

# **Avoiding Probate with Small Estates with Real Property Packet**

## **Contents**

<a href="#">Avoiding Probate with Small Estates with Real Property Fact Sheet</a> .....	2
<a href="#">Affidavit for Collection of Small Estate by Distributee</a> .....	4
<a href="#">Civil-Probate Cover Sheet Instructions</a> .....	8
<a href="#">Civil-Probate Cover Sheet</a> .....	9
<a href="#">Civil-Probate Cover Sheet for Additional Parties</a> .....	10
<a href="#">Disclaimer</a> .....	11
<a href="#">Notice of Publication</a> .....	14
<a href="#">Deed of Distribution Pursuant to A.C.A. § 28-41-102</a> .....	16

# Avoiding Probate with Small Estates with Real Property Fact Sheet

## Introduction

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)
- listing the deceased person's property
- getting the property appraised (how much is it worth)
- paying the debts and taxes
- distributing what is left as directed by either the will or, if there is no will, Arkansas law

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 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 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
- 45 days have passed since the death before filing the affidavit
- there is neither a personal representative of the estate already appointed nor a petition for an appointment pending

## Filing an Affidavit

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.

After you file the affidavit with the probate clerk, the clerk will sign the affidavit and place their 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.

## Small Estate Process with Real Property

If there is real property involved (land or a home), you must follow four steps to submit the estate for Small Estate Probate.

### Step 1

An affidavit filed with the probate clerk of the circuit court of the county of proper venue for administration must be completed by one or more of the distributees (heirs). See the form "Affidavit for Collection of Small Estate by Distributee" in "Avoiding Probate with Small Estates with Real Property Packet (PDF)" at [arlegalservices.org/fact-sheets](http://arlegalservices.org/fact-sheets).

### Step 2

This affidavit must be filed with the probate clerk. There is a charge of \$25 for filing and \$5 for each certified copy. No additional fee shall be charged if a will is attached. If there are other heirs, and the other heirs have no interest in the property, they may sign a waiver in which they waive their interest in the property. This waiver would need to be filed with the affidavit. The waiver would need to be signed by each heir other than you who may have an interest in the estate property. See the form "Disclaimer" in "Avoiding Probate with Small Estates with Real Property Packet (PDF)" at [arlegalservices.org/fact-sheets](http://arlegalservices.org/fact-sheets).

### Step 3

Since there is also real property involved, within thirty (30) days from the date the affidavit is filed, you will also need to file a notice in a newspaper of general circulation once a week for two weeks. See the form "Notice of Publication" in "Avoiding Probate with Small Estates with Real Property Packet (PDF)" at [arlegalservices.org/fact-sheets](http://arlegalservices.org/fact-sheets). The cost of placing this notice will vary from newspaper to newspaper. Once the notice has run, the newspaper will send you an affidavit stating that the notice has run and the dates of publication. This will need to be filed with the probate clerk.

In addition, if there are other heirs, each one will need to be sent a copy of the notice. You will also need to serve a copy of the notice on all known and "reasonably ascertainable creditors." To discover "reasonably ascertainable" creditors, you should monitor the deceased's mail and inquire of anyone living with or doing business with the deceased at the time of death. Health care providers that were providing or provided treatment at the time of the death should be contacted to determine whether the deceased has an outstanding account balance. If you become aware of a potential creditor, you are required to promptly serve them with notice of the Small Estate Administration.

A collaboration of Center for Arkansas Legal Services and Legal Aid of Arkansas, Inc.

| [arlegalservices.org](http://arlegalservices.org) | [arkansaslegal.org](http://arkansaslegal.org)

#### Step 4

After the filing of the affidavit and the notice, and if no claim is presented within three (3) months from the date the notice was first published, the distributees shall be authorized to issue to themselves a deed of distribution for the real property of the decedent. They also shall deliver notice of the transfer of ownership to the county assessor of each county where the real property is located. See “Deed of Distribution Pursuant to § 28-41-103” in “Avoiding Probate with Small Estates with Real Property Packet (PDF)” at [arkansaslegalservices.org/fact-sheets](http://arkansaslegalservices.org/fact-sheets).

