

INFORMATION: SMALL ESTATES

NON-PROBATE PROCEDURE FOR SMALL ESTATES

Attached is a pamphlet from the Northwest Justice Project outlining the procedures that can be used under Washington state law for small estates without going through a court probate procedure. This process is limited as follows:

1. There cannot be any "real property" (land or a home)
2. The total value of the estate cannot exceed \$100,000
3. You are entitled to the property as a successor (heir under a will or under state law)
4. The person who died lived in the state of Washington
5. At least 40 days have passed since the death.
6. No court papers have been filed for the appointment of a personal representative
7. All the person's debts and funeral expenses have been paid or provided for

The Lummi Tribal Court takes no position on the accuracy of the publication or the legal sufficiency of the forms. However, for your own reference, they are attached.

SUMMARY PROBATE PROCEEDINGS UNDER LUMMI CODE

LCL 35.07.120 of the Lummi Code provides for a summary probate proceeding for estates that are less than \$3,500, under which unsecured debts will be discharged. Forms Packet PB – P3 is available for that purpose.

COMPARISON

For your assistance, here is a comparison of the two procedures:

	Non-Probate State Procedure	Lummi Summary Probate Procedure
Value of estate	Cannot exceed \$100,000 and no real property	Cannot exceed \$3,500
Debts	Must be paid	Unsecured debts will be discharged
Filing in court	Cannot start probate in any court	Must file probate proceeding in Lummi court
Restriction on beneficiary of estate	No restriction	Can only be surviving spouse and/or minor children

HOW TO CLAIM THE PERSONAL PROPERTY OF SOMEONE WHO HAS DIED: AFFIDAVIT PROCEDURE FOR SMALL ESTATES

By: **Northwest Justice Project**

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

This information is current as of the date of its printing, March 2008.

How do I use this packet?

This packet has four parts. Part 1 answers general questions to let you know whether the affidavit procedure is right for your claim to property. Part 2 gives step- by-step instructions on how to get the property using the procedure. Part 3 provides sample forms for you to use in completing an affidavit and claiming your property. Finally, Part 4 directs you where to find further information. It is always best to consult with a lawyer before any legal procedure. However, if your claim is uncomplicated and will not be challenged by anyone, this packet should help you get your property with the least expense possible.

This packet refers to the deceased person as the "decedent." The law governing the affidavit procedure is found in the Revised Code of Washington (RCW) at RCW 11.62.010, which can be found online or at your local library.

1. QUESTIONS AND ANSWERS

What is the affidavit procedure?

The affidavit procedure allows people who are entitled to a dead person's (also called a decedent) personal property to get that property without going through probate. This is done by filling out an affidavit and delivering it to the person or organization holding the property. The procedure does not apply to real property, such as a house or land (not all mobile homes are real property, so you may want to consult a lawyer if a mobile home is involved). Personal property is anything that is not real property.

Who is a "successor," or person entitled to the decedent's property?

If there is a will, the property generally goes to the people as directed by the will. However, there are some exceptions to that rule. The most common exceptions are surviving spouses or state registered domestic partners and unmentioned children of the deceased. Surviving spouses and state registered domestic partners are entitled to 1/2 of the community property whether the name is in the will or not. Property of spouses and state registered domestic partners is assumed to be community property unless there is evidence that it is separate property. Also, children of the decedent, regardless of age, whom the will does not specifically exclude (disinherit) may have an interest in the property, regardless of whether they are named in the will. If there are questions as to the interpretation or interests of the will, it is best to consult a lawyer who can let you know whether or not you are entitled to the property you seek to claim. Some lawyers or bar associations provide free or reduced fee consultations for seniors or low income people. Call your local bar association for more information.

If there is no will (called intestacy), the property passes according to the statute. Under the law, the surviving spouse or the state registered domestic partner gets all of the community property, plus 1/2 of the separate property if any of the decedent's children are still alive, or 3/4 of the separate property if there are no children, but one or both of the decedent's parents are alive. If there are no surviving children or parents, all of the estate goes to the surviving spouse or state registered domestic partner.

Property not going to the surviving spouse or the state registered domestic partner, or the entire net estate if there is no surviving spouse or state registered domestic partner, is divided as follows:

1. To the decedent's children, in equal shares. If one or more of the children have died, that child's children (the decedent's grandchildren) split the deceased child's share equally;

2. If there are no surviving children, then to surviving parents;
3. If no surviving parents, then to surviving brothers or sisters in equal shares. If one or more of the siblings have died, that sibling's children (the decedent's nieces and nephews) split equally the sibling's share;
4. If no surviving siblings, then to surviving grandparents;
5. If no surviving grandparents, then to aunts or uncles. If one or more of the aunts/uncles have died, that aunt/uncle's children (the decedent's cousins) split equally the aunt/uncle's share;
6. If none of the above survive the deceased, then to the State of Washington.

One level must be completely eliminated before going on to the next. For example, the decedent's brothers or sisters are not entitled to any property if ANY child, grandchild, or parent of the decedent is still alive. People who are not on this list, such as the decedent's friends, are not entitled to the decedent's property in the probate estate.

