the payment of attorney fees for representation of the protected person, except for services incurred prior to the filing of the protective proceeding petition and unrelated to the protective proceeding. There is also an exception for attorney mediators in protective proceedings. This provision was subject to spirited debate as it is a significant change from the past. Not only does it require the attorney for the protected person to obtain court approval of fees, it also now clearly requires court fee approval for attorneys who provide any legal service for the protected person.

Previously when attorneys other than the attorney for the fiduciary were retained for services such as eviction of a tenant, many felt those fees did not require court approval because the attorney was representing the protected person, not the fiduciary. Some were of the opinion that this should remain the case because attorneys should not be considered a “suspicious class” because, after all, the conservator does not have to have a plumber’s bill approved by the court before it is paid. It also adds to the administrative expense because of the additional pleadings. However, in the end, the majority of the Elder Law Section Executive Committee decided that the protection offered by court approval outweighed the other considerations.

A pleading alleging a basis for the payment of attorney fees is no longer required.

The statute specifically provides that ORCP 68 does not apply to the approval for payment of attorney fees in a protective proceeding.

House Bill 2570 adds a new section, written primarily by Matthew Whitman, that specifies factors for the court to follow in determining first whether to award attorney fees in a protective proceeding, and, if fees are awarded, factors

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## Attorney fees

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Michael A. Schmidt is a practicing attorney in Washington County and the incoming Chair of the Elder Law Section Executive Committee. He is the current Chair of the Executive Committee's Legislative Subcommittee.

to consider when determining the amount of fees to be awarded. The list includes most of the same items we are familiar with in the existing attorney fee statutes, but two are added that are unique to protective proceedings:

- the benefit to the person subject to the protective proceeding by the party's actions in the proceeding
- the party's self interest in the outcome of the proceeding

Among the factors that have been used in the past when the court considers the amount of attorney fees to be awarded is the relationship of the fee amount requested to the size of the estate of the protected person. Some attorneys were concerned that the addition of this factor

would have a chilling effect on the willingness of attorneys to take on cases with estates of limited value. Sometimes the dynamics of such cases require a great deal of time, regardless of the assets available, particularly in contested guardianship cases. With the addition of a provision that "no single factor" is to be considered controlling and with the understanding that the statutory factors are just the starting point for the court's consideration of the attorney fee question, the concerns over fees involved in lower-value cases were addressed.

The author would like to thank specifically Steve Owen and Matthew Whitman for their efforts in drafting and supporting this bill through its passage. ■

## Important elder law numbers

as of  
October 1, 2013

<b>Supplemental Security Income (SSI) Benefit Standards</b>	Eligible individual..... \$710/month Eligible couple..... \$1,066/month
<b>Medicaid (Oregon)</b>	Long term care income cap..... \$2,130/month Community spouse minimum resource standard..... \$23,184 Community spouse maximum resource standard ..... \$115,920 Community spouse minimum and maximum monthly allowance standards.....\$1,939/month; \$2,898/month Excess shelter allowance .....Amount above \$582/month SNAP (food stamp) utility allowance used to figure excess shelter allowance .....\$441/month Personal needs allowance in nursing home .....\$30/month Personal needs allowance in community-based care.....\$157.30/month Room & board rate for community-based care facilities..... \$552.70/month OSIP maintenance standard for person receiving in-home services .....\$710 Average private pay rate for calculating ineligibility for applications made on or after October 1, 2010..... \$7,663/month
<b>Medicare</b>	Part B premium ..... \$104.90/month* Part B deductible..... \$147/year Part A hospital deductible per spell of illness.....\$1,184 Part D premium: .....Varies according to plan chosen Skilled nursing facility co-insurance for days 21-100..... \$148/day * Premiums are higher if annual income is more than \$85,000 (single filer) or \$170,000 (married couple filing jointly).

# Legislators strengthen tools to curb elder abuse

By House Majority Leader Val Hoyle (D–Eugene) and Representative Vic Gilliam (R–Silverton)



Val Hoyle was first appointed to the Oregon State Legislature in 2009 to represent West Eugene and Junction City. As House Majority Leader, she has been leading the fight for middle-class families, quality public schools, and family-wage jobs in Oregon.



Vic Gilliam has represented House District 18 since 2007. He serves on the House Human Services and Housing Committee, and the House Committee on Higher Education and Workforce Development. He co-chairs the House Elder Abuse Prevention Work Group.

For the past three years, we have been honored to stand shoulder to shoulder with state agencies, healthcare organizations, elder advocates, and engaged citizens leading the charge against elder abuse in Oregon. We co-chaired the Oregon Elder Abuse Prevention Work Group, which brought together dedicated and talented individuals from all walks of life to find practical solutions to combat elder abuse.

We championed legislation that harmonized Oregon's statutory treatment of elder abuse and child abuse, and provided strong and consistent protection for all our most-vulnerable Oregonians. We engaged broad, bipartisan support to provide vital tools for law enforcement officials investigating egregious elder abuse cases. We are proud of the work we've done and ready to move forward on the serious challenges ahead.

In February 2012 we worked together to pass a landmark piece of legislation that significantly increased protection for aging Oregonians. That legislation (House Bill 4084) took steps forward in several important ways, including:

- Increased time to prosecute crimes against elders. Extended the statute of limitations from three to six years for crimes of forgery, robbery, theft, and identification theft committed against people 65 and older. Often these complex investigations can take years and the additional time will ensure prosecution of these cases and hold perpetrators accountable.
- Eliminated expungement for convictions of elder abuse. As with crimes of child abuse, convictions for criminal mistreatment of an elderly victim should not easily be expunged. This will keep those convicted of elder abuse from returning to caregiving roles among our most vulnerable populations.
- Provided vital tools for law enforcement during abuse investigations. Allows law enforcement officials investigating potential elder abuse cases to review medical records and discuss potential abuse with the victim's doctor. Also allows access to review financial records with a subpoena.
- Created the Resident Safety Review Council to develop policy recommendations for classifying actual incidents of abuse separately from adverse events in order to make sure abusers are punished.

Following the February 2012 session, we continued to build on these efforts and drafted new legislation that won bipartisan support and was signed into law by Governor Kitzhaber on June 11, 2013. House Bill 2205 made additional strides to protect our elders, including:

- Ensured vital tools for law enforcement during abuse investigations are permanent by removing the sunset provision on providing access to medical and financial health records
- Conformed the elder abuse mandatory reporter statute with child abuse mandatory reporter requirements
- Added reporters: members of the legislature, dentists, optometrists, chiropractors, and attorneys
- Extended Elder Abuse Work Group to 2015 with a narrowed objective to revise the definition of elder abuse, specifically to align definitions of abuse of vulnerable persons across populations, agencies, service providers and law enforcement. The goal for redefining elder abuse in Oregon is to make the statute easier to understand by victims, consumers, prosecutors, law enforcement, and public and private entities charged with caring for Oregon's older citizens.

