

SMALL ESTATE SETTLEMENT BY AFFIDAVIT



Washington law provides a simple alternative to formal probate for collection and distribution of a deceased person's personal property. Using this procedure, the person entitled to the deceased's property obtains it by presenting a Small Estate Affidavit to persons and institutions holding the deceased's property.

The Procedure applies only to small estates where the value of the decedent's entire probate estate does not exceed \$100,000. The decedent's estate includes his or separate property and one-half of all community property (both real property and personal property), less liens and encumbrances.

This simplified procedure should be used with care. Without the normal court probate proceedings to determine testacy or establish heirship, there will be no bar to challenges to a will, no bar to creditor claims, no homestead or in lieu preference for the surviving spouse or domestic partner, and no tax management opportunity.

There must be no controversy among heirs or difficulties of collection. Title to real estate cannot be changed by this procedure. Forty days must pass after the decedent's death before this procedure may be used.

Ten days written notice must be given to all other successors.

A blank sample form for Small Estate Affidavit is attached. Also attached is a copy of the applicable law, Chapter 11.62, Revised Code of Washington. Current versions of the law should be consulted as they are subject to change each time the legislature is in session.

Disclaimer: *The information is for general purposes only. Information is provided "as is" without warranty of any kind, either expressed or implied, including, but not limited to fitness for a particular purpose. It is not intended to be legal or other advice. The material is provided solely on the basis that the user will take full responsibility for verifying the accuracy, current regulatory requirements and completeness of all relevant representations and statements. No user should act on the basis of any matter without due consideration, and if necessary, seeking appropriate advice based upon his or her own particular circumstances.*

STATE OF WASHINGTON

Estate of

[Name]

Deceased.

SMALL ESTATE AFFIDAVIT
(RCW 11.62.010)

Having been sworn under oath, I declare as follows:

- 1. **Decedent's Death Certificate.** A copy of Decedent's Death Certificate is attached to this Affidavit.
- 2. **Forty-Days Since Death.** Forty (40) or more days have elapsed since Decedent's death.
- 3. **Washington Resident.** Decedent was a resident of Washington at his/her death.
- 4. **No Personal Representative.** No application or petition for the appointment of a Personal Representative is pending or has been granted in any jurisdiction.
- 5. **Decedent's Net Probate Estate Does Not Exceed \$100,000.** The value of Decedent's entire estate subject to probate, not including any surviving spouse's or domestic partner's community property interest in such assets, wherever located, less liens and encumbrances, does not exceed one-hundred thousand dollars (\$100,000).
- 6. **Decedent's Debts.** All of Decedent's debts, including funeral and burial expenses, have been paid or provided for.
- 7. **My Name & Address.** My name and address are as shown below.

Name: _____

Address: _____

- 8. **Claiming Successor.** I am a "successor" of Decedent as defined in RCW 11.62.005.
- 9. **Other Claiming Successors.**

No Others. I am the only claiming Successor; there are no others.

--- OR ---

Other Claiming Successors. There are other claiming Successors. I have given each of them written notice, by personal service or mail, identifying my claim and describing the property claimed. At least ten (10) days have elapsed since the service or mailing of such notice.

10. Entitlement to Property.

Sole Entitlement. I am personally entitled to full payment or delivery of the property claimed.

--- OR ---

Entitlement on Behalf of All Claiming Successors. I am personally entitled to full payment or delivery of the property claimed on behalf, and with the written authority, of all other claiming Successors; a copy of which authority is attached to this Affidavit.

11. Property Claimed. A description of the personal property claimed, all of which is subject to probate, is as follows:

Dated: _____

Signature: _____
Decedent's Claiming Successor

Printed Name: _____

Address: _____

STATE OF _____)ss.

COUNTY OF _____)

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20____.

Signature

Printed Name

NOTARY PUBLIC for _____(state)

Residing at: _____

My appointment expires on: _____

Chapter 11.62 RCW

Small estates — disposition of property (as of 6/2008)

RCW Sections

11.62.005 Definitions.

11.62.010 Disposition of personal property, debts by affidavit, proof of death -- Contents of affidavit -- Procedure -- Securities.

11.62.020 Effect of affidavit and proof of death -- Discharge and release of transferor -- Refusal to pay or deliver -- Procedure -- False affidavit -- Conflicting affidavits -- Accountability.

11.62.005

Definitions.

As used in this chapter, the following terms shall have the meanings indicated.

(1) "Personal property" shall include any tangible personal property, any instrument evidencing a debt, obligation, stock, chose in action, license or ownership, any debt or any other intangible property.