## Glossary

- **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

*This fact sheet is a collaboration of the Center for Arkansas Legal Services and Legal Aid of Arkansas, Inc. These nonprofit organizations provide free legal assistance to eligible Arkansans who meet income, asset, and other guidelines. Legal assistance may also include advice and counsel, brief services, or full representation depending on the situation. For more information about civil legal aid in Arkansas, please visit [arlegalservices.org](http://arlegalservices.org). For information specific to Legal Aid of Arkansas, Inc., visit [arlegalaid.org](http://arlegalaid.org). For information specific to Center for Arkansas Legal Services, visit [arkansaslegal.org](http://arkansaslegal.org). Apply for services online .*

*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.*

**Content provided by:  
Center for Arkansas Legal Services**

*Updated November 2020*

A collaboration of Center for Arkansas Legal Services and Legal Aid of Arkansas, Inc.

[arlegalservices.org](http://arlegalservices.org) | [arkansaslegal.org](http://arkansaslegal.org)

IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, ARKANSAS  
PROBATE DIVISION

IN THE MATTER OF THE ESTATE OF

\_\_\_\_\_, Deceased

CASE NO. \_\_\_\_\_

**AFFIDAVIT FOR COLLECTION OF SMALL ESTATE BY DISTRIBUTE**

Comes now, \_\_\_\_\_,

\_\_\_\_\_, and \_\_\_\_\_

for the purpose of dispensing with administration of the estate of

\_\_\_\_\_, deceased, state on oath:

1. That the decedent, \_\_\_\_\_, aged \_\_\_\_\_, who resided at \_\_\_\_\_, in \_\_\_\_\_ County, Arkansas, died at \_\_\_\_\_ on or about \_\_\_\_\_ (time) \_\_\_\_\_ as is evidenced by a copy of the \_\_\_\_\_ (date) Certificate of Death attached hereto as "Exhibit A." No petition for the appointment of a personal representative for the decedent's estate is pending or has been granted.
2. That more than forty-five (45) days have elapsed since decedent's death.
3. That the value, less encumbrances, of all property owned by the decedent at the time of death, excluding the homestead of and statutory allowances for the benefit of the surviving spouse or minor children, if any, of the decedent, does not exceed one hundred thousand dollars (\$100,000).
4. That there are no unpaid claims or demands against the decedent or the decedent's estate, and the Department of Human Services furnished no federal or state benefits to

the decedent (or, that if such benefits were furnished, the Department of Human Services has been reimbursed in accordance with state and federal laws and regulations).

5. That an itemized description and valuation of the decedent's personal property, a legal description and valuation of the decedent's real property, including homestead, if any, and the names and addresses of persons having possession thereof or residing on any of the decedent's real property are:

Description of Property  
and Extent and Details

of Encumbrances, if Any:    Valuation Less Encumbrances:    In Possession Of:

6. That the names, ages, and relationships to the decedent and residence addresses of the persons entitled to receive the property of the decedent as surviving spouse, heirs, or devisees of decedent's will are:

Name:

Age:

Relationship:

Residence Address:

WHEREFORE, the distributee(s) of this estate shall be entitled to distribution of the property identified above, without the necessity of an order of the court or other proceeding, upon furnishing a copy of this Affidavit, certified by the clerk, to any person owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right of the decedent.

FURTHER YOUR AFFIANT SAYETH NOT.

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

STATE OF ARKANSAS )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

Subscribed and sworn to before me, a notary public, this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

Notary Public: \_\_\_\_\_

My commission expires on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(SEAL)

**CERTIFICATE OF CLERK**

The undersigned Probate Clerk of the County of \_\_\_\_\_, Arkansas, certifies that this is a true copy of an affidavit filed in this court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that the affidavit remains on file, and that no petition for the appointment of a personal representative of this estate has been filed in this court.

Clerk or Deputy Clerk: \_\_\_\_\_

Date: \_\_\_\_\_

(SEAL)

# Civil-Probate Cover Sheet Instructions

## Introduction

The probate reporting form and the information contained herein is intended for case assignment and statistical purposes. It shall not be admissible as evidence in any court proceeding or replace or supplement the filing and service of pleadings, orders, or other papers as required by law or Supreme Court Rule. Authority: Supreme Court Administrative Order Number 8.

## Filing Information

The filing information must be completed by the attorney or pro se litigant filing an initial pleading with the court clerk. The clerk shall not accept the pleading unless accompanied by this reporting form. The clerk shall place the original reporting form in the case file and send a copy of the filing information to the Administrative Office of the Courts in a weekly mailing.