We've made significant strides to protect aging Oregonians, but there is still more work to do. With the continued commitment of Oregon's legislative leaders, healthcare providers, advocates for elders, and engaged citizens, we will keep fighting to put an end to abuse against our elders and create a safe and healthy Oregon. ■

## Oregon statute requires national certification of professional fiduciaries

By Kevin Burke, Senior Managing Fiduciary, Beagle, Burke & Associates



Kevin Burke is a partner at Beagle, Burke & Associates, a private professional fiduciary firm with offices in Portland and Vancouver. He is the author of **Guardian: The Art of Restoring Lives**, a book about the fight against elder financial abuse. His writing can be found at [kevinburkewrites.blogspot.com](http://kevinburkewrites.blogspot.com).

The 2013 legislative session saw the adoption of HB 3129, which will for the first time require national certification of professional fiduciaries in Oregon. After January 1, 2014, professional fiduciaries must be certified as either National Certified Guardians or National Master Guardians by the Center for Guardian Certification (CGC).

The CGS is a national nonprofit organization that provides certification to any practicing guardian who meets its standards. Oregon joins Illinois and Alaska in making CGC certification mandatory under statute.

The statute change requires that proof of certification be contained in any petition that seeks the appointment of a professional fiduciary as guardian or conservator. Practicing fiduciaries who are not currently certified by the CGC will be able to continue administration of their existing cases while applying for CGC certification for future petitions. (Currently 58 of Oregon's estimated 150 professional fiduciaries are CGC certified.) Copies of certificates provided by the Center for Guardianship Certification will need to be attached to petitions. This certificate is a one-page document provided via email upon completion of the certification process. At this point in time the requirement for CGC certification will only apply to future petitions, though the principles and standards of practice behind CGC certification will apply to all cases in which a CGC-certified fiduciary is appointed.

HB 3129 was spearheaded by Representative Michael Dembrow (D-Portland). His aide Marissa Johnson was instrumental in helping shepherd the bill through the regular legislative session. Representatives Sara Gelser (D-Corvallis), Margaret Doherty (D-Tigard), Alissa Keny-Guyer (D-Portland), David Gomberg (D-Central Coast), and Senators Jackie Dingfelder (D-Portland) and Chris Edwards (D-Eugene) cosponsored the bill.

Since 2006 the Guardian Conservator Association of Oregon has provided access to voluntary certification of fiduciaries by the CGC. This includes an Oregon-specific component to the testing process that allows fiduciaries to be certified as Oregon Certified Professional Fiduciaries. HB3129 represents the culmination of a 20-year goal of the GCA of Oregon to have a statute that links measurable professional standards to the

core values of professional guardians.

Last March, I joined three other members of the Board of the Guardian Conservator Association— Nancy Doty of Nancy Doty Inc., Michael O'Shea of Tiffany and O'Shea, and GCA President Nancy MacDonald—to testify in favor of HB 3129 before the House Committee on Human Services and Housing. Nancy MacDonald's testimony pointed out that CGC certification requires a national criminal background check, third-party verification of education and employment history, ongoing continuing education, and demonstration of core competencies in financial management, care planning, and medical decision making. GCA also administers a decertification process.

The actual language HB 3129 inserts into ORS 125.240 states that a petition for the appointment of a professional fiduciary must contain "*Proof that the professional fiduciary, or an individual responsible for making decisions for clients or for managing client assets for the professional fiduciary, is certified by the Center for Guardianship Certification.*" This will allow existing professional fiduciaries to adapt their operations to the statute while providing courts with proof that all decisions are made within the context of state-of-the-art standards for care and fiduciary decision-making maintained by the CGC.

The practice of guardianship by CGC-certified guardians is governed by two core values: *substitute judgment* and *least restrictive alternative*. As a result of HB3129 these ideas will now be available for attorneys to use in weighing the quality of professional fiduciaries' work.

Substitute judgment means that a fiduciary is required to make decisions according to the values, ideas, and preferences of a protected person. In the case of people who were incapacitated at birth, for example through a developmental disability, this principle requires guardians to honor the dreams, hopes, and potentials of a protected person as he or she moves through developmental stages such as graduating from high school and making the transition to adulthood.

Similarly, for persons who become disabled through a traumatic brain injury or mental illness, guardians must gather information about

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## Professional fiduciaries *Continued from page 4*

the protected person's values and use this information to make decisions that reflect the protected persons values while developing a care plan that maximizes the independence of the protected person.

For elders at risk, the principle of substituted judgment means that a fiduciary has a duty to understand his or her clients' life choices prior to whatever crisis led to the appointment of a guardian and/or conservator. This principle is meant to guide *every* decision a fiduciary makes on behalf of a protected person. In cases with deeply divided families, for example, fiduciaries may have to expend effort to make sure an elder has access to relationships with all family members, even those whose problematic behaviors may have led to the initial protective proceeding. And when making end-of-life medical decisions, fiduciaries have to weigh whatever information they can obtain about their clients' prior planning in working with doctors.

This is best shown by an example. My firm was recently brought into a case where a man was suffering life-threatening dehydration and malnutrition and living in conditions that were quite simply horrible. Adult Protective Services had been called when home care workers had refused to enter the house. The goal of the initial petition was to get emergency authority to remove the man from his home and place him in

a care facility. However, during an initial investigation, two friends of the vulnerable elder were found who were willing to step in, work with the fiduciary to clean up the house, and provide the elder with ongoing care in his home.

In the order of appointment, the fiduciary was able to allow the elder to retain the right to decide where he lived and obtain court authority to advance some cleaning costs to replace carpets and other items. As a result, that man has been able to remain in his own home at a net monthly cost of care less than most care facilities.

This was an example of the fiduciary incorporating substitute judgment into the court process. It was also an example of a least restrictive alternative for care. Not all cases work out this smoothly, of course. Sometimes there is simply no way to safely provide protected persons with exactly what they want. However, the concepts of substitute judgment and least restrictive alternative provide a way of explaining and understanding a fiduciary's decisions, as well as language for advocating for best outcomes, that will help attorneys promote the dignity and mental well-being of people who need court protection. ■

### Resources

The Center for Guardianship Certifications process for certifying guardians incorporates the standards of practice of the National Guardianship Association. Rules and regulations for CGC certification of National Certified Guardian and National Master Guardians can be found at [www.guardiancert.org](http://www.guardiancert.org).

## Retirement-facility company settles with DOJ over marketing tactics

Holiday Retirement, a Lake Oswego company, entered into a settlement with the Oregon Department of Justice, that calls for the company to pay \$750 to \$3,500 or more to at least 163 Oregon veterans financially damaged as a result of alleged unlawful marketing of retirement housing to veterans.

