

How to Claim the Personal Property of Someone Who Has Died: Do-It-Yourself Affidavit Procedure for Small Estates

How do I use this packet?

This packet has four parts.

- **Section 1** answers questions so you know whether the affidavit procedure is right for your claim to property.
- **Section 2** has instructions on how to use the procedure to get the property.
- **Section 3** has sample forms to use in making an affidavit and claiming your property.
- **Section 4** directs you to further information and help.

You should always try to talk to a lawyer before any legal procedure. However, if your claim is simple and no one will challenge it, this packet should help you get your property with the least expense.

In this packet, the person who died is the "decedent." The law on the affidavit procedure is in the Revised Code of Washington (RCW) at [RCW 11.62.010](#). It is [online](#) and at your local library.

Section 1: Questions and Answers

What is the affidavit procedure?

It allows people who are entitled to a dead person's (decedent's) personal property to get that property without going through probate (a court process that takes time and money). You fill out an affidavit and deliver it to the person or organization holding the property.

The procedure does not apply to real property, like a house or land. (Not all mobile homes are real property. if a mobile home is involved, talk to a lawyer.) It only applies to personal property - anything that is not real property.

Who or what is a "successor"?

A successor is someone entitled to the decedent's property. Who the successors are in a case depends on the facts of that case.

If there is a will, the will generally directs who will get the property. 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 half of the

community property even if the will does not name them. Property of spouses and state-registered domestic partners is assumed community property unless there is evidence that it is separate.

Any of the **decedent's children**, regardless of age, whom the will does not specifically exclude (disinherit) may have an interest in the property, even if the will does not name them.

If there are questions about the interpretation or interests of the will, talk to a lawyer who can tell you whether you can have the property you want to claim. Some lawyers or bar associations provide free or reduced-fee consultations for seniors or low-income people. Your local bar association may have more information.

If there is no will (intestacy), state law says how the property will pass. The surviving spouse or state-registered domestic partner gets all the community property, PLUS half the separate property if any of the decedent's children is still alive, OR three-quarters of the separate property if there are no children but one or both of the decedent's parents is alive. If there are no surviving children or parents, all the surviving spouse or state-registered domestic partner gets all of the estate.

The law divides 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, as follows:

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

One level must be completely eliminated before you go to the next. **Example:** The decedent's siblings are not entitled to any property if ANY child, grandchild, or parent of the decedent is still alive.

-
- ❖ **People not on this list**, such as the decedent's friends, are not entitled to the decedent's property in the probate estate. They are only entitled to whatever the will leaves them, if anything.
-

No matter whether there is a will, the decedent's property must first go to satisfy any of the decedent's unpaid debts or obligations. This includes any money the Department of Social and Health Services (DSHS) paid out for the decedent's medical care.

Creditors (except DSHS) are not successors. They can only use the affidavit procedure if they are entitled to the property because they and the decedent had one of the relationships listed above.

Who is a "state-registered domestic partner?"

Someone who:

- meets the criteria for a domestic partnership and
- has entered with the decedent into a "declaration of state registered domestic partnership," through the Washington State Secretary of State

If either the domestic partner or decedent filed for dissolution and getting final court orders in the dissolution case, the domestic partnership no longer exists.

Can I use the affidavit procedure?

Yes, if all of these are true in your case:

- The value of the decedent's probate estate, minus debts and liens, is no more than \$100,000
- You are entitled to the property as a successor
- The decedent lived in Washington at the time of death
- At least forty days have passed since the death
- There is no application or petition (court papers) for the appointment of a personal representative
- All the decedent's debts, including funeral and burial expenses, have been paid or provided for
- The affidavit describes the property claimed, and states that the property is subject to probate
- You have given written notice, by personal service or mail, to all the decedent's other successors. The notice must identify the heir's claim and describe the claimed property. At least ten days must have passed since that notice was served or mailed.

Who else do I need to notify?

You must notify anyone possibly entitled to all or part of the probate estate. The section called “Who is a successor” explains how figure out who to notify.

If the other successors want you to get the property through affidavit on their behalf, they must sign an authorization form. A blank authorization form is in this packet.

What property do I include for purposes of the affidavit procedure?

You may claim any personal property in the decedent's "probate estate." This does **not** include property automatically passing to someone upon the decedent's death. Here are some examples of property **not included** in the probate estate:

- Property passing through a community property agreement
- Property held in joint tenancy with a right of survivorship
- Property distributed under certain types of trusts, such as a "living trust"
- Property automatically distributed to a designated beneficiary, like life insurance and some employee benefits
- Property passing to a surviving spouse through state community property laws

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

Talk to a lawyer. If you are a successor who gets notice that someone else is claiming property you think should be yours, send a the person claiming the property and whomever holds the property a letter. If you and the claiming party cannot agree about ownership, you may have to go to court.

If the one holding the property will not give it up after you have followed the steps below, you can go to court to get it.

The decedent had money in a bank account. The bank will not release the money. I have correctly followed the affidavit procedure. What can I do?

