



Claiming the Personal Property of Someone Who Has Died

Do-It-Yourself Affidavit Procedure for Small Estates

❖ Read this *only if* the person who died lived in Washington state.

Who should read this?

If you think you are entitled to inherit the personal property of a Washington state resident who has died, leaving a “small estate,” that is, less than \$100,000, you should read this.

How do I use this?

This packet has 4 parts.

Part 1 - find out if this procedure is right for you.

Part 2 - explains how to use the procedure.

Part 3 - lists the forms you need for the procedure (forms are attached).

Part 4 - has contact info for more help.

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

❖ **The person who died is the “decedent.”**



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- ❖ The law on the affidavit procedure is in the Revised Code of Washington (RCW) at [RCW 11.62.010](#). It is [online](#) and pasted to the end of this document.
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Part 1. Does this procedure apply to you?

A. Who can use this procedure?

This procedure allows someone legally entitled to inherit 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 (a form you sign under penalty of perjury) and deliver it to the person or 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. See below.
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B. Successors: Who is entitled to the property?

A successor is someone entitled to the decedent's property. Whether you are a successor depends on if that person left a will and your relationship to the decedent.

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

- **Surviving spouses and domestic partners** are entitled to half 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 exclude may have an interest in the property, even if the will does not name them.

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- ❖ 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 people with a low income. Your local bar association may have more info.
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If there is no will (called, “intestacy”), [RCW 11.04.015](#) says how the property will pass. The surviving spouse or domestic partner gets all the community property, **plus**

- 1/2 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 no children by any of decedent’s siblings are still alive.

❖ If there are no surviving children, parents, siblings, nieces or nephews, the surviving spouse or domestic partner gets all 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, the sibling’s 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 or uncle has died, his or her children (decedent's cousins) split equally the aunt or 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 decedent is still alive.

❖ **People not on this list**, such as friends, are only entitled to whatever the will leaves them, if anything.



C. Who is a domestic partner?

You are a domestic partner if **both** these are true:

- You and decedent registered your domestic partnership with the Washington State Secretary of State. See [RCW 26.60](#).
- A court had not ended (dissolved) the partnership before decedent passed away.

D. Are creditors successors?

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

E. Can I use the affidavit procedure?

Yes, if all these are true:

- Decedent lived in Washington at the time of death.
- At least forty days have passed since the death.
- The value of decedent's estate, minus encumbrances and liens, is no more than \$100,000.
- You are entitled to the property as a successor.
- 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 10 days must have passed since you had that notice delivered or mailed.

F. Who do I 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 whom 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.

G. What property do I include for the affidavit procedure?

You can 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.

H. 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

I. What if someone else claims the same property, or whoever has the property refuses to deliver it?

Talk to a lawyer. If someone sends you notice that they are claiming property you think should be yours, send letters to that person and whomever 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.

J. The decedent had a bank account. The bank will not release the money. What can I do?

As long as the account holds \$100,000 or less, you can claim it using the affidavit procedure IF you are decedent's spouse or next-of-kin. If the bank account holds \$2,500 or less, you can use a different affidavit. See [RCW 30A.22.190\(2\)](#).

If this does not work, talk to a lawyer.

Part 2. Step-By-Step Instructions

- 1. You must take care of decedent's debts before filing an affidavit for property.** If you cannot get at decedent's assets to pay decedent's 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 bills, 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 40 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 entitled to the property?**" above. If someone else is entitled to all or

part of the property, you must get their 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
- 9.** Mail it via certified mail, return receipt requested. Keep a copy of the return receipt when you get it back.
- 10.** Deliver the affidavit, a copy of decedent's death certificate, and a copy of [RCW 11.62.010](#) to whomever (like the bank where decedent's account is) has the property or owes the debt you are claiming. If the property is a vehicle, send the person holding the title the affidavit. They should 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.

Part 3. Blank Forms

This packet has these blank forms:

1. Form to Claim Property on Behalf of Another
2. Notice to Other Successors
3. Department of Revenue Small Estates Affidavit

There is also a copy of [RCW 11.62.010](#) at the end of the forms.