(2)(a) "Successor" and "successors" shall mean (subject to subsection (2)(b) of this section):

(i) That person or those persons who are entitled to the claimed property pursuant to the terms and provisions of the last will and testament of the decedent or by virtue of the laws of intestate succession contained in this title; and/or

(ii) The surviving spouse or surviving domestic partner of the decedent to the extent that the surviving spouse or surviving domestic partner is entitled to the property claimed as his or her undivided one-half interest in the community property of said spouse or said domestic partner and the decedent; and/or

(iii) The department of social and health services, to the extent of funds expended or paid, in the case of claims provided under RCW 43.20B.080; and/or

(iv) This state, in the case of escheat property.

(b) Any person claiming to be a successor solely by reason of being a creditor of the decedent or of the decedent's estate, except for the state as set forth in (a)(iii) and (iv) of this subsection, shall be excluded from the definition of "successor".

(3) "Person" shall mean any individual or organization, specifically including but not limited to a bank, credit union, brokerage firm or stock transfer agent, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

11.62.010

Disposition of personal property, debts by affidavit, proof of death — Contents of affidavit — Procedure — Securities.

(1) At any time after forty days from the date of a decedent's death, any person who is indebted to or who has possession of any personal property belonging to the decedent or to the decedent and his or her surviving spouse or surviving domestic partner as a community, which debt or personal property is an asset which is subject to probate, shall pay such indebtedness or deliver such personal property, or so much of either as is claimed, to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by said person which meets the requirements of subsection (2) of this section.

(2) An affidavit which is to be made pursuant to this section shall state:

(a) The claiming successor's name and address, and that the claiming successor is a "successor" as defined in RCW 11.62.005;

(b) That the decedent was a resident of the state of Washington on the date of his or her death;

(c) That the value of the decedent's entire estate subject to probate, not including the surviving spouse's or surviving domestic partner's community property interest in any assets which are subject to probate in the decedent's estate, wherever located, less liens and encumbrances, does not exceed one hundred thousand dollars;

(d) That forty days have elapsed since the death of the decedent;

(e) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(f) That all debts of the decedent including funeral and burial expenses have been paid or provided for;

(g) A description of the personal property and the portion thereof claimed, together with a statement that such personal property is subject to probate;

(h) That the claiming successor has given written notice, either by personal service or by mail, identifying his or her claim, and describing the property claimed, to all other successors of the decedent, and that at least ten days have elapsed since the service or mailing of such notice; and

(i) That the claiming successor is either personally entitled to full payment or delivery of the property claimed or is entitled to full payment or delivery thereof on the behalf and with the written authority of all other successors who have an interest therein.

(3) A transfer agent of any security shall change the registered ownership of the security claimed from the decedent to the person claiming to be the successor with respect to such security upon the presentation of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section. Any governmental agency required to issue certificates of ownership or of license registration to personal property shall issue a new certificate of ownership or of license registration to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section.

(4) No release from any Washington state or local taxing authority may be required before any assets or debts are paid or delivered to a successor of a decedent as required under this section.

(5) A copy of the affidavit, including the decedent's social security number, shall be mailed to the state of Washington, department of social and health services, office of financial recovery.

11.62.020

Effect of affidavit and proof of death — Discharge and release of transferor — Refusal to pay or deliver — Procedure — False affidavit — Conflicting affidavits — Accountability.

The person paying, delivering, transferring, or issuing personal property pursuant to RCW 11.62.010 is discharged and released to the same extent as if such person has dealt with a personal representative of the decedent, unless at the time of such payment, delivery, transfer, or issuance, such person had actual knowledge of the falsity of any statement which is required by RCW 11.62.010 (2) as now or hereafter amended to be contained in the successor's affidavit. Such person is not required to see to the application of the personal property, or to inquire into the truth of any matter specified in RCW 11.62.010 (1) or (2), or into the payment of any estate tax liability.

An organization shall not be deemed to have actual knowledge of the falsity of any statement contained in an affidavit made pursuant to RCW 11.62.010 (2) as now or hereafter amended until such time as said knowledge shall have been brought to the personal attention of the individual making the transfer, delivery, payment, or issuance of the personal property claimed under RCW 11.62.010 as now or hereafter amended.

If any person to whom an affidavit and proof of death is delivered refuses to pay, deliver, or transfer any personal property, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. If more than one affidavit is delivered with reference to the same personal property, the person to whom an affidavit is delivered may pay, deliver, transfer, or issue any personal property in response to the first affidavit received, provided that proof of death has also been received, or alternately implead such property into court for payment over to the person entitled thereto. Any person to whom payment, delivery, transfer, or issuance of personal property is made pursuant to RCW 11.62.010 as now or hereafter amended is answerable and accountable therefore to any personal representative of the estate of the decedent or to any other person having a superior right thereto.