

SMALL ESTATES MEMO

In order to save time and money, Oregon has an affidavit procedure for small estates to take the place of probate. Using fair market values, if the estate consists of not more than \$75,000.00 in personal property and not more than \$200,000.00 in real property, or a combination of personal property having a fair market value of \$75,000.00 or less and real property having a fair market value of \$200,000.00 or less, it qualifies as a small estate.

WHY PREPARE A SMALL ESTATE AFFIDAVIT? The small estate affidavit procedure provides a method of finalizing a decedent's business affairs and distribution of the estate. Specifically, the affidavit is used to:

1. Notify the Oregon Health Authority and Estate Administration Unit of the State of Oregon (*this is a statutory requirement in all cases*);
2. Make transfers of the decedent's real property;
3. Prove the right to collect debts and other property on behalf of the decedent's estate;
4. Make transfers of bank accounts, stocks and bonds;
5. Show authority for using estate assets in order to satisfy the claims of creditors (creditors are obliged to submit claims within four months after the filing of the affidavit); and
6. Provide a means for placing responsibility to pay the decedent's claims with those who receive the decedent's estate.

PREPARING THE AFFIDAVIT. Necessary information for preparing the affidavit will include the following items:

1. A certified copy of the decedent's death certificate;
2. The decedent's will, if any;
3. A list of the decedent's property showing its fair market value and whether it is jointly or separately owned by the decedent;

4. A list of all heirs, including their last known addresses and their relationship to the decedent;
5. If the decedent died having a will, a list of all devisees and their last known addresses;
6. A list of all debts showing the amount owed by decedent on the date of death and the address of each creditor.

FILING THE AFFIDAVIT. The completed affidavit and the filing fee will be tendered to the county for filing not sooner than 30 days after the decedent's date of death. If there is a will, it will also be delivered for filing along with the affidavit. Notices will be sent to persons interested in the estate such as heirs, devisees and creditors.

Because this procedure is very informal as compared to a probate, it is necessary to take special care to make sure that the appropriate steps are taken. If you need help in bringing the settlement of the decedent's estate to an orderly, economical and prompt conclusion, please ask us for assistance. Also, if claims are filed within the four-month period, especially if you decide to disallow any claim, you should seek legal assistance. *You should also be aware that there may be tax issues to deal with.* For instance, a final tax return for the decedent may be required and it may be your responsibility to file it. We highly recommend that a qualified tax advisor be consulted about tax questions relating to handling the decedent's estate and assets.

INCLUDE FOLLOWING NOTE IF POTENTIAL CLIENT IS NOT ENGAGING US.

NOTE: This memorandum is provided under the assumption that you will not be engaging our law office to assist you at this time with respect to a small estate filing. It is not a complete explanation of the small estate procedure, but a summary of important aspects of the procedure. This memorandum is not a substitute for obtaining the assistance of a lawyer in handling a small estate proceeding, because it is not possible to address all potential situations that may arise in such a proceeding..