Part 4. Get legal help

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

- **Apply online** with [CLEAR*Online](#) - nwjustice.org/get-legal-help
- **Outside King County:** Call CLEAR at 1-888-201-1014 weekdays, 9:15 a.m. - 12:15 p.m.
- **King County:** Call 2-1-1 for referral to a 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).
- **Seniors, age 60 and Over** can call CLEAR*Sr at 1-888-387-7111. Assets limits may apply. Seniors in King County may call 2-1-1.
- **Deaf, hard of hearing or speech impaired** callers can call CLEAR or 211 (or toll-free 1-877-211-9274) using the relay service of your choice.

CLEAR and 211 will conference in free interpreters when needed.

Free legal education publications, videos and self-help packets covering many legal issues are available at 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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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 10 days after I mail or deliver this letter to you.

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

(Signature & address of claiming successor)

Affidavit of Successor

The "Affidavit of Successor" may be used if the decedent's estate was not probated and no personal representative has been appointed by the courts. Living heirs have certain rights according to Washington State laws of Descent and Distribution. One heir may claim and distribute to other heirs with their written approval. Please note this affidavit is only to be used for personal property. The transfer of real estate or real property is not allowed.

The undersigned, being first duly sworn, on oath deposes and says:

1. That the name and address of the undersigned successor is as follows:

- a. Decedent Name: _____
Successor Name: _____
- b. Address: _____
- c. City: _____ State: _____ Zip: _____

2. The undersigned claimant is a "successor" as defined in Revised Code of Washington (RCW) 11.62.005. **(One box MUST be checked or the form will be rejected)**

- Under the terms and provisions of the decedent's last will and testament or
- Under the laws of intestate succession and/or
- As the surviving spouse or domestic partner entitled to property under the community property laws.

3. The undersigned does not claim to be a successor solely by reason of being a creditor of the decedent or of the decedent's estate.

4. The decedent was, at the time of their death, a resident of the state of Washington.

5. The value of the entire estate of the decedent subject to probate, wherever located, (not including any surviving spouse's community property interest in any assets which are subject to probate in the decedent's estate), less liens and encumbrances, does not exceed \$100,000.

6. Forty days have elapsed since the death of the decedent.

7. No application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction.

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

9. The undersigned successor claims the following personal property, which property is subject to probate:

<i>Description of Property</i>	<i>Amount</i>

10. The undersigned 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 mail of such notice.

11. The undersigned successor is: **(One box MUST be checked and the back of this form (page 2) must be completed or the form will be rejected)**

- Personally entitled to full payment or delivery of the property described above as the sole heir or,
- Notarized written authority and copy of ID from all heirs is included authorizing the claimant to receive full payment or,
- An heir entitled to a portion of the property described above and claiming only that portion.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Claimant Signature

Date

Subscribed and sworn (or affirmed) to before me this _____ day of _____, _____.

Notary Public (print name)

Notary Public (signature)

Residing at

Commission Expires

Deceased Name: _____

What is the relationship to the deceased:

- Spouse (date of marriage _____) Parent Niece/Nephew
 Child Granddaughter/son Other _____

Did the deceased leave a will?

- Yes
 No

1. If the decedent left a will, was it probated?

- Yes - Do not use this form, send the following items:
1. Copy of the probated will
2. Addresses for all heirs listed in the will
 No - Complete this form and send a copy of the will.

2. Was the deceased married when they passed away?

- Yes, spouse's name _____
Are they living?
 Yes
 No - If no, provide date of death _____
 No

3. How many children did the deceased have? List the names of the children (if deceased, include date of death)

_____	_____
_____	_____
_____	_____

4. Are the parents of the deceased living?

- Yes - If yes, provide their names

No

5. How many brothers and sisters did the deceased have? List their full names (if deceased, include date of death)

_____	_____
_____	_____
_____	_____

If you are claiming as a remote relative, you must provide a complete family tree showing your relationship to the deceased. The family tree should include names and dates of death for all relatives of the deceased.

RCW 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.

[2008 c 6 § 923; 2006 c 360 § 16; 1995 1st sp.s. c 18 § 60; 1993 c 291 § 1.

Prior: 1988 c 64 § 25; 1988 c 29 § 2; 1987 c 157 § 1; 1977 ex.s. c 234 § 11; 1974 ex.s. c 117 § 4.]