The department investigated allegations that Holiday made misrepresentations to prospective customers about the availability of federal veterans' benefits. Some moved into Holiday facilities based on the anticipated additional income and Holiday's offer to defer their rent. After some of these new residents failed to qualify for the veterans' benefits, Holiday took aggressive actions to collect the deferred rent.

Robert E. Elhard Jr. and Fielding Financial LLC were involved with Holiday in promoting the veterans' benefits. They have entered into a settlement with the Department of Justice that bans them permanently from soliciting or providing financial services to Oregon veterans.

The investigation began after the department received complaints about Elhard from residents of Holiday's Rock Creek facility in Hillsboro and volunteers with the Oregon Department of Veterans' Affairs. DOJ's investigation expanded to include all 14 of Holiday's Oregon facilities. The allegations under investigation included:

- Holiday failed to disclose it had a business marketing relationship with Elhard, who represented he was a "free" advocate for senior veterans.
- Elhard and Holiday failed to disclose Elhard's objective to identify financially "overqualified" veterans and to sell them trusts and annuities, as a means to divest themselves of assets and meet the financial requirements for a VA pension.
- Veterans often did not get timely VA application service. Some applications were never submitted.
- Holiday offered "deferred rent" agreements to veterans, to induce them to move in while VA applications were anticipated or pending. Holiday thereafter insisted that some residents "agree" to lease changes that made the deferred-rent program more onerous to consumers.
- Holiday and Elhard shared confidential financial and medical information obtained from elders.

Both Holiday and Elhard denied wrongdoing and cooperated with the Department of Justice's investigation. ■

## 2013 amendments to the Oregon Uniform Trust Code

By Professor Susan N. Gary, University of Oregon School of Law



Susan Gary is the Orlando J. and Marian H. Hollis Professor of Law at the University of Oregon. Her teaching and research interests include nonprofit organizations, trusts and estates, and estate planning.

In 2006 the Oregon legislature enacted the Oregon Uniform Trust Code (OUTC) and in 2008 the legislature enacted technical corrections. As Oregon lawyers continued to work with the OUTC, they identified a number of places where amendments to the statutes would improve results for people working with or using trusts. A committee of the Estate Planning Section of the Oregon State Bar began work on the project and then a work group of the Oregon Law Commission, with the involvement of several members of the original committee, developed a proposal that became SB 592. The Oregon Legislature enacted the bill, and it took effect on June 26, 2013, the date of enactment.

The general goals of SB 592 were to facilitate the use of nonjudicial settlement agreements for trust modification, provide a means for a trustee to get advance authorization for certain actions through notice to beneficiaries, and provide a number of clarifying changes that should improve the administration of trusts. Some of the amendments follow common estate planning practices.

### New definitions

In connection with modification proceedings and notice, one change needed for more efficient administration was to create two new types of beneficiaries. A *remote interest beneficiary* is one "whose beneficial interest in the trust, at the time the determination of interest is made, is contingent upon the successive terminations of both the interest of a qualified beneficiary and the interest of a secondary beneficiary whose interests precede the interest of the beneficiary." A *secondary beneficiary* is "a beneficiary, other than a qualified beneficiary, whose beneficial interest in the trust, at the time the determination of interest is made, is contingent solely upon the termination of all qualified beneficiary interests that precede the interest of the secondary beneficiary." These two definitions were added to ORS 130.010.

The purpose of the new categories is to provide that in some circumstances notice need not be given to beneficiaries whose interest is so remote that they will likely never benefit from the trust. Trustees have sometimes found it difficult to obtain consent for needed modifications if consent must be obtained from all beneficiaries,

because beneficiaries who know they will likely never receive anything from the trust may not bother to respond to requests for consent. The statutes now limit the necessary notice in situations in which a beneficiary's interest is remote. A remote interest beneficiary is a beneficiary that is at least third in line and in many situations fourth in line. The definition of secondary beneficiary was necessary to create the desired definition of remote interest beneficiary.

### Nonjudicial settlement agreements

ORS 130.045 provides for nonjudicial settlement agreements on matters that involve a trust. SB 592 changed the persons who may enter into an agreement and clarifies the effect of filing the agreement in court. The original definition included as "interested persons" who may enter into an agreement "beneficiaries of the trust who have an interest in the subject matter of the agreement." That provision was changed to "qualified beneficiaries." Thus, all qualified beneficiaries can be parties to the agreement without a determination that each one is interested in the subject matter.

The new legislation clarified the Attorney General's role in representing the public's interests in charitable assets. The Attorney General is an "interested person" for purposes of nonjudicial settlement agreements, both in connection with a charitable trust located in Oregon and in connection with an Oregon charity that is the beneficiary of a trust operating outside Oregon. If a trust includes a gift to a charity and the settlor reserves the power to change the name of the charity (the identity of the beneficiary), a named charity that may be replaced will not be a necessary party to an agreement involving the trust. The Attorney General will represent the interests of all charitable beneficiaries in connection with any agreement.

Changes to ORS 130.045 also clarify that if an agreement that involves a trust is not filed with the court, the agreement will be binding only on the parties to the agreement. If the parties file the agreement with the court and provide notice of a right to object to beneficiaries, the agreement will be binding on all those who receive or waive notice, if no one objects. If someone

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## Uniform Trust Code *Continued from Page 6*

objects and a hearing is held, the decision of the court will be binding on all beneficiaries of the trust and all parties to the agreement. If the court does not approve the agreement, the agreement will not be binding on any beneficiary or party.

SB 592 decreased the time period for objections to a settlement agreement from 120 days to 60 days. The longer time period had impeded the ability of trusts to accomplish modifications in an efficient manner, and 60 days should allow ample time for objection.

Some trustees have been concerned that entering into a settlement agreement would violate a spendthrift provision. SB 592 added a subsection to ORS 130.305 stating that entering into a settlement agreement is not, by itself, a transfer in violation of a spendthrift provision.

A trustee has a duty of obedience to carry out the terms of the trust (ORS 130.650) and a duty of loyalty to administer the trust solely in the interests of the beneficiaries (ORS 130.655). These duties could suggest to a trustee that any modification of a trust would be a violation of one or both of these duties. SB 592 amended both sections to clarify that the mere existence of these duties does not require a trustee to object to a modification of a trust.

### Definition of charitable trust

In the OUTC a charitable trust is defined as a trust or a portion of a trust that holds assets for charitable purposes. SB 592 amended ORS 130.170 to confirm that a trust created to distribute funds to charities is a charitable trust. The new legislation also clarifies that if the charitable interests are negligible or if the charitable beneficiaries are all remote interest beneficiaries, the portion of the trust held by charitable beneficiaries will not be considered a charitable trust. For example, if a trust provides for three generations of family members, with multiple people at each generation, and then provides a contingent remainder interest in a charity so that the charity takes only if all family members die before the trust terminates, the contingent remainder interest will not be considered a "charitable trust" for purposes of the OUTC. This provision means that the trust will not need to provide notice to the Attorney General when notice to "beneficiaries" is required, saving the resources of the Attorney General for situations in which charitable interests are important ones.