Whether or not there is a will, property must first be used to satisfy any unpaid debts or obligations of the decedent. This includes any money paid out by the Department of Social and Health Services for medical care.

Creditors (except DSHS) are not successors and cannot use the affidavit procedure unless they are entitled to the property because of one of the relationships listed above.

Who is a "state registered domestic partner?"

A state registered domestic partner is a person who has meets the criteria for a domestic partnership and who has entered into a "declaration of state registered domestic partnership," through the Washington State Secretary of State, with the decedent. If either the domestic partner or the decedent ended the state registered domestic partnership by filing a "notice of termination of state registered domestic partnership" with the Secretary of State, then that person is no longer a state registered domestic partner.

When can I use the affidavit procedure?

To use the affidavit procedure, **all** of the following conditions must be met:

1. The value of the decedent's probate estate, minus debts and liens, is no more than \$100,000;
2. You are entitled to the property as a successor;
3. The decedent was a resident of Washington at the time of death;
4. Forty days have passed since the death;
5. There is no application or petition (court papers) for the appointment of a personal representative;
6. All the decedent's debts, including funeral and burial expenses, have been paid or provided for;
7. The affidavit has a description of the property claimed, and a statement that the property is subject to probate;
8. You have given written notice, by personal service or mail, to all other successors of the decedent. The notice must identify the heir's claim and describe the claimed property and at least ten days have passed since that notice was served or mailed.

Who are the other successors I must notify?

Anyone who may be entitled to all or part of the probate estate must be notified. Refer back to the section titled, "Who is a successor" to determine who must be notified. If the other successors want to have you go ahead and get the property through affidavit on their behalf, they must sign an authorization form for you to do so. A blank authorization form is included in this packet.

What property is included for purposes of the affidavit procedure?

For purposes of the affidavit procedure, successors may claim any personal property in the decedent's "probate estate." The probate estate includes all personal property **except** property automatically passing to someone upon the decedent's death. The most common examples of property **not included** in the probate estate are:

1. Property passing through a community property agreement;
2. Property held in joint tenancy with a right of survivorship;
3. Property distributed under certain types of trusts, such as a "living trust;"
4. Property automatically distributed to a designated beneficiary, such as life insurance and some employee benefits, and;
5. Property passing to a surviving spouse through the community property laws of this State.

What if someone else claims the same property or the person(s) or organization(s) holding the property refuse to deliver the property?

If problems like this arise, it is best to consult a lawyer. If you are a successor who receives notice that someone else is claiming property you think should be yours, send a letter to the person claiming the property and to whomever holds the property. If you and the claiming party cannot agree as to ownership, the matter may have to go to court.

If the one holding the property refuses to give it to you after you have followed the steps below, you can go to court to get it.

What if the decedent had money in a bank account and the bank won't release the money after I have correctly followed the affidavit procedure?

If the amount of money in the bank account is \$2,500 or less, a spouse or next of kin may claim the money for the decedent's estate. The spouse or next of kin must follow the instructions below, and then send a copy of the affidavit, death certificate and a copy of R.C.W. 30.22.190 (2) to the bank. A copy of R.C.W. 30.22.190 (2) is at the end of this publication. If you are still not successful, contact an attorney.

2. STEP-BY-STEP INSTRUCTIONS

1. Make sure that all the decedent's debts have been paid. If you are unable to get at money or other property you need to take care of the debts, you or another successor could pay the debts, then file an affidavit to recover the amount you spent as well as any other property to which you are entitled. Be sure to keep written records and receipts of any debts you pay on the decedent's behalf. If no one can afford to pay the debt while waiting for reimbursement, you will probably have to consult a lawyer and go to court to get the authority to pay the debts out of the estate. You cannot file an affidavit for property until the debts have been paid.
2. Figure out the value of the decedent's probate estate. List and value any personal property in the probate estate. Include all property subject to probate: boats, cars, other vehicles, jewelry, furniture, other household and personal belongings, bank accounts, stocks, bonds, and other personal property. To figure out if the property should go through probate, see the section above titled "**What property is included for purposes of the affidavit procedure?**" Some people are surprised to find that personal property often adds up to more than they thought. You can subtract from the value of the property any unpaid debts or liens, such as money still owed for a car. The total value must be no more than \$100,000. If the value is close, you should be able to show how you got the valuations for the property. For example, in valuing a vehicle, you should copy the page out of the Blue Book you used.
3. Be sure it has been forty days since the decedent's death.

