

DISPOSITION OF SMALL ESTATES

Oakland County Probate Court

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#3

A series of brochures presented to you by the Oakland County Probate Court

This pamphlet identifies six methods of either closing “small” estates quickly, or avoiding probate administration altogether.

Please refer to the year of the decedent’s death to determine the appropriate values for items #1-#3. These numbers may be adjusted in subsequent years according to the cost of living.

Methods for Small Estates	Year of Death Dollar Limits		
	2006	2007- 2008	2009
1. Summary Proceedings			
Homestead Allowance	\$18,000	\$ 19,000	\$20,000
Family Allowance	\$22,000	\$ 23,000	\$24,000
Exempt Property	\$12,000	\$ 13,000	\$13,000
Totals	\$52,000	\$ 55,000	\$57,000
2. Small Estates	\$18,000	\$ 19,000	\$20,000
3. Transfer by Affidavit	\$18,000	\$ 19,000	\$20,000
4. Money Due from Employer	Wages and Fringe Benefits		
5. Transfer of Vehicles at the Secretary of State	\$ 60,000		
6. Wearing Apparel and \$500 cash			

1. SUMMARY PROCEEDINGS – UNSUPERVISED ESTATE ADMINISTRATION MCL 700.3987 and 3988

Unsupervised estates may qualify for a shortened form of administration called “summary proceedings.” (An unsupervised estate is usually indicated by a “DE” suffix as part of the file number i.e.; 2002-123,456-DE).

Summary proceedings are not available for supervised estates (suffix “DA”).

WHEN ARE SUMMARY PROCEEDINGS POSSIBLE?

An inventory of the decedent's assets will reflect the value of the assets as of the date of death. If the inventory value is less than the liens and encumbrances, administration costs and expenses, reasonable funeral and burial expenses, homestead allowance, family allowance, exempt property, and reasonable and necessary medical and hospital expenses of the decedent's last illness, a summary proceeding is possible. The personal representative may immediately disburse the estate to persons entitled to it and may then file a summary closing statement. (Use Form PC 590, *Sworn Closing Statement, Summary Proceeding, Small Estates* to close the estate.)

WHAT IS MEANT BY HOMESTEAD AND FAMILY ALLOWANCES AND EXEMPT PROPERTY?

Homestead Allowance (see previous chart for amount based on year of death)

- ❖ A surviving spouse is entitled to this allowance OR
- ❖ The decedent's minor and dependent children share equally if there is no surviving spouse
- ❖ It is generally payable in addition to any share passing to the spouse or minor or dependent children by will, intestate succession, or by elective share
- ❖ Specifically devised property shall not be used to satisfy homestead rights, if the estate is otherwise sufficient

Family Allowance (see previous chart for amount based on year of death)

- ❖ A surviving spouse and minor children who decedent was obligated to support are entitled to this allowance
- ❖ Children of the decedent or children of another who were in fact being supported by decedent are also entitled to this allowance
- ❖ It shall not continue for longer than 1 year if the estate is inadequate to discharge allowed claims
- ❖ It is payable in a lump sum or in periodic installments
- ❖ It is generally payable in addition to any share passing to the spouse or children by will, intestate succession or by elective share
- ❖ The death of a recipient terminates the right to unpaid allowances

Exempt Property (see previous chart for amount based on year of death)

- ❖ A surviving spouse is entitled to this allowance
- ❖ Decedent's children share equally if there is no surviving spouse
- ❖ It is generally payable in addition to any share passing to the spouse or children by will, intestate succession or elective share
- ❖ Property such as household furniture, vehicles, furnishings, appliances and personal effects may be used to satisfy exempt property rights
- ❖ Specifically devised property shall not be used to satisfy exempt property rights, if the estate is otherwise sufficient

2. “SMALL ESTATES” (see previous chart for amount based on year of death)
MCL 700.3982

If the date-of-death value of decedent’s property (real estate and personal property) minus the funeral and burial expenses is less than the amount on the chart above, it may qualify as a small estate (i.e., \$20,000 for decedent dying in 2009).

An expedited procedure is used. A *Petition and Order for Assignment* (PC 556) is the only required court form. Even if there is a will, it is not presented for probate (but it is filed for safekeeping and future probate if the need arises). A personal representative is not appointed. Letters of Authority are not issued. Inventories and accounts are not filed. Creditors do not have to be notified. The Order of Assignment simply assigns the assets to the rightful owners. Once the petition is filed and the order is entered (usually the same day), the file is closed.

- ❖ An heir or the person who paid the funeral bill may petition the court
- ❖ A funeral bill and a death certificate must be presented to the court at the time the petition is filed
- ❖ The filing fee is \$25. An additional inventory fee based on the value of the estate will be assessed
- ❖ The court will order that the property be used to pay any unpaid funeral and burial expenses first (or to reimburse whoever paid those expenses)
- ❖ The court will order that the remaining property be assigned to the spouse or to decedent’s heirs if there is no surviving spouse
- ❖ An heir (other than a surviving spouse who qualifies for allowances, or minor children) who receives property through a small estate distribution remains responsible (up to the value of property received) for any of the decedent’s unsatisfied debts for 63 days after the order

See the Oakland County Probate Court sheet “*Instructions for Filing a Petition and Order for Assignment*” for more detailed information on small estates.

