

Small Estate Affidavit

When a person dies, their property becomes the property of their "estate." An estate is all the property a person owns at their death.

Estate property is usually passed on to beneficiaries through a legal proceeding in probate court. A "beneficiary" is the person who receives property or money from an estate.

Depending on the size of the estate, the probate court process can take a lot of time and can be expensive. The probate court process can also take a lot of time if a will is contested.

Do all estates have to be distributed through the probate court?

No. In Illinois, estates that do not include real estate, do not have debts or claims, and are worth \$100,000 or less do not have to go through probate court. These are called "small estates." You can use a document called a "Small Estate Affidavit" to distribute the decedent's property outside of the court without a court's supervision.

If you use a Small Estate Affidavit, you are still bound by the terms of the will. If there is no will, then the rules found in the Illinois Probate Act must be followed.

What if someone refuses to distribute property of the estate according to the affidavit?

If a person or company with property from the estate will not follow the instructions in the affidavit, you can file a case in the Circuit Court to make them give you the property.

What are the risks of using a Small Estate Affidavit?


When you use a small estate affidavit, you become legally responsible to any creditors.

This means that someone who should have received money or property from the decedent's estate can file a lawsuit against you. If they win in court, you could be held financially responsible for the amount that they lost as a result of the affidavit.

This is true even if you do not keep any property and distribute all of the property to others.

Therefore, it is very important that if you sign a Small Estate Affidavit, you make sure that there are no claims being made against the estate. There should be no disputes as to who should rightfully be given the property.

Using a Small Estate Affidavit

 McHenry.IllinoisLegalAid.org

 Illinois Legal Aid Online



Information from www.IllinoisLegalAid.org

McHenry County Circuit Clerk
Civil Division

2200 N Seminary Ave—Room 136
Woodstock, IL 60098

Hours: Monday—Friday (except Court Holidays)
8:00 a.m.—4:30 p.m.

Can I use a Small Estate Affidavit?

If there is a will, only the person who is the executor of the estate can use the Small Estate Affidavit. If there is not a will, generally, a beneficiary can use the Small Estate affidavit.

The estate itself must also meet the following six conditions before you may use a Small Estate Affidavit:

- The total amount of personal property in the estate must be worth \$100,000 or less;
- The decedent did not own any real estate;
- A probate court has not issued any "letters of office." A letter of office is issued by the probate court to the executor of an estate and gives the executor the authority to distribute the estate;
- If there is a will, it must be filed with the Clerk of the Circuit Court within 30 days of the death;
- You are not aware of any disputes or conflicts relating to the will or to the heirs of the decedent; and
- There are no outstanding unpaid claims or contested claims against the decedent (other than funeral expenses).

Where can I get a Small Estate Affidavit?

You can get a Small Estate Affidavit from the Circuit Clerk, either online at www.McHenryCircuitClerk.org or in person at the Circuit Clerk's Civil Division in Room 136. You can also find a Small Estate Affidavit form and additional information at <http://McHenry.IllinoisLegalAid.org>.

Do I need anything else?

Yes. You will need:

- A copy of the death certificate (it is a good idea to have several copies of the death certificate), and
- A certified copy of the will (if there is one), which had been filed with the Clerk of the Circuit Court in the county where the decedent died.

Attach these documents to the affidavit.

What if the person died owning a car?

A car can be transferred through a Small Estate Affidavit, but there are some extra steps that you will have to take. The car's title must be transferred to the new owner by the Secretary of State's office.

For more information, see the Secretary of State's website for information on *Corrected Titles* at www.cyberdriveillinois.com or call the Secretary of State at (800)252-8980.

How do I use the Small Estate Affidavit?

Once you get the affidavit, you can show the affidavit to any person, bank, or corporation that has estate property. The bank, person, or corporation must give the property the way the affidavit says. Once the property is transferred, the person who gave you the property cannot be sued.

