

Claiming the Personal Property of Someone Who Has Died

Do-It-Yourself Affidavit Procedure for Small Estates

How do I use this?

This packet has four parts.

- **Section 1** - find out if the affidavit procedure is right for you.
- **Section 2** explains how to use the procedure.
- **Section 3** has the forms you need for the procedure.
- **Section 4** has contact info for more help.

Try to talk to a lawyer about whether this procedure is right for you. If your claim is simple and no one will challenge it, this packet should help you get your property with the least expense.

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- ❖ **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.
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Section 1: Questions and Answers

What is the affidavit procedure?

It allows someone entitled to a decedent's personal property to get that property without going through probate. Probate is a court process that takes time and money. Instead, you fill out an affidavit and deliver it to the person/organization that has the property.

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- ❖ Do not use this for real property, like a house or land.
 - ❖ If a mobile home is involved, talk to a lawyer.
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Successors: Who is entitled to the property?

A successor is someone entitled to the decedent's property. Who the successors are in a case will vary.

If the decedent left a will - The will generally directs who gets the property, except:

- **Surviving spouses and domestic partners** are entitled to half of the community property even if the will does not name them. Property of spouses and domestic

partners is community property unless there is evidence that it is separate.

- Any of the **decedent's children** whom the will does not specifically cut out may have an interest in the property, even if the will does not name them.

❖ Talk to a lawyer who can tell you if you can have the property you want. Some lawyers or bar associations provide free or reduced-fee consultations for seniors or low-income people. Your local bar association may have more info.

If there is no will (intestacy), [RCW 11.04.015](#) says how the property will pass. The surviving spouse or domestic partner gets all the community property, PLUS

- Half the separate property if any of decedent's children are still alive.
- 3/4 of the separate property if there are no children but at least one of decedent's parents is alive.
- 3/4 of the separate property if there are no children by any of decedent's siblings that are still alive.

❖ If there are no surviving children, parents, siblings, nieces or nephews, the surviving spouse or domestic partner gets all of the estate.

Property not going to spouse or domestic partner - The law divides property not going to the surviving spouse or domestic partner, or the entire estate if there is no surviving spouse or domestic partner, as follows:

- To the decedent's children, in equal shares. If a child has 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 children or parents, then to surviving siblings in equal shares. If a sibling has died, his/her children (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 an aunt/uncle has died, his/her children (decedent's cousins) split equally the aunt/uncle's share.
- If none of the above survive the deceased, then to the State of Washington.

You must eliminate one level before you go to the next. **Example:** 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 friends, are only entitled to whatever the will leaves them, if anything.

Are creditors successors?

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- ❖ Will or no will, decedent's property must first go to pay any of decedent's unpaid debts or obligations. This includes money Department of Social and Health Services (DSHS) paid out for decedent's medical care.
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Who is a domestic partner?

You are a domestic partner if both these are true:

- You had entered with decedent into a "declaration of state registered domestic partnership," through the Washington State Secretary of State.
- You had not gotten a court to dissolve the partnership before decedent passed away.

Can I use the affidavit procedure?

Yes, if all these are true:

- The value of decedent's estate, minus debts and liens, is no more than \$100,000.
- You are entitled to the property as a successor.
- Decedent lived in Washington at the time of death.
- At least forty days have passed since the death.
- No one has filed for the court to appoint a personal representative.
- All decedent's debts, including funeral and burial expenses, have been paid or provided for.
- You have given written notice, by hand delivery or mail, to all other successors. **Use the Notice to Other Successors** in this packet. The notice must identify the heir's claim and describe the claimed property.
- At least ten days must have passed since you had that notice delivered or mailed.

Who do I need to notify?

You must notify anyone possibly entitled to any of the estate using the **Notice to Other Successors** in this packet. "Who is a successor," above, explains how to figure out who to notify. This can be complicated. Try to talk to a lawyer.

Other successors may want you to get the property through affidavit on their behalf. They must sign the **Form to Claim Property on Behalf of Another** in this packet.

What property do I include for the affidavit procedure?

You may claim any personal property in decedent's estate. This can include boats, cars, other vehicles, jewelry, furniture, other household and personal items, bank accounts, stocks, and bonds.

What property do I leave out of the affidavit procedure?

Do **not** include property automatically passing to someone upon decedent's death, such as:

- 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 named 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 whoever has the property refuse to deliver it?

Talk to a lawyer. If someone sends you notice that he/she is claiming property you think should be yours, send a letter to that person and to whoever has the property. 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 a bank account. The bank will not release the money. What can I do?

You can claim it for decedent's estate using the affidavit procedure IF

- the bank account holds \$2,500 or less
- you are decedent's spouse or next-of-kin

If this does not work, talk to a lawyer.

Section 2: Step-By-Step Instructions

1. **You must take care of decedent's debts before you can file an affidavit for property.** If you cannot get at decedent's assets to pay his/her debts, you or another successor could pay the debts yourselves. Keep records and receipts of whatever you pay. You would then file an affidavit to get back what you spent plus any other property you believe you should get. If no one can afford to pay decedent's debt right now, you should probably see a lawyer and go to court to get permission to pay the debts out of the estate.
2. Figure out the value of decedent's estate. List and value any personal property in the estate. To figure out what to list, see "**What property do I include for the affidavit procedure,**" above. It may add up to more than you thought. You can subtract from the property's value any unpaid debts/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 must show how you got the valuations for the property. **Example:** In valuing a vehicle, copy the page from the Blue Book you used.
3. Be sure forty days have passed since the decedent's death.
4. Make sure no one else has started a probate of decedent's estate. Ask all other successors you know if they have applied or know if anyone else has. After talking to the other successors, send each a letter confirming they have not started a probate. Keep a copy of these letters for your records.
5. Make sure you are the only person entitled to any of the property you are claiming. Read "**Who is a successor**" above. If someone else is entitled to all/part of the property, you must get his/her written authorization to claim it for yourself. Use the blank **Notice to Other Successors** at the end of this packet.
6. Use the blank **Notice to Other Successors** in this packet to notify any other successor that you are claiming property. The letter must describe the property. You must hand-deliver this letter OR use certified mail, return receipt requested, for proof you mailed it. 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 **Small Estates Affidavit** in this packet in front of a notary. **Sign it when the notary tells you to.** Make at least two copies. Keep one for yourself.
8. Mail the other notarized copy, including 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, a copy of decedent's death certificate, and a copy of [RCW 30A.22.190](#) to whoever (like the bank where 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. Where appropriate, they should have a new certificate of ownership and/or license registration issued in your name.

❖ **How do I get 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

This packet has these blank forms:

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

There is also a copy of [RCW 30A.22.190](#) at the end of the forms.

Section 4: What if I need legal help?

- **Apply online with [CLEAR*Online](#) - <https://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, 9:15 a.m. – 12:15 p.m.
- **King County**: Call 211 for info and referral to an appropriate legal services provider, weekdays, 8:00 am – 6:00 pm. You may also call (206) 461-3200, or toll-free 1-877-211-WASH (9274). You can also get info on legal service providers in King County through 211's website, www.resourcehouse.com/win211/.
- **Persons 60 and Over**: Persons 60 or over may call CLEAR*Sr at 1-888-387-7111, regardless of income.

Deaf, hard of hearing, or speech impaired callers can call CLEAR or 211 using the relay service of their choice.

211 and CLEAR will conference in interpreters when needed at no cost.

Free legal education publications, videos, and self-help packets covering many legal issues are available at www.washingtonlawhelp.org.

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

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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 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.]