### Lines 1–4 and 6

Line 1: Fill in the blanks for County and Judicial District where this pleading is being filed. Unless this is a re-opened case, the clerk will assign you the docket number to fill in that blank.

Line 2: Fill in the blanks for Judge's name and Division if applicable. In a multi-judge county, the clerk will tell you the correct Name and Division or will complete this information. The Filing Date is the month, day, and year you are filing this pleading.

Line 3: Fill in the Name of the Case as it appears in the style of the pleading you are filing.

Line 4: Fill in your name and address. "Pro Se" means you are filing this pleading on your own behalf and are not represented by an attorney.

Line 6: Reference any related case(s).

### Type of Case

Place an "X" in the single box which best describes the subject matter of the pleading you are filing. If no Type accurately describes the subject matter, place an "X" in the box for Other.

### Manner of Filing

Place an "X" in the appropriate box. For the purposes of this reporting form, the following definitions apply. "Original" means a filing of a complaint or petition at the beginning of a case. "Re-open" means a case which has been disposed of but is now being resubmitted to the court. For example, a guardianship has been granted and terminated, and the subject of this pleading is a petition requesting the appointment of a new guardian. "Transfer" means a case filed with this court from another court due to invalid jurisdiction, venue, etc.

## Disposition Information

When the final order, decree, or judgment is filed with the clerk, the clerk or other official as the trial court may designate shall complete the following disposition information on the reporting form which was placed in the case file when the initial pleading was filed.

### Disposition Date

This is the month, day, and year of the clerk's date stamp.

Place an "X" in the appropriate box for the type of trial. For the purposes of this reporting form, the following definitions apply. A "Bench Trial" is a trial in which there is no jury and in which a judge determines both the issues of fact and law in a case. A "Non-Trial" is where a probate case is disposed of by one of the following methods:

- a settlement by agreement of the parties
- an order of dismissal
- an order granted prior to trial which concludes the case
- the respondent did not respond to the allegations contained in the petition, e.g. an uncontested matter

### Disposition Type

Place an "X" in the box which best describes how the trial court disposed of the matter.

The clerk or a deputy clerk shall sign on the signature line. A clerk's signature stamp will suffice. The date is the same as the Disposition Date. The clerk shall retain the original reporting form in the case file and send a copy of the disposition information to the Administrative Office of the Courts in a weekly mailing.

*This fact sheet is a collaboration of the Center for Arkansas Legal Services and Legal Aid of Arkansas, Inc. These nonprofit organizations provide free legal assistance to eligible Arkansans who meet income, asset, and other guidelines. Legal assistance may also include advice and counsel, brief services, or full representation depending on the situation. For more information about civil legal aid in Arkansas, please visit [arlegalservices.org](http://arlegalservices.org). For information specific to Legal Aid of Arkansas, Inc., visit [arlegalaid.org](http://arlegalaid.org). For information specific to Center for Arkansas Legal Services, visit [arkansaslegal.org](http://arkansaslegal.org). Apply for services online.*

*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.*

**Content provided by:  
Arkansas Judiciary**

*Updated October 2020*

**COVER SHEET  
STATE OF ARKANSAS  
CIRCUIT COURT: PROBATE**

The probate reporting form and the information contained herein shall not be admissible as evidence in any court proceeding or replace or supplement the filing and service of pleadings, orders, or other papers as required by law or Supreme Court Rule. This form is required pursuant to Administrative Order Number 8. Instructions can be found at [www.courts.arkansas.gov](http://www.courts.arkansas.gov).

