



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3298

Introduced 2/24/2011, by Rep. Patricia R. Bellock

SYNOPSIS AS INTRODUCED:

755 ILCS 5/25-1

from Ch. 110 1/2, par. 25-1

Amends the Probate Act of 1975. Provides that any person, corporation, or financial institution (instead of person or corporation) holding or controlling personal property shall, upon examining and approving the documents attached to the affidavit, deliver or pay (instead of deliver or pay) over the personal property pursuant to the provisions of the small estate affidavit. Provides that the affidavit shall state that the burial and funeral expenses, medical bills, credit card bills, and real property taxes (instead of funeral expenses) have been, or remain to be, paid. Provides that if there is a surviving spouse, but the surviving spouse is unable to prepare the small estate affidavit or has declined, refused, or asked the affiant to prepare the small estate affidavit, the affiant must state the reason that the affiant has prepared the small estate affidavit rather than the surviving spouse. Provides that the explanation shall include the precise time, date, and circumstances of the surviving spouse declining, refusing, or asking the affiant to prepare the small estate affidavit or state the reason that the surviving spouse is unable to prepare the small estate affidavit. Provides that if the reason for the surviving spouse's inability to prepare the affidavit is medically related that a letter from the surviving spouse's physician should be attached attesting to the medical condition that makes the surviving spouse unable to complete the affidavit. Provides that if there is no surviving spouse and there is one or more minor children, the affiant must be a court appointed guardian for one or more of the children. Provides that the property held shall be paid, after the burial, funeral, medical, and credit card bills, and real estate taxes are paid. Provides that if the surviving spouse is the affiant that he or she shall affirm that he or she was not separated from the decedent. Makes other changes.

LRB097 05568 AJO 45630 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Probate Act of 1975 is amended by changing
5 Section 25-1 as follows:

6 (755 ILCS 5/25-1) (from Ch. 110 1/2, par. 25-1)

7 Sec. 25-1. Payment or delivery of small estate of decedent
8 upon affidavit.

9 (a) When any person, ~~or~~ corporation, or financial
10 institution (1) indebted to or holding personal estate of a
11 decedent, (2) controlling the right of access to decedent's
12 safe deposit box or (3) acting as registrar or transfer agent
13 of any evidence of interest, indebtedness, property or right is
14 furnished with a small estate affidavit in substantially the
15 form hereinafter set forth, that person, ~~or~~ corporation, or
16 financial institution upon examining and approving the
17 documents presented by the affiant which are attached to the
18 small estate affidavit shall pay the indebtedness, grant access
19 to the safe deposit box, deliver the personal estate or
20 transfer or issue the evidence of interest, indebtedness,
21 property or right to persons and in the manner specified in
22 paragraph 11 of the affidavit or to an agent appointed as
23 hereinafter set forth.

1 (b) Small Estate Affidavit

2 I, (name of affiant) , on oath state:

3 1. (a) My post office address is: ;

4 (b) My residence address is: ; and

5 (c) I understand that, if I am an out-of-state
6 resident, I submit myself to the jurisdiction of Illinois
7 courts for all matters related to the preparation and use of
8 this affidavit. My agent for service of process in Illinois is:

9 NAME.....

10 ADDRESS.....

11 CITY.....

12 TELEPHONE (IF ANY).....

13 I understand that if no person is named above as my agent for
14 service or, if for any reason, service on the named person
15 cannot be effectuated, the clerk of the circuit court of
16(County) (Judicial Circuit) Illinois is recognized by
17 Illinois law as my agent for service of process.

18 2. The decedent's name is ;

19 3. The date of the decedent's death was , and I
20 have attached a copy of the death certificate hereto.