4. Make sure that no one in any State has applied to be appointed as personal representative of the decedent's estate. You can do this by asking any other successors you know of whether they have applied or know if anyone else has applied. After you have talked to the other successors, send each of them a letter stating that you understand that they have not started a probate. Keep a copy of these letters for your records. You should be able to prove that you believed no application had been made.
5. Make sure you are the only person entitled to any part of the property you are claiming by reading the section above called "**Who is a 'successor' or person entitled to the decedent's property?**" If someone else is entitled to all or part of the property and you still wish to claim it, get the other successor's written authorization using the blank form in this packet.
6. Using the blank letter in this packet, notify any other successor that you are claiming property, and describe the property. You must deliver this letter personally or mail it. The best way is to use certified mail, return receipt requested, so you can prove that the letter was mailed. You should also keep a dated copy of the letter for yourself. Wait ten days after mailing or delivering the last of the letters.
7. Complete the blank affidavit form in this packet. The affidavit must be notarized so don't sign it until the notary instructs you to sign. After the affidavit is notarized, make at least two copies, keeping one for yourself.
8. Mail a copy of the affidavit, including the decedent's social security number, to:

Department of Social and Health Services
Office of Financial Recovery
Box 9501
Olympia, WA 98507-9501

This must be mailed via certified mail, return receipt requested. Keep a copy of the return receipt when the postal service returns it to you.

9. Deliver the affidavit, along with a copy of the decedent's death certificate, to the person(s) or organization(s) (such as the bank where the decedent's account is) holding the property or owing the debt you are claiming. If the property is a vehicle, the affidavit should be sent to the person holding the title. The property or payment should then be turned over to you, and (where appropriate), a new certificate of ownership and/or license registration issued in your name upon showing that ownership has been transferred. The decedent's death certificate may be obtained from the county health department - there will be a small charge. After 30 days you can also obtain a death certificate from the Center for Health Statistics of the Washington State Department of Health. They can be reached at (360) 753-5936 or by writing to P.O. Box 7814, Olympia, WA 98504-7814.

3. BLANK FORMS

The following blank forms are provided for your convenience.

Form to Claim Property on Behalf of Another
Notice to Other Successors
Affidavit

4. FURTHER INFORMATION

For further information about issues related to probate, call the Northwest Justice Project's Coordinated Legal Education, Advice and Referral line (CLEAR) at 1-888-201-1014 or visit our web site at www.washingtonlawhelp.org.

Washington State RCW 30.22.190

Payment to heirs and creditors of a deceased depositor.

In each case, where it is provided in RCW 30.22.180 that a financial institution may make payment of funds deposited in an account to the personal representative of the estate of a deceased depositor or beneficiary, the financial institution may make payment of the funds to the following persons under the circumstances provided:

(1) In those instances where the deceased depositor left a surviving spouse, and the deceased depositor and the surviving spouse shall have executed a community property agreement which by its terms would include funds of the deceased depositor remaining in the account, a financial institution may make payment of all funds in the name of the deceased spouse to the surviving spouse upon receipt of a certified copy of the community property agreement as recorded in the office of a county auditor of the state and an affidavit of the surviving spouse that the community property agreement was validly executed and in full force and effect upon the death of the depositor.

(2) In those instances where the balance of the funds in the name of a deceased depositor does not exceed two thousand five hundred dollars, payment of the decedent's funds remaining in the account may be made to the surviving spouse, next of kin, funeral director, or other creditor who may appear to be entitled thereto upon receipt of proof of death and an affidavit to the effect that no personal representative has been appointed for the deceased depositor's estate. As a condition to the payment, a financial institution may require such waivers, indemnity, receipts, and acquittance and additional proofs as it may consider proper.

(3) In those instances where the person entitled presents an affidavit which meets the requirements of chapter 11.62 RCW.

A person receiving a payment from a financial institution pursuant to subsections (2) and (3) of this section is answerable and accountable therefor to any personal representative of the deceased depositor's estate wherever and whenever appointed.

[1989 c 220 § 3; 1981 c 192 § 19.]

Form to Claim Property on Behalf of Another

I, _____ (non-claiming successor's full name) hereby authorize
_____ (claiming successor's full name) to file an affidavit and claim on my
behalf for the following property: _____

By authorizing this claim, I am not releasing my right to the property.

Signed this _____ day of _____, 20_____.

(Signature of Nonclaiming Successor)

I. NOTICE TO OTHER SUCCESSORS

I hereby notify you pursuant to RCW 11.62.010 that I am claiming the following property:

I believe I am entitled to this property because _____ or

I believe that the following people are entitled to this property because

_____, and I am claiming it for them
and will divide it when I get it.

I will be mailing an affidavit to claim this property ten days after I mail or deliver this letter to you.

Mailed or Delivered this _____ day of _____, 20_____.

(Signature & address of claiming successor)

granted in any jurisdiction.

6. All debts of the decedent including funeral and burial expenses have been paid or provided for.

7. I am claiming the following portions of the following property: _____

_____. All of this property is subject to probate.

8. I have personally served or mailed written notice to all other successors of the decedent identifying my claim and describing the property claimed. At least ten days have passed since the service or mailing of such notice.

9. I am entitled to full payment or delivery of the property claimed on my own behalf, and on the behalf of any other successor from whom I have attached to this affidavit a written authorization.

Signed this _____ day of _____, 20____.

(your signature)

(print or type name)

SIGNED AND SWORN to before me on _____, 20____, by _____

(Signature)

(Please print name legibly)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My appointment expires: _____