### Judicial modification

ORS 130.200(1) provides that if a settlor and all beneficiaries consent, a court can approve a modification of an irrevocable trust. Remote interest beneficiaries are now excluded from the beneficiaries who must consent. Even if not all beneficiaries agree, ORS 130.200(5) permits a court to approve a modification if the court could have done so under the section with the consent of all beneficiaries. Again, remote interest beneficiaries are excluded from the beneficiaries who would have been required to consent.

Under the original version of ORS 130.200 the settlor's power to consent to modification could be exercised by an agent acting under a power of attorney only if the terms of the trust authorized an agent to consent to modification. Now the authorization can occur either in the terms of the trust or in the grant of the power of attorney. This change conforms Oregon law to the Uniform Trust Code.

### Creditors

SB 592 amended ORS 130.310 to clarify that a court may order execution against an amount a trustee is required to distribute. Language added to ORS 130.315 states that creditors cannot reach assets in a trust solely because the trustee holds a discretionary power to pay taxes or to reimburse the settlor for taxes paid; that property becomes subject to creditors only if the property is subject to a power of withdrawal greater than the amount of the annual exclusion or, if the donor was married, twice that amount; that assets in an inter vivos marital deduction trust will be deemed contributed by the donor's spouse; and that assets contributed to a trust by a settlor will not be subject to claims of the settlor's creditors if someone else is given a non-general power of appointment.

### Revocable trusts

ORS 130.525 explains which provisions of the OUTC apply to revocable trusts. The changes clarify that the statutory rules apply to trusts that were revocable on the occurrence of an event or until the settlor's death.

Under ORS 130.555, the pretermitted child rules that apply to wills also apply to revocable trusts. Clarifying language links the rules applicable to wills and revocable trusts and states that a child will not be considered pretermitted if the settlor acknowledges or mentions the child by name or by class either in the trust instrument or in the settlor's will. As under the statute applicable to wills, a child will be covered if the child is born or adopted while the settlor is alive, but not after the settlor's death unless the child is in gestation at the settlor's death. ORS 130.555 has always given a pretermitted child the share the child would have received if the settlor had died intestate, with no trust. SB 592 incorporated the provisions from the intestacy statute into ORS 130.555, so the statute now directly states the share to which a pretermitted child will be entitled.

SB 592 added a new section to Chapter 130 that applies the abatement rules from probate law to property being distributed from a revocable trust. As with property distributed under a will, the new section will provide that after the payment of creditors and expenses of administration, the trustee will first pay specific gifts (identifiable items), then general gifts (fungible gifts like gifts of money), and then the residuary gifts.

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## Uniform Trust Code *Continued from Page 7*

### Trustees and administration

Perhaps the most important change with respect to a trustee's powers is a new process by which a trustee can give a beneficiary notice of a proposed action and then proceed with the action if the beneficiary does not object within 45 days. The notice to the beneficiary must clearly inform the beneficiary of the right to object and the way to object, and must provide sufficient information for the beneficiary to make an informed decision about whether to object. The beneficiary must object in writing. If the beneficiary does not object, the beneficiary is barred from taking action against the trustee in connection with the action. The notice process does not apply to a number of types of self-dealing transactions between the trustee and trust, including, among others, settlement of trust accounts or the trustee's report, actions involving property sales or exchanges between the trustee and the trust, and settlement of actions by the trust against the trustee.

A number of other provisions related to trustees clarify trustees' duties, make trust administration more efficient, or make default law provisions typically drafted into trusts.

ORS 130.215 permits termination of a trust if the value of the trust property is too small to justify the cost of administration. The statute was amended to permit termination if the trustee is a beneficiary, so long as the trustee is not a qualified beneficiary (someone currently receiving distributions or who will receive distributions if the trust terminates).

ORS 130.610 provides for delegation of duties by a trustee. The statute now clearly requires that a delegation or a revocation or termination of a delegation must be in writing.

ORS 130.615 now provides that a trustee vacancy in a charitable trust can be filled by unanimous agreement of all qualified beneficiaries and the Attorney General (rather than all beneficiaries as required under prior law).

ORS 130.630 authorizes the court to remove a trustee if removal "best serves the interests of all of the beneficiaries" and certain other requirements are met, but only if "[r]emoval is not inconsistent with a material purpose of the trust." Some trustees have argued that a settlor's choice of trustee is a material purpose of the trust, which has made removal under this provision difficult. A change permits the court to remove the trustee if the other requirements are

met unless the trustee establishes "by clear and convincing evidence that removal is inconsistent with a material purpose of the trust."

ORS 130.630 now provides that a successor trustee or the court may require the departing trustee to prepare a final report, and if the departing trustee is required to prepare a final report, the trust must pay reasonable fees and costs.

ORS 130.635 now makes clear that trustee compensation must reflect the total services provided to the trust by co-trustees or by third parties such as financial advisors, so that the trust is not paying duplicative fees.

ORS 130.710 requires the trustee to keep the qualified beneficiaries informed about the administration of the trust. The OUTC had required a trustee who leaves office to send a report to the qualified beneficiaries. The statute now states that the former trustee must send the report if the successor trustee or the court requires it.

ORS 130.725(22) now provides that distribution of trust property may include payments in cash or in kind.

ORS 130.730 provides more clarity in the trustee's duties on termination of a trust and the effectiveness of a release executed by a beneficiary.

A new section states that if a trustee is permitted or obligated to divide a trust into separate shares for separate beneficiaries, each share will be deemed a new trust and the trust from which the new trust is created will be deemed to terminate.

### Trust advisers

ORS 130.735 provides rules for the appointment of a person who will act as an adviser to the trustee. The section now clarifies that "[t]he appointment may provide for succession of advisers and for a process for the removal of advisers." The amendment added a provision on removal of an adviser by the court.

### Conclusion

These amendments to the OUTC should benefit settlors, trustees, and beneficiaries, as well as their advisors. Several years of experience with the OUTC have allowed lawyers working with the statutes to identify places where the OUTC could be clarified or otherwise strengthened. SB 592 accomplished the needed improvements. ■

**Work group members** were Chair, Prof. Susan N. Gary, University of Oregon School of Law and OLC Commissioner; Susan Bower, Oregon Dept. of Justice; Bill Brewer, Hershner Hunter LLP; Christopher Cline, Wells Fargo Bank; John Draneas, Draneas & Huglin PC; D. Charles Mauritz, Duffy Kekel LLP; Hilary Newcomb, HAN Legal; Robert Saalfeld, Saalfeld Griggs PC; Lane Shetterly, Shetterly Irick & Ozias and Chair of OLC; Jeff Thede, Thede Culpepper Moore Munro & Silliman LLP; Vanessa Usui, Duffy Kekel LLP; Matthew Whitman, Cartwright, Whitman, Baer PC; Ken Sherman, Jr., Sherman Sherman Johnnie & Hoyt.