If the amount in the bank account is \$2,500 or less, a spouse or next of kin may claim the money for the decedent’s estate. You must follow the instructions below, and then send the bank a copy of the affidavit, death certificate and [R.C.W. 30.22.190 \(2\)](#). (A copy of [R.C.W. 30.22.190 \(2\)](#) is in this packet.) If this does not work, talk to a lawyer.

Section 2: Step-By-Step Instructions

1. Make sure all the decedent's debts have been paid. If you cannot get at money or other property you need to take care of the debts, you or another successor could pay the debts, and then file an affidavit to get back what you spent plus any other property you are entitled 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 see a lawyer and go to court to get 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 called "**What property do I include for purposes of the affidavit procedure?**" Personal property may add up to more than you thought. You can subtract from the property's value 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. **Example:** In valuing a vehicle, you should copy the page out of the Blue Book you used.
3. Be sure forty days have passed since the decedent's death.
4. Make sure no one in any state has applied to be appointed as personal representative of the decedent's estate. Ask any other successors you know of whether they have applied or know if anyone else has. After talking to the other successors, send each of them a letter confirming they have not started a probate. Keep a copy of these letters for your records. This will help prove you believed no one else made an application.
5. Make sure you are the only person entitled to any part of the property you are claiming. Read the section above called "**Who is a 'successor'?**" If someone else is entitled to all or part of the property and you still wish to claim it, you must get the other successor's written authorization. Use the blank form in this packet.
6. Use the blank letter in this packet to notify any other successor that you are claiming property. Describe the property in the letter. You must deliver this letter personally or mail it. Use certified mail, return receipt requested, for proof you mailed the letter. Keep a dated copy of the letter for yourself. Wait ten days after mailing or delivering the last of the letters.
7. Fill out the blank affidavit form in this packet in front of a notary. **Do not sign it until**

the notary tells you to. After the affidavit is notarized, make at least two copies. Keep one copy.

8. Mail the other notarized copy, including the decedent's social security number, to:

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

Mail it via certified mail, return receipt requested. Keep a copy of the return receipt when you get it back.

9. Deliver the affidavit, along with a copy of the decedent's death certificate, to the person(s) or organization(s) (like the bank where the decedent's account is) holding the property or owing the debt you are claiming. If the property is a vehicle, send the person holding the title the affidavit. They should then turn property or payment over to you, and (where appropriate) they should have a new certificate of ownership and/or license registration issued in your name upon showing the transfer of ownership. Get the decedent's death certificate from the county health department. (There will be a small charge.) After 30 days you can get a death certificate from the Center for Health Statistics of the Washington State Department of Health. Call them at (360) 753-5936 or write P.O. Box 7814, Olympia, WA 98504-7814.

Section 3: Blank Forms

We have included the following blank forms in this packet:

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

Section 4: What if I need legal help?

- Apply online with **CLEAR*Online** - <http://nwjustice.org/get-legal-help>
or
- Call CLEAR at 1-888-201-1014

CLEAR is Washington's toll-free, centralized intake, advice and referral service for low-income people seeking free legal assistance with civil legal problems.

- **Outside King County:** Call 1-888-201-1014 weekdays from 9:15 a.m. until 12:15 p.m.

- **King County:** Call 211 for information and referral to an appropriate legal services provider Monday through Friday from 8:00 am – 6:00 pm. You may also call (206) 461-3200, or the toll-free number, 1-877-211-WASH (9274). You can also get information on legal service providers in King County through 211's website at www.resourcehouse.com/win211/.
- **Persons 60 and Over:** Persons 60 or over may call CLEAR*Sr at 1-888-387-7111, regardless of income.

Callers who are deaf and hard of hearing can call 1-800-833-6384 or 711 to get a free relay operator. They will then connect you with 211 or CLEAR.

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 October 2015.

© 2015 Northwest Justice Project — 1-888-201-1014

(Permission for copying and distribution granted to the Alliance for Equal Justice and to individuals for non-commercial purposes only.)

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)

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 the following people are entitled to this property because

_____. 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)

Small Estates Affidavit

AFFIDAVIT OF _____
(Successor's name)

FOR DISTRIBUTION OF DECEDENT'S PROPERTY

State of _____)

)ss.

County of _____)

I (*successor's name*), _____, being first duly sworn upon oath, declare that:

1. I wish to claim property of the deceased, _____
(*decedent's full name*), whose Social Security Number is _____, and who was
a Washington state resident on the date of his/her death.

2. I am a successor as defined in RCW 11.62.005. Here are my name and address:

3. The value of the decedent's entire estate subject to probate, not including the surviving spouse'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 \$100,000.

4. At least forty days have elapsed since the decedent's death.

5. No application or petition for the appointment of a personal representative is pending or has been 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 the decedent's other successors 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: _____

RCW 30.22.190

Payment to heirs and creditors of a deceased depositor. (*Effective until January 5, 2015. Recodified as RCW 30A.22.190.*)

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.]