21 4. The decedent's place of residence immediately before his
22 death was ;

23 5. No letters of office are now outstanding on the
24 decedent's estate and no petition for letters is contemplated
25 or pending in Illinois or in any other jurisdiction, to my
26 knowledge;

1 6. The gross value of the decedent's entire personal
 2 estate, including the value of all property passing to any
 3 party either by intestacy or under a will, does not exceed
 4 \$100,000. (Here, list each asset, e.g., cash, stock, and its
 5 fair market value.);

6 7. (a) All of the decedent's burial and funeral expenses
 7 have been paid, or (b) The amount of the decedent's unpaid
 8 burial and funeral expenses, medical bills, credit card bills,
 9 and real property taxes and the name and post office address of
 10 each person entitled thereto are as follows:

| | |
|----------------------------------|--------|
| 11 Name and post office address | Amount |
| 12 (Strike either 7(a) or 7(b)). | |

13 8. There is no known unpaid claimant or contested claim
 14 against the decedent, except as stated in paragraph 7.

15 9. (a) The names and places of residence of any surviving
 16 spouse, minor children and adult dependent* children of the
 17 decedent are as follows:

| | | |
|-----------------|-----------|-------------|
| 18 Name and | Place of | Age of |
| 19 Relationship | Residence | minor child |

20

21 * (Note: An adult dependent child is one who is unable to
 22 maintain himself and is likely to become a public charge.)

1 (b) The award allowable to the surviving spouse of a
 2 decedent who was an Illinois resident is \$..... (\$20,000,
 3 plus \$10,000 multiplied by the number of minor children and
 4 adult dependent children who resided with the surviving spouse
 5 at the time of the decedent's death. If any such child did not
 6 reside with the surviving spouse at the time of the decedent's
 7 death, so indicate).

8 (c) If there is no surviving spouse, the award allowable to
 9 the minor children and adult dependent children of a decedent
 10 who was an Illinois resident is \$..... (\$20,000, plus
 11 \$10,000 multiplied by the number of minor children and adult
 12 dependent children), to be divided among them in equal shares.
 13 If there is no surviving spouse and there are minor children,
 14 the affiant must be a court appointed guardian for one or more
 15 of the children. If this provision applies, the date of the
 16 court order making this appointment was, and I have
 17 attached a copy of the court order.

18 10. (a) The decedent left no will. The names, places of
 19 residence and relationships of the decedent's heirs, and the
 20 portion of the estate to which each heir is entitled under the
 21 law, after all just debts and expenses described in paragraph 7
 22 are fully paid, where decedent died intestate are as follows:

| | | | |
|----|------------------------|--------|------------|
| 23 | Name, relationship | Age of | Portion of |
| 24 | and place of residence | minor | Estate |
| 25 | | OR | |

26

1 (b) The decedent left a will, which has been filed with the
 2 clerk of an appropriate court. A certified copy of the will on
 3 file is attached. To the best of my knowledge and belief the
 4 will on file is the decedent's last will and was signed by the
 5 decedent and the attesting witnesses as required by law and
 6 would be admissible to probate. The names and places of
 7 residence of the legatees and the portion of the estate, if
 8 any, to which each legatee is entitled are as follows:

| | | | |
|----|------------------------|--------|------------|
| 9 | Name, relationship | Age of | Portion of |
| 10 | and place of residence | minor | Estate |

11
 12 (Strike either 10(a) or 10(b)).

13 (c) Affiant is unaware of any dispute or potential conflict
 14 as to the heirship or will of the decedent.

15
 16 10.1. I, (the affiant) state that I am the
 17 surviving spouse and the decedent and I resided together as
 18 husband and wife and we were not legally separated, or
 19 otherwise separated, at the time of decedent's death.

20
 21 10.2. I, (the affiant) state that my
 22 relationship to the decedent is and (check
 23 all that apply):
 24 ... there is no surviving spouse; or
 25 ... there is a surviving spouse, but the surviving spouse is:

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... unable to prepare the small estate affidavit for medical reasons as shown by the attached letter of a physician for the surviving spouse, based upon the physician's examination of the surviving spouse within 90 days prior to the date of the affidavit, attesting to and describing this disabling medical condition; or

... has declined, refused, or asked affiant to prepare the small estate affidavit. The reason that the affiant has prepared this small estate affidavit rather than the surviving spouse is that (state here the precise time, date, and circumstances of the surviving spouse declining, refusing, or asking affiant to prepare the small estate affidavit):

.....