**Staff members** included Prof. Jeff Dobbins, Executive Director of the OLC; Dave Heynderickx, Special Counsel to the Legislative Counsel; Wendy Johnson, Deputy Director and General Counsel of the Oregon Law Commission; BeaLisa Sydlik, Deputy Legislative Counsel.



## Blazing a trail to murky waters: Considerations for same-sex spouses in the wake of United States v Windsor

By Beth S. Wolfson, Attorney at Law



Beth Wolfson focuses her Portland practice on estate planning, adoptions, and donor & surrogacy agreements. She is a member of the Basic Rights Oregon Legal Group, Pride Professional Alliance, Portland Area Business Association, Oregon Women Lawyers, and the Oregon Gay and Lesbian Lawyers Association. She speaks each year on topics such as adoption and assisted reproduction, planning to protect your family and children, planning for your pet's care and needs, issues affecting the LGBT community, and marriage equality.

On June 26, 2013, the Supreme Court of the United States handed down its opinion in the case of *United States v. Windsor*<sup>1</sup>, which ruled unconstitutional Section 3 of the federal Defense of Marriage Act (DOMA), the section of the Act which restricted the federal government to recognizing only opposite-sex couples as “married” for all purposes under federal law. The *Windsor* case involved Edith Windsor and her spouse, Thea Spyer, residents of New York, who were together for more than 40 years and married in Canada in 2007 after the State of New York declared it would recognize same-sex marriages from other jurisdictions. When Ms. Spyer died in 2009 she left her entire estate to Ms. Windsor. Ms. Windsor tried to claim the unlimited marital deduction on her federal income taxes, but was denied because the Internal Revenue Service (IRS) and Department of the Treasury were precluded from recognizing the couple as married. After paying more than \$363,000 in estate tax to the IRS, Ms. Windsor filed a lawsuit to challenge the constitutionality of Section 3 of DOMA, arguing that it violated the due process clause of the Fifth Amendment. After both lower courts found in Ms. Windsor’s favor, the U.S. Supreme Court affirmed in a 5-to-4 decision.

Although the *Windsor* case is seen as a victory and a momentous step forward for proponents of marriage equality in the United States, it has also left same-sex spouses and the professionals who advise and assist them to grapple with the practical realities of implementing the court’s decision. This is especially so in light of the fact that Section 2 of DOMA—the section which says that no one state has to recognize or give effect to the “relationship between persons of the same sex that is treated as a marriage” under the laws of another state<sup>2</sup>—is still in effect. In other words, the federal government can no longer limit the definition of marriage to “one man and one woman,” but individual states can. Currently in the United States, 13 states and the District of Columbia issue marriage licenses to same-sex couples but more than 30 states have statutory or constitutional restrictions to marriage as between one man and one woman.

To further complicate the matter, there is no uniform federal definition of marriage. In order to know whether a particular right, benefit, or responsibility applies to a particular couple, we have to look to the individual statute to see how “marriage” or “spouse” is defined. In other words, many federal statutes will recognize a couple as married according to the laws of the state in which a couple were married (“place of celebration test”), and other federal statutes define marriage using the laws of the state in which the couple is domiciled now or when the benefit accrued. Now, more than ever, a couple’s marital status *and* state of domicile are critically important in evaluating which of the 1,138 rights and protections under federal law<sup>3</sup> apply to same-sex spouses.

Shortly after the court issued its decision in *Windsor*, President Obama, who publicly expressed his support of marriage equality in 2012, directed the U.S. Attorney General to “work with other members of my cabinet to review all relevant federal statutes to ensure this decision, including its implications for federal benefits and obligations, is implemented swiftly and smoothly.” Since then, several federal agencies have issued statements that provide some guidance in how they will implement the court’s decision. Though far from comprehensive, this article provides a snapshot of what we know so far and provides resources to help the reader find new information as it becomes available in coming months.

### Social Security Administration

On August 9, 2013, the Social Security Administration (SSA) provided its initial statement of how it would implement the court’s ruling in *Windsor*. However, the agency limited its decision thus far to processing claims from same-sex spouses who are both married in a state that permits marriage between couples of the same sex *and* are also domiciled “at the time of application or while the claim is pending final determination” in a state that recognizes same-sex marriage.<sup>4</sup> For same-sex spouses who are domiciled in recognition states, the financial

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## Same-sex spouses *Continued from Page 9*

benefits could be enormous, considering that for the first time in U.S. history these spouses have the ability to apply for and receive survivor benefits based on the higher earning record of a deceased spouse or up to 50 percent of a retired or disabled spouse's benefit amount.

Although same-sex spouses who are domiciled in non-recognition states must wait for further clarification from the SSA before knowing whether they will be eligible to receive those benefits, the SSA is encouraging same-sex spouses and couples who are registered domestic partners or civil union parties to apply for benefits right away so the application is pending while the agency develops its policy.<sup>5</sup> While the agency decision is pending, there may still be opportunity for certain same-sex couples to receive benefits. Consider this definition from the Social Security laws:

*"An applicant is the wife, husband, widow, or widower of a fully or currently insured individual ... if the courts of the State in which such insured individual is domiciled at the time such applicant files an application ... would find that such applicant and such insured individual were validly married ... or if such applicant would, under the laws applied by such courts in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a wife, husband, widow, or widower of such insured individual ..."*<sup>6</sup>

In other words, if a couple is deemed to be married under state law or if the survivor would take by intestacy under state law, the survivor may still be treated as a spouse for purposes of these benefits. Therefore, couples who are registered domestic partners under the comprehensive Oregon Family Fairness Act and who are also domiciled in the State of Oregon may still be eligible to apply for Social Security benefits even if they are not married or if they are married but their marriage is not recognized by the State of Oregon.