**County:** \_\_\_\_\_ **District:** \_\_\_\_\_ **Filing Date:** \_\_\_\_\_

**Judge:** \_\_\_\_\_ **Division:** \_\_\_\_\_ **Case ID:** \_\_\_\_\_

**Type of case (choose one):**

- |  |  |
|--|--|
| <input type="checkbox"/> (AD) Adoption                 | <input type="checkbox"/> (DE) Decedent Estate Administration |
| <input type="checkbox"/> (PC) Adult Protective Custody | <input type="checkbox"/> (GA) Guardianship of an Adult       |
| <input type="checkbox"/> (AL) Alcoholic Commitment     | <input type="checkbox"/> (GJ) Guardianship of a Juvenile     |
| <input type="checkbox"/> (AA) Ancillary Administration | <input type="checkbox"/> (DC) Narcotic Commitment            |
| <input type="checkbox"/> (CV) Civil Commitment         | <input type="checkbox"/> (SE) Small Estate                   |
| <input type="checkbox"/> (CP) Conservatorship          | <input type="checkbox"/> (TA) Trust Administration           |
|  | <input type="checkbox"/> (OP) Probate-Other                  |

**In the Matter of:** \_\_\_\_\_

**Does this case involve the custody or support of minor children?**     Yes     No

*If yes, also file the completed Confidential Information Sheet.*

Participant 1		Participant 2	
<b>Participant Type</b>		<b>Participant Type</b>	
<b>Company/ Last Name</b>		<b>Company/ Last Name</b>	
Suffix		Suffix	
<b>First Name</b>		<b>First Name</b>	
DLN/State ID/ Contexte ID		DLN/State ID/ Contexte ID	
Address		Address	
City, State ZIP		City, State ZIP	
Phone		Phone	
Email		Email	
Self-represented	<input type="checkbox"/> Yes <input type="checkbox"/> No	Self-represented	<input type="checkbox"/> Yes <input type="checkbox"/> No
DOB		DOB	
Date of Death		Date of Death	
Interpreter needed?	<input type="checkbox"/> Yes: _____ <input type="checkbox"/> No                      (language)	Interpreter needed?	<input type="checkbox"/> Yes: _____ <input type="checkbox"/> No                      (language)

**Attorney of Record:** \_\_\_\_\_ **Bar #:** \_\_\_\_\_

**Party representing:** \_\_\_\_\_ **Atty Email Address:** \_\_\_\_\_

**Related Case(s):** Judge: \_\_\_\_\_ **Case ID(s):** \_\_\_\_\_

- Manner of filing (choose one):**
- |   |  |
|---|--|
| <input type="checkbox"/> (MFO) Original | <input type="checkbox"/> (MFR+case type) Re-open |
| <input type="checkbox"/> (MFT) Transfer | <input type="checkbox"/> (MFF) Reactivate        |

**COVER SHEET  
STATE OF ARKANSAS  
CIRCUIT COURT: PROBATE**

*Additional Probate Case Party Information. Attach this and additional pages if needed.*

If amending an existing case to add parties, include:

Case ID: \_\_\_\_\_ Case Styling: \_\_\_\_\_

<b>Participant type:</b>		<b>Participant type:</b>	
Company/ Last Name		Company/ Last Name	
Suffix		Suffix	
First Name		First Name	
DL/State ID		DL/State ID	
Address		Address	
City, State ZIP		City, State ZIP	
Phone		Phone	
Email		Email	
Self-represented	<input type="checkbox"/> Yes <input type="checkbox"/> No	Self-represented	<input type="checkbox"/> Yes <input type="checkbox"/> No
DOB		DOB	
Interpreter needed?	<input type="checkbox"/> Yes: _____ <input type="checkbox"/> No (language)	Interpreter needed?	<input type="checkbox"/> Yes: _____ <input type="checkbox"/> No (language)
<b>Participant type:</b>		<b>Participant type:</b>	
Company/ Last Name		Company/ Last Name	
Suffix		Suffix	
First Name		First Name	
DL/State ID		DL/State ID	
Address		Address	
City, State ZIP		City, State ZIP	
Phone		Phone	
Email		Email	
Self-represented	<input type="checkbox"/> Yes <input type="checkbox"/> No	Self-represented	<input type="checkbox"/> Yes <input type="checkbox"/> No
DOB		DOB	
Interpreter needed?	<input type="checkbox"/> Yes: _____ <input type="checkbox"/> No (language)	Interpreter needed?	<input type="checkbox"/> Yes: _____ <input type="checkbox"/> No (language)

IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, ARKANSAS  
PROBATE DIVISION

IN THE MATTER OF THE ESTATE OF

\_\_\_\_\_, Deceased

CASE NO. \_\_\_\_\_

\_\_\_\_\_, Petitioner

**DISCLAIMER AND AFFIDAVIT OF:**

\_\_\_\_\_  
(NAME)