3. TRANSFER BY AFFIDAVIT (see previous chart for amount based on year of death)
MCL 700.3983

A small estate consisting of entirely personal property may qualify for the “Transfer by Affidavit” procedure. 28 days or more after the decedent’s death, a person holding the decedent’s property must deliver it to the decedent’s successor when the successor presents the death certificate and a sworn statement. Use form PC 598 – *Affidavit of Decedent’s Successor for Delivery of Certain Assets Owned by Decedent* which states:

- ❖ The estate does not include real property
- ❖ The estate value, minus liens and encumbrances, does not exceed the amount on the chart above for the decedent’s year of death
- ❖ 28 days have passed since the decedent’s death
- ❖ An application or petition for appointment of personal representative is not pending or has not been granted
- ❖ The successor is entitled to the payment or delivery of the property
- ❖ The name and address of any other person that is entitled to a share of the property

If both the Small Estate procedure and the Transfer by Affidavit procedure are available, the person holding the asset may not require the use of one proceeding rather than the other.

Note – this is *not* a court procedure. Although nothing is filed with the court, the court does have the form available for use.

4. MONEY DUE FROM DECEDENT'S EMPLOYER FOR WAGES AND FRINGE BENEFITS

MCL 408.480

Money from wages or fringe benefits may be transferred without court intervention if there is no other property for which probate court estate administration is required.

Who May Receive Payment?

- A. Fringe benefits are payable as designated by the terms of the employer's written contract, policy or plan
- B. Wages and fringe benefits are payable to the person(s) designated in a statement signed by the employee and filed with the employer before the employee's death
- C. Any wages and fringe benefits not covered by #1 or #2 shall be payable to the employee's survivors according to the following priority:
 - ❖ Spouse
 - ❖ Children
 - ❖ Mother or father
 - ❖ Sister or brother

Payment will be a full discharge and release of the employer from the wages and fringe benefits due and owing the deceased employee.

5. TRANSFER OF VEHICLES AT THE SECRETARY OF STATE

MCL 257.236

Title to registered vehicles may be transferred without court intervention if the total value of the decedent's solely owned vehicles does not exceed \$60,000 and there is no other property for which probate court administration is required.

How is the Title Transferred?

- ❖ Complete the Secretary of State Form TR-29, *Certification from the Heir to a Vehicle*, available at a Secretary of State office, or on-line at www.michigan.gov/SOS
- ❖ Attach the vehicle title (if available) to the form
- ❖ Present a certified copy of the death certificate of the vehicle owner
- ❖ Certificate of title will be furnished according to the following priority:
 - ❖ Spouse. If no spouse, the "next closest kin," which would mean
 - ❖ Descendants (children/grandchildren); if none, then
 - ❖ Parents; if none, then
 - ❖ Brothers and sisters or children of deceased brothers and sisters; if none then
 - ❖ Grandparents or descendants of deceased grandparents.

- ❖ When there is a secured party (lien holder) shown on the face of the title, a termination statement from the lien holder must be submitted.

If the title is held jointly, with the legend “full rights to survivor” printed on it, then all that is needed to transfer the vehicle to the survivor’s name is the title and a copy of the death certificate.

Note – this is *not* a court procedure. It is done at a Secretary of State branch office.

6. WEARING APPAREL AND \$500 CASH

MCL 700.3981

The decedent’s wearing apparel and cash of \$500 or less may be transferred to a decedent’s spouse, child or parent without court intervention.

Who May Transfer?

- ❖ Hospital
- ❖ Convalescent or nursing home
- ❖ Morgue
- ❖ Law enforcement agency

What Is Needed?

- ❖ Proof of identity of spouse, child or parent
- ❖ Sworn statement as to proof of relationship
- ❖ Sworn statement that there is no application or petition pending for estate administration

The transferor is released to the same extent as if delivery were made to a legally qualified personal representative. The person receiving the decedent’s property is answerable to a person with a prior right and accountable to personal representative of the decedent’s estate appointed after the transfer.

Note – this is *not* a court procedure.

ADDITIONAL INFORMATION

Transfers by Operation of Law

Let’s say that someone (who we will call “A”) owns property. The property owned by A has either a named, living beneficiary (who we will call “B”), or is payable or transferable on death (“POD” or “TOD”) to B, or is held “in trust for B,” or is jointly owned with B with rights of survivorship. A dies. Generally, A’s property would then pass to B by operation of law, and without probate court intervention, upon A’s death. This applies to any size estate.

Of course, there are always exceptions to the procedures discussed in this pamphlet. An attorney would be the best person to discuss those exceptions with you. The Oakland County Probate Court staff is prohibited from giving legal advice.

**OAKLAND COUNTY PROBATE COURT
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The Probate Court for the County of Oakland does not discriminate on the basis of disability in admission or access to its programs, activities or services as required by Title II of the Americans with Disabilities Act of 1990.

We are an Equal Opportunity Employer

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For more information and forms go to:
www.oakgov.com/probate