### Department of the Treasury

On August 29, 2013, the Department of the Treasury issued a press release that stated same-sex spouses who are "legally married in jurisdictions that recognize their marriages" would be

treated as married for federal tax purposes regardless of whether they currently live in a state that doesn't recognize their marriage. Secretary Jacob L. Lew said, *"Today's ruling provides certainty and clear, coherent tax filing guidance for all legally married same-sex couples nationwide. It provides access to benefits, responsibilities, and protections under federal tax law that all Americans deserve ... This ruling also assures legally married same-sex couples that they can move freely throughout the country knowing that their federal filing status will not change."*<sup>8</sup>

Under the ruling, same-sex spouses will now, for the first time ever, not only be able to file joint federal tax returns but in fact *must* check either the "married filing jointly" or "married filing separately" boxes on the return. Some same-sex spouses may experience an increase in the amount of income tax they pay (the "marriage penalty"), but that possibility may be far outweighed by the potential savings for many couples. Not only will same-sex spouses have protection from federal estate taxes, but there is now a whole new world of opportunity with regard to gifting, income-splitting, and in fact, "all federal tax provisions where marriage is a factor, including filing status, claiming personal and dependency exemptions, taking the standard deduction, employee benefits, contributing to an IRA, and claiming the earned income tax credit or child tax credit."<sup>8</sup> This specifically includes an end to individuals having to pay tax on the imputed income on health insurance premiums for their partners. Same-sex spouses will also have the opportunity to amend their 2010, 2011, and 2012 income-tax returns if they were legally married at the time, which could result in significant refunds for some couples.

### Department of Health and Human Service (Medicaid/Medicare)

August 29, 2013, was a busy day in the halls of the federal government. Not only did the Department of the Treasury issue its press release, but the Department of Health and Human Services (HHS) issued one as well. In its initial memo, HHS Secretary Kathleen Sebelius announced that HHS "is working swiftly to implement the Supreme Court's decision and to ensure that gay and lesbian married couples were treated equally under the law." The guidance provided by HHS specifically clarified that the agency rules would apply to married same-sex couples regardless of where they live.<sup>9</sup>

Again, the implications are far reaching. Take, for instance, the fact that access to the Medicare program is based on an individual's Part A eligibility and how many quarters that individual has worked and paid payroll taxes. An individual who works 40 quarters can enroll in Medicare and pay no premium for Part A. Now, a same-sex spouse who may have worked fewer than 40 quarters during his or her career can enroll in Part A based on a spouse's earning history and potentially pay no premium. In addition, same-sex spouses enrolled in a Medicare Advantage plan will no longer have to fear being separated because they don't qualify for care in the same skilled nursing facilities in which their spouses reside (with some exceptions that apply to all spouses universally). Consider also the fact that Medicaid's spousal impoverishment rules will now apply to same-sex spouses, providing some protection from impoverishment for the well spouse when the ill spouse is receiving long term care services and needs Medicaid to help pay for the care.

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## Same-sex spouses *Continued from Page 10*

### Departments of Defense and Veterans Affairs

On August 13, 2013, the Department of Defense (DOD) issued a memorandum affirming earlier statements by Secretary of Defense Chuck Hagel that the DOD would extend full benefits to married military personnel and civilian employees.<sup>10</sup> The memorandum clarified that the benefits would begin no later than September 3, 2013, would be retroactive to the date of the court's *Windsor* decision, and would apply regardless of whether the spouses currently lived in a recognition state. In addition, the memorandum clarified that U.S. military currently living in states that do not allow marriage between same-sex partners would be granted nonchargeable leave to travel to another jurisdiction in order to marry. According to *Stars and Stripes* columnist Leo Shane III, "*The change, set to go into effect no later than Sept. 3, will mean tens of thousands of dollars in direct payments and covered health care costs for legally married same-sex military couples. Housing allowances alone can reach up to \$30,000 in annual payouts for married troops with dependent children.*"<sup>11</sup>

A few weeks later, on September 4, 2013, following a federal district court's decision in California that Title 38 was unconstitutional, and at the direction of President Obama, United States Attorney General Eric Holder announced that the Executive Branch would no longer enforce the statutory definition of spouses in 38 U.S.C 101(31), Title 38, that limited application of benefits to only spouses of the opposite sex.<sup>12</sup> The decision by the Obama administration not to enforce the Title 38 definition of spouse opened the door to same-sex spouses of U.S. veterans to a wide array of disability and survivor benefits, health insurance, pension, home loans, cemetery services, and burial allowances—and the list goes on. However, there remains a statutory requirement that veterans' benefits be determined based on the law of the state where the couple lived at the time of marriage or when the benefit accrued, meaning there could still be a delay in the administration of benefits for couples who are living in non-recognition states.

### All in all

Though the waters are still murky, we are learning more nearly every day about how the *Windsor* opinion will affect same-sex spouses. And even as this article is written, the landscape is changing and we must analyze and re-analyze how the changes affect our clients. The State of

Oregon recently announced that its agencies would recognize out-of-state same-sex marriages after the Oregon Department of Justice concluded that to do otherwise might violate the federal constitutional rights of married same-sex couples. This is a limited decision, which took effect immediately, and leaves intact the state's constitutional ban on same-sex marriages in the State of Oregon. The organization Oregon United for Marriage is gathering signatures to win the freedom to marry at the ballot box in Oregon in November 2014, and a federal district court case was recently filed to challenge the constitutionality of the marriage ban here in Oregon: *Geiger et al v Kitzhaber et al* \_\_\_\_\_ (2013).

Like spouses everywhere, same-sex spouses will now be more vulnerable to certain financial hardships from potential increase in income taxes and inclusion of the other's spouses income when applying for need-based benefits to potential loss of retirement income upon remarriage to a new spouse. But overall, the opportunity now exists for greater financial security for aging same-sex spouses as the United States takes one more step toward marriage equality. ■