The undersigned, \_\_\_\_\_, is an heir of  
\_\_\_\_\_, deceased, who died on the \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_, and whose relation is that of

\_\_\_\_\_ to the deceased. An Affidavit for Collection of Small Estate  
(son, daughter, husband, etc.)

by Distributee has been filed in the office of the Circuit Clerk of

\_\_\_\_\_ County, Arkansas. Under paragraph six (6) of the Affidavit

for Collection of Small Estate by Distributee, the undersigned was named as an heir or devisee of

certain property owned by the decedent. The undersigned hereby disclaims all of their right, title,

and interest to the following described real property to the sole and exclusive benefit of

\_\_\_\_\_:

**Legal Description**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

---

---

---

---

---

---

---

---

---

This disclaimer is intended as a qualified disclaimer within the meaning of § 2518(b) of the Internal Revenue Code of 1986, as amended.

Dated: \_\_\_\_\_

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

**VERIFICATION**

STATE OF ARKANSAS )  
 )  
COUNTY OF \_\_\_\_\_)

On this this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared  
before me, a Notary Public for the aforesaid state and county,  
\_\_\_\_\_, to me well-known or satisfactorily proven, who stated that  
the statements in the foregoing Disclaimer and Affidavit of  
\_\_\_\_\_ were true and correct to the best of their  
knowledge and belief.

Subscribed and sworn to before me, a notary public, this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

Notary Public: \_\_\_\_\_

My commission expires on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, ARKANSAS  
PROBATE DIVISION

IN THE MATTER OF THE ESTATE OF

\_\_\_\_\_, Deceased

CASE NO. \_\_\_\_\_

**NOTICE OF PUBLICATION**

Name of Decedent: \_\_\_\_\_

Last known address: \_\_\_\_\_

Date of death: \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, an Affidavit for  
Collection of Small Estate by Distributee was filed with respect to the estate of  
\_\_\_\_\_, deceased, with the Clerk of the Probate Division  
of the Circuit Court of \_\_\_\_\_ County, Arkansas, under Arkansas  
Code Annotated § 28-41-101.

The legal description of the real property listed in the affidavit is as follows:

---

---

---

---

---

---

---

---

---

---

---

---

---

---

All persons having claims against the estate must exhibit them, properly verified, to the distributee or their attorney within three (3) months from the date of the first publication of this notice or they shall be forever barred and precluded from any benefit of the estate.

The name, mailing address, and telephone number of the distributee or the distributee's attorney is:

Print: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

This notice first published on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**DEED OF DISTRIBUTION PURSUANT TO A.C.A. § 28-41-102**

KNOW ALL MEN BY THESE PRESENTS:

That the estate of \_\_\_\_\_, deceased, having been submitted in the Probate Court of \_\_\_\_\_ County, Arkansas, for Collection of Small Estate by Distributee, by \_\_\_\_\_, hereinafter called "Grantor," and pursuant to the power of sale vested in such Grantor without necessity of an Order of the Court or other proceeding, pursuant to A.C.A. § 28-41-101 and § 28-41-102, for and in consideration of the sum of one dollar and no/100 (\$1.00) and other good and valuable consideration me in hand paid by \_\_\_\_\_, hereinafter called "Grantee(s)," do hereby grant, bargain, and sell unto said Grantee(s) and Grantee's (Grantees') successors and assigns all the right, title, interest, equity, and estate of \_\_\_\_\_, deceased, discharged from liability of all debts, in and to the following commonly described land situate in \_\_\_\_\_ County, Arkansas, to-wit:

**Legal Description**

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

To have and to hold the said land and appurtenances thereunto belonging unto the said Grantee and Grantee's (Grantees') successors and assigns forever.

Witness our hands and seal on this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_.

**ACKNOWLEDGMENT**

STATE OF ARKANSAS )  
 )  
COUNTY OF \_\_\_\_\_)

BE IT REMEMBERED, that on this day came before the undersigned, a Notary Public within and for the county and state aforesaid, duly commissioned and acting \_\_\_\_\_, Distributee of the Estate of \_\_\_\_\_, deceased, to me well known as the Grantor in the foregoing Deed, and stated that they had executed the same for the consideration and purposes therein mentioned and set forth.

Subscribed and sworn to before me, a notary public, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public: \_\_\_\_\_

My commission expires on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.