

Avoiding Probate: The Small Estate

What is probate?

Probate is a legal process that takes place after someone dies. The probate process usually includes:

- proving in court that a deceased person's will is legal (usually a routine matter);
- list the deceased person's property;
- get the property appraised (how much is it worth);
- pay the debts and taxes; and
- distribute what is left as either the will or Arkansas law (if there is no will) directs.

How can I avoid probate?

Many people want to avoid the probate process because it can be a long and expensive process. There are many ways to avoid probate, such as owning property jointly, payable on death (POD) accounts, or giving the property away before death. You can also avoid or shorten the probate process with Small Estate laws.

Collection of small estates

Small Estate laws were enacted in Arkansas in order to allow heirs to receive the property that the deceased wanted them to have without the long process of probate. In Arkansas, you may be able to avoid the probate process or at least shorten the process if certain conditions are met. These conditions include:

- The total value of the estate is less than \$100,000 and that claims (debts or judgments) against the estate have been paid. There are other exclusions and exemptions from this amount, such as the homestead exemption and spouse and child allowances.
- Forty-five (45) days must have passed since the death before filing the affidavit
- There is not a personal representative of the estate already appointed or a petition for an appointment pending.

How do I use the Small Estate laws?

You must file an Affidavit for Collection of Small Estate with the probate clerk of the circuit court in the county where the deceased last lived. The affidavit can be filed by one or more of the people receiving proceeds from the estate (called distributees).

The affidavit must state, among other things, that the conditions in the previous section are true. *See the following Sample Form below.*

What happens after filing the affidavit?

After you file the affidavit with the probate clerk, the clerk will sign the affidavit and place her seal on it. You can then provide a copy of the affidavit to financial institutions or other persons or entities that have property of the deceased.

Glossary of helpful terms

- Affidavit – a written document where the signer swears under oath (such as notary public) that the statements in the document are true
- Deceased – the person who has died
- Distributee – anyone who received something. Usually, the term refers to someone who inherits a deceased person's property.
- Homestead – the main dwelling of the family

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The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. Always do what the court tells you to do.