### Footnotes

1. *United States v. Windsor*, 570 U.S. \_\_\_ (2013).
2. 28 USC §1738C
3. General Accounting Office, GAO-04-353R, "Defense of Marriage Act: Update to Prior Report" January 23, 2004: [www.gao.gov/assets/100/92442.html](http://www.gao.gov/assets/100/92442.html)
4. Social Security Administration Press Release, August 9, 2013 (processing some claims from same-sex couples): [www.ssa.gov/pressoffice/pr/doma-statement-pr-alt.pdf](http://www.ssa.gov/pressoffice/pr/doma-statement-pr-alt.pdf)
5. See Social Security Administration website and its Frequently Asked Questions section: [www.ssa.gov/same-sex-couples](http://www.ssa.gov/same-sex-couples) and [http://ssa-custhelp.ssa.gov/app/answers/topic\\_landing/c/237](http://ssa-custhelp.ssa.gov/app/answers/topic_landing/c/237)
6. 42 U.S.C. 416 Sec.216 (h)(1)(A)(i) and (ii)
7. Department of Treasury press release, August 29, 2013: [www.treasury.gov/press-center/press-releases/Pages/jl2153.aspx](http://www.treasury.gov/press-center/press-releases/Pages/jl2153.aspx). See also Revenue Ruling 2013-17: [www.irs.gov/pub/irs-drop/rr-13-17.pdf](http://www.irs.gov/pub/irs-drop/rr-13-17.pdf).
8. *Ibid.*
9. Department of Health & Human Services press release, August 29, 2013: [www.hhs.gov/news/press/2013pres/08/20130829a.html](http://www.hhs.gov/news/press/2013pres/08/20130829a.html)
10. Department of Defense, August 13, 2013: [www.defense.gov/home/features/2013/docs/Further-Guidance-on-Extending-Benefits-to-Same-Sex-Spouses-of-Military-M.pdf](http://www.defense.gov/home/features/2013/docs/Further-Guidance-on-Extending-Benefits-to-Same-Sex-Spouses-of-Military-M.pdf). See also DOD Secretary Chuck Hagel, June 26, 2013: [www.defense.gov/news/newsarticle.aspx?id=120364](http://www.defense.gov/news/newsarticle.aspx?id=120364)
11. *Stars and Stripes* article, August 14, 2013: [www.stripes.com/news/us/dod-announces-full-benefits-to-married-same-sex-couples-1.235284](http://www.stripes.com/news/us/dod-announces-full-benefits-to-married-same-sex-couples-1.235284)
12. Department of Justice, AG Holder, Extending Veterans Benefits to Same-Sex Spouses, September 4, 2013: [www.justice.gov/print/PrintOut3.jsp](http://www.justice.gov/print/PrintOut3.jsp). See also letter from Attorney General Eric Holder to Hon. John Boehner, September 4, 2013: [www.justice.gov/iso/opa/resources/557201394151530910116.pdf](http://www.justice.gov/iso/opa/resources/557201394151530910116.pdf).

See page 14 for a list of resources on this topic.

## Results of informal survey on guardianship-related recommendations

By Fred Steele, Attorney at Law



Fred Steele is Oregon's Legal Services Developer under the Older Americans Act. He is leading the development of a Working Interdisciplinary Network of Guardian Stakeholders (WINGS) group in Oregon.

Through a joint effort between the Department of Human Services' State Unit on Aging and the Oregon Judicial Department, Oregon is in the process of establishing a Working Interdisciplinary Network of Guardian Stakeholders (WINGS) group. Oregon was one of four states selected by the National Guardianship Network (NGN) to receive a seed money grant—and national support from NGN—to establish a WINGS group over the next year. WINGS brings together people from various disciplines with interest in the guardianship/conservatorship system for short-term and long-term planning and action to improve the state's system, including alternatives to guardianship/conservatorship.

In preparation for initiating the WINGS group, an online survey was developed with the purpose of assessing opinions of those involved with guardianship processes in Oregon. The survey's intent was to use the knowledge of individuals who interact with Oregon's adult guardianship system to help the new Oregon WINGS group understand which issues should be prioritized. Persons identified as respondents for the survey included attorneys, court visitors, disability professionals, lay (non-professional) guardians, long term care ombudsmen (paid & volunteer/certified), judges, medical professionals, mental health professionals, professional guardians, and protective-services specialists (investigators of adult abuse).

The survey questions were based on existing recommendations for improving guardianship practices—specifically, recommendations from the 2008 report by the Oregon Task Force on Protective Proceedings and recommendations from the 2011 National Guardianship Summit. The conversion of the recommendation issues into survey questions included the elimination of successfully completed recommendations from the 2008 report, deletion of the 2011 national recommendations that were not applicable to Oregon, and modification of recommendations that have been partially addressed in Oregon.

Given that these recommendations already existed, the survey was not intended to re-identify problems or issues that need to be addressed. Rather the survey was effectively seeking opinions regarding the problems identified as issues in Oregon's guardianship processes.

Members of the Oregon WINGS steering committee distributed the survey in the first two weeks of August 2013. A total of 186 respondents completed the survey—including 68 attorneys, 46 adult-abuse protective service specialists, and 34 professional fiduciaries. A considerably smaller number of responses—fewer than 10 each—were seen from the other groups of individuals. (Respondents could categorize themselves as more than one type.) An additional 22 individuals identified themselves as “other” in completing the survey.

All 36 Oregon counties were represented, with no less than 12 individuals indicating that they interact with the adult guardianship system in identified counties. Respondents were asked to identify all counties in which they worked or practiced with the guardianship system.

The primary substantive questions within the survey consisted of 21 statements of recommended reforms (again, from the 2008 and 2011 recommendations). For each statement, respondents were asked to “indicate whether you believe the issue is something that needs to be addressed in Oregon as a high priority, moderate priority, low priority, whether it is not needed, or whether you are not sure.”

### High-priority issues identified

The issue consistently identified as the highest priority was **the need to establish statewide public guardianship services**. 69.9% of all respondents identified it as a high-priority issue, with another 19.9% identifying it as a moderate priority.

Among attorneys, the need for statewide public guardianship was also identified as the highest priority issue. 52.9% of attorney respondents identified it as a high-priority issue and another 27.9% identified it as a moderate priority issue. (Of note, attorney respondents did not specify any of the other 20 substantive recommendation issues with more than 35% high-priority need.)

Looking beyond the strong interest in establishing statewide public guardianship services, survey results were examined for other collectively recognized highest-priority issues. This was accomplished by looking for issues with a combined 60% or greater response rate for high-priority plus moderate-priority.

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## Guardianship survey *Continued from Page 12*

From the overall group of 186 respondents, the additional recommendation issues that received the highest priority responses were:

- **Mandatory training and continuing education of professional guardians must be established.** (52.4% marked as a high priority; 34.6% marked as a moderate priority)
- **Ongoing education/training should be required for lay (non-professional) guardians.** (46.2% marked as a high priority; 34.9% marked as a moderate priority)
- **A standardized protocol should be developed for courts to obtain an accurate and detailed assessment of a proposed protected person's functional limitations.** (43.2% marked as a high priority; 34.6% marked as a moderate priority)
- **Court monitoring of established guardianships needs to be improved.** (37.1% marked as a high priority; 30.1% marked as a moderate priority)
- **Mandatory training program for court visitors should be developed.** (36.2% marked as a high priority; 35.7% marked as a moderate priority)

Three of those recommendations were also identified by the 68 responding attorneys as highest priority issues. Those receiving the highest priority responses (again, beyond the need for statewide public guardianship) were:

- **Mandatory training and continuing education of professional guardians must be established.** (52.4% marked as a high priority; 34.6% marked as a moderate priority)
- **A standardized protocol should be developed for courts to obtain an accurate and detailed assessment of a proposed protected person's functional limitations.** (32.8% marked as a high priority; 28.4% marked as a moderate priority)
- **Ongoing education/training should be required for lay (non-professional) guardians.** (29.4% marked as a high priority; 44.1% marked as a moderate priority)
- **Lead probate judges should be established in each judicial district where feasible.** (26.5% marked as a high priority; 33.8% marked as a moderate priority)