Attached is a statement of the surviving spouse in which the surviving spouse expressly declines or states that he or she refuses to prepare the small estate affidavit or expressly requests that the affiant prepare the small estate affidavit. This statement must be signed by the surviving spouse, witnessed by 2 persons unrelated to the affiant, and be notarized.

11. The property described in paragraph 6 of this affidavit should be distributed, after all just debts and expenses described in paragraph 7 are fully paid, as follows:

Name Specific sum or property to be distributed

1 The foregoing statement is made under the penalties of
2 perjury* .

3
4 Signature of Affiant

5 *(Note: A fraudulent statement made under the penalties of
6 perjury is perjury, as defined in Section 32-2 of the Criminal
7 Code of 1961.)

8 (c) Appointment of Agent. If safe deposit access is
9 involved or if sale of any personal property is desirable to
10 facilitate distribution pursuant to the small estate
11 affidavit, all persons named in paragraph 11 of the small
12 estate affidavit (excluding minors and unascertained or
13 disabled persons) may in writing appoint one or more persons as
14 their agent for that purpose, provided that the writing
15 contains the signature of each person, is witnessed by 2
16 persons unrelated to the affiant and is notarized, and also
17 shows the written consent of the surviving spouse and all adult
18 children. The agent shall have power, without court approval,
19 to gain access to, sell, and distribute the property for the
20 benefit of all persons named in paragraph 11 of the affidavit;
21 and the payment, delivery, transfer, access or issuance shall
22 be made or granted to or on the order of the agent.

23 (d) Release. Upon examination and approval of all documents
24 presented by the affiant with this small estate affidavit,

1 payment, delivery, transfer, access or issuance pursuant to a
2 properly executed affidavit, the person, ~~or~~ corporation, or
3 financial institution is released to the same extent as if the
4 payment, delivery, transfer, access or issuance had been made
5 or granted to the representative of the estate. Such person, ~~or~~
6 corporation, or financial institution is not required to see to
7 the application or disposition of the property; but each person
8 to whom a payment, delivery, transfer, access or issuance is
9 made or given is answerable therefor to any person having a
10 prior right and is accountable to any representative of the
11 estate.

12 (e) The affiant signing the small estate affidavit prepared
13 pursuant to subsection (b) of this Section shall indemnify and
14 hold harmless all creditors and heirs of the decedent and other
15 persons relying upon the affidavit who incur loss because of
16 such reliance. That indemnification shall only be up to the
17 amount lost because of the act or omission of the affiant. Any
18 person recovering under this subsection (e) shall be entitled
19 to reasonable attorney's fees and the expenses of recovery.

20 (f) The affiant of a small estate affidavit who is a
21 non-resident of Illinois submits himself or herself to the
22 jurisdiction of Illinois courts for all matters related to the
23 preparation or use of the affidavit. The affidavit shall
24 provide the name, address, and phone number of a person whom
25 the affiant names as his agent for service of process. If no
26 such person is named or if, for any reason, service on the

1 named person cannot be effectuated, the clerk of the circuit
2 court of the county or judicial circuit of which the decedent
3 was a resident at the time of his death shall be the agent for
4 service of process.

5 (g) Any action properly taken under this Section, as
6 amended by Public Act 93-877, on or after August 6, 2004 (the
7 effective date of Public Act 93-877) is valid regardless of the
8 date of death of the decedent.

9 (h) The changes made by this amendatory Act of the 96th
10 General Assembly apply to a decedent whose date of death is on
11 or after the effective date of this amendatory Act of the 96th
12 General Assembly.

13 (Source: P.A. 96-968, eff. 7-2-10.)