### Additional survey findings

Further examination of the responses from the overall group of 186 respondents was done by grouping those issues that received a majority

of "moderate priority" responses, that when combined with "high priority" responses, resulted in a greater than 60% combined selection rate. Those recommendation issues included:

- **Support services for lay guardians to complete their legally mandated duties need to be enhanced.** (45.9% marked as a moderate priority; 30.8% marked as a high priority)
- **Ongoing education/training regarding guardianships must be available to health professionals.** (44.0% marked as a moderate priority; 30.4% marked as a high priority)
- **Services to coordinate alternatives to guardianship must be established.** (41.1% marked as a moderate priority; 28.6% marked as a high priority)
- **Court visitor qualifications, standards, and procedures should be established with uniformity, and specificity beyond what is currently in state statute, by the Oregon Judicial Department.** (35.5% marked as a moderate priority; 30.1% marked as a high priority)
- **Court visitors should be used in conservatorship cases where a respondent is not represented.** (36.0% marked as a moderate priority; 28.5% marked as a high priority)
- **Standard electronic forms for filing, objections, and fiduciary reporting should be created.** (37.8% marked as a moderate priority; 25.9% marked as a high priority)

In general, attorney respondents collectively provided lower priority response rates for most of the 21 recommendation issues provided in the survey. That being the case, three recommendation issues that fell into the combined moderate-priority-plus-low-priority category (categorized as a combined 60% or greater response rate for these selections) received more than 40% of attorneys collectively selecting these as moderate priority issues:

- **Ongoing education/training regarding guardianships must be available to health professionals.** (43.9% marked as a moderate priority)
- **Personal information of those subject to guardianship should be better defined and protected.** (42.6% marked as a moderate priority)
- **Services to coordinate alternatives to guardianship must be established.** (41.8% marked as a moderate priority)

The only recommendation issue to receive a "not needed" response rate of greater than 50%—and this occurred only among attorney respondents—was the recommendation, "a hearing should be held in every protective proceeding." 50.7% of attorneys responded that this recommendation issue was not needed. No issue received a majority "not needed" response from the collective group of respondents, or any other cohort of respondents.

Other recommendation issues included in the survey, but not identified above, received either mixed responses or low-priority results from respondents.

In conclusion, though this survey was never intended to be a fully informative picture of the needs of guardianship system improvements in Oregon, the responses have provided some insight into what individuals involved with the Oregon guardianship process collectively perceive as priority issues. As planned, the results will help guide the priority-setting work of the Oregon WINGS group. ■

## Resources for elder law attorneys

### Events

#### Elder Law Discussion Group

Noon-1:00 p.m.

Legal Aid Services Portland conference room  
921 SW Washington Street, Suite 500, Portland

November 14: Elder law attorney Cynthia Barrett will present on "LGBT Caregivers and Surviving Partners—Suggestions, Medicaid Protections (at Application and in Estate Recovery) for Partners, And Other Issues for the Poor and Middle Class."

#### Planning to Avoid Probate

OSB CLE Audio Online Seminar

Tuesday, October 29, 2013/10–11 a.m.

[www.osbar.org](http://www.osbar.org)

#### Medicare: Why Should You Care?

Multnomah Bar Association Seminar

October 30, 2013

World Trade Center, Portland

[www.mbabar.org](http://www.mbabar.org)

#### Ethics and Client Confidences

OSB CLE Audio Online Seminar

November 4, 2013/10–11 a.m.

[www.osbar.org](http://www.osbar.org)

#### NAELA Fall Institute and Advanced Elder Law Review

November 5–9, 2013

Washington D.C.

[www.naela.org](http://www.naela.org)

#### Estate Planning and IRAs

November 12, 2013/10–11 a.m. ,

OSB CLE Audio Online Seminar

[www.osbar.org](http://www.osbar.org)

#### Handling a VA Service Connected Disability Claim

November 14, 2013/9 a.m.–4:30 p.m.

Oregon State Bar Center

[www.osbar.org](http://www.osbar.org)

#### Estate Planning for the Elderly

OSB CLE Audio Online Seminar (2 parts)

November 19 & 20, 2013/10–11 a.m.

[www.osbar.org](http://www.osbar.org)

#### Basic Estate Planning and Administration

OSB CLE Audio Online Seminar

November 22, 2013/8:30 a.m.–4:30 p.m.

Oregon Convention Center, Portland

[www.osbar.org](http://www.osbar.org) ■

### Websites related to marriage equality

California Prop 8 case: *Hollingsworth et al v Perry et al* 570 U.S. \_\_\_(2013) : [www.supremecourt.gov/opinions/12pdf/12-144\\_8ok0.pdf](http://www.supremecourt.gov/opinions/12pdf/12-144_8ok0.pdf)

Defense of Marriage Act case: *United States v. Windsor* 570 U.S. \_\_\_(2013): [www.supremecourt.gov/opinions/12pdf/12-307\\_6j37.pdf](http://www.supremecourt.gov/opinions/12pdf/12-307_6j37.pdf)

U.S. Map showing which states recognize marriages, registered domestic partners, and civil unions, and which states do not.

[www.freedomtomarry.org/states](http://www.freedomtomarry.org/states)

Benefits and Protections for Civilian Federal Employees

[www.usa.gov/Federal-Employees/Benefits.shtml](http://www.usa.gov/Federal-Employees/Benefits.shtml)

Social Security encourages registered domestic partners and civil unions parties to apply for benefits while it works on how to implement the Court's ruling: [www.ssa.gov/same-sexcouples](http://www.ssa.gov/same-sexcouples)

IRS Frequently Asked Questions for Same-Sex Spouses: [www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples](http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples)

IRS Frequently Asked Questions for Registered Domestic Partners and Civil Union partners: [www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Registered-Domestic-Partners-and-Individuals-in-Civil-Unions](http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Registered-Domestic-Partners-and-Individuals-in-Civil-Unions)

### Other websites

Elder Law Section website

[www.osbar.org/sections/elder/elderlaw.html](http://www.osbar.org/sections/elder/elderlaw.html)

The website provides useful links for elder law practitioners, past issues of *Elder Law Newsletter*, and current elder law numbers.

OregonLawHelp

[www.oregonlawhelp.org](http://www.oregonlawhelp.org)

This website, operated by legal aid offices in Oregon, provides helpful information for low-income Oregonians and their lawyers. Much of the information is useful for clients in any income bracket.

Administration on Aging

[www.aoa.gov](http://www.aoa.gov)

This website provides information about resources that connect older persons, caregivers, and professionals to important federal, national, and local programs. ■

### Elder Law Discussion List

To post to the list, enter [eldlaw@forums.osbar.org](mailto:eldlaw@forums.osbar.org) in the *To* line of your email. The discussion list provides a forum for sharing information and asking questions. ■

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