



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB0664

Introduced 1/28/2015, by Sen. Heather A. Steans

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11-13.4 new
755 ILCS 5/25-1

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

Amends the Probate Act of 1975. Provides that the terms of a guardianship account established on behalf of a minor at a financial institution must provide for compliance with court orders regarding the establishment and management of the account, and imposes certain other duties upon financial institutions. Provides that an entity may not act under the direction of a small estate affidavit unless the affiant, or his or her agent, has first presented the affidavit before a judge and obtained a court order granting access. Provides that if there is a surviving spouse, but the surviving spouse is not the affiant, the affiant must state the reason that the affiant, rather than the surviving spouse, has prepared the small estate affidavit. Provides that an affidavit not prepared by a surviving spouse must include a notarized statement, signed by the surviving spouse and witnessed by 2 persons unrelated to the affiant, stating that the surviving spouse declines to prepare the affidavit. Provides that if the reason for the surviving spouse's inability to prepare the affidavit is medically related, 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 child, the affiant must be a court-appointed guardian for one or more of the children. Provides that if the surviving spouse is the affiant, he or she shall affirm that he or she was not separated from the decedent. Makes other changes.

LRB099 05937 HEP 25986 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 and adding Section 11-13.4 as follows:

6 (755 ILCS 5/11-13.4 new)

7 Sec. 11-13.4. Financial institution; guardianship accounts
8 established on behalf of minors.

9 (a) If an account at a financial institution is a
10 guardianship account established on behalf of a minor, the
11 terms of the account must provide for compliance with orders of
12 the court, if any, regarding the establishment and management
13 of that account. A financial institution has a duty to inquire
14 as to the existence of any court orders when opening a
15 guardianship account on behalf of a minor. If the financial
16 institution holds an account that is subject to a court order,
17 the financial institution must obtain a court order granting
18 the authority to release funds from the account. An order
19 authorizing the disbursement of funds in the account may be
20 granted only upon a showing of good cause.

21 (b) A guardian of a minor that establishes an account with
22 a financial institution on behalf of the minor pursuant to a
23 court order has a duty to present the court order to the

1 financial institution at the time the account is opened.

2 (c) As used in this Section, "financial institution"
3 includes, but is not limited to, a bank, credit union,
4 investment company, savings bank, savings and loan
5 association, securities dealer, and trust company.

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

23 (a-5) A person, corporation, or financial institution may
24 not pay the indebtedness, grant access to the safe deposit box,
25 deliver the personal estate, or transfer or issue the evidence

1 of interest, indebtedness, property or right as provided in
 2 subsection (a) of this Section, unless the affiant, or his or
 3 her agent, has first obtained a court order as provided in this
 4 subsection (a-5). A judge shall grant an order under this
 5 subsection (a-5) if the affiant presents: (i) the small estate
 6 affidavit; (ii) evidence of notice having been given to the
 7 heirs or legatees identified in paragraph 10 of the affidavit;
 8 and (iii) a petition asking the court to find that the
 9 affidavit does not appear to have been fraudulently executed
 10 and to grant access to property in the manner specified in
 11 paragraph 11 of the affidavit. A person, corporation, or
 12 financial institution has a duty to inquire as to the existence
 13 of any court orders before taking action under this Section.

14 (b) Small Estate Affidavit

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

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

17 (b) My residence address is: ; and

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

22 NAME.....

23 ADDRESS.....

24 CITY.....

25 TELEPHONE (IF ANY).....

26 I understand that if no person is named above as my agent for

1 service or, if for any reason, service on the named person
2 cannot be effectuated, the clerk of the circuit court of
3(County) (Judicial Circuit) Illinois is recognized by
4 Illinois law as my agent for service of process.

5 2. The decedent's name is ;

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

8 4. The decedent's place of residence immediately before his
9 death was ;

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

14 6. The gross value of the decedent's entire personal
15 estate, including the value of all property passing to any
16 party either by intestacy or under a will, does not exceed
17 \$100,000. (Here, list each asset, e.g., cash, stock, and its
18 fair market value.);

19 7. (a) All of the decedent's burial and funeral expenses
20 and other debts have been paid, or

21 (b) All of the decedent's known unpaid debts are listed and
22 classified as follows (include the name, post office address,
23 and amount):

24 Class 1: funeral and burial expenses, which include
25 reasonable amounts paid for a burial space, crypt, or
26 niche; a marker on the burial space; and care of the burial

1 space, crypt, or niche; expenses of administration; and
2 statutory custodial claims as follows:

3

4 Class 2: the surviving spouse's award or child's award, if
5 applicable, as follows:

6

7 Class 3: debts due the United States, as follows:

8

9 Class 4: money due employees of the decedent of not more
10 than \$800 for each claimant for services rendered within 4
11 months prior to the decedent's death and expenses attending
12 the last illness, as follows:

13

14 Class 5: money and property received or held in trust by
15 the decedent which cannot be identified or traced, as
16 follows:

17

18 Class 6: debts due the State of Illinois and any county,
19 township, city, town, village, or school district located
20 within Illinois, as follows:

21

22 Class 7: all other claims, as follows:

23

24 (Strike either 7(a) or 7(b)).

25 7.5. I understand that all valid claims against the
26 decedent's estate described in paragraph 7 must be paid by me

1 from the decedent's estate before any distribution is made to
 2 any heir or legatee. I further understand that the decedent's
 3 estate should pay all claims in the order set forth above, and
 4 if the decedent's estate is insufficient to pay the claims in
 5 any one class, the claims in that class shall be paid pro rata.

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

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

11	Name and	Place of	Age of
12	Relationship	Residence	minor child

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

15 (b) The award allowable to the surviving spouse of a
 16 decedent who was an Illinois resident is \$..... (\$20,000,
 17 plus \$10,000 multiplied by the number of minor children and
 18 adult dependent children who resided with the surviving spouse
 19 at the time of the decedent's death. If any such child did not
 20 reside with the surviving spouse at the time of the decedent's
 21 death, so indicate).

22 (c) If there is no surviving spouse, the award allowable to
 23 the minor children and adult dependent children of a decedent
 24 who was an Illinois resident is \$..... (\$20,000, plus
 25 \$10,000 multiplied by the number of minor children and adult

1 dependent children), to be divided among them in equal shares.
 2 If there is no surviving spouse and there are minor children,
 3 the affiant must be a court appointed guardian for one or more
 4 of the children. If this provision applies, the date of the
 5 court order making this appointment was, and I have
 6 attached a copy of the court order.

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

Name, relationship	Age of	Portion of
and place of residence	minor	Estate
OR		

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

Name, relationship	Age of	Portion of
and place of residence	minor	Estate

25 (Strike either 10(a) or 10(b)).

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

3 10.1. I,(the affiant) state that I am the
4 surviving spouse and the decedent and I resided together as
5 husband and wife and we were not legally separated, or
6 otherwise separated, at the time of decedent's death.

7 10.2. I, (the affiant) state that my
8 relationship to the decedent is and (check
9 all that apply):

10 ... there is no surviving spouse; or

11 ... there is a surviving spouse, but the surviving spouse is:

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

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

24

25 Attached is a statement of the surviving spouse in which
26 the surviving spouse expressly declines or states that he or

1 she refuses to prepare the small estate affidavit or expressly
 2 requests that the affiant prepare the small estate affidavit.
 3 This statement must be signed by the surviving spouse,
 4 witnessed by 2 persons unrelated to the affiant, and be
 5 notarized.

6 ~~10.3. My relationship to the decedent or the decedent's~~
 7 ~~estate is as follows:~~

8 10.5. (The following paragraph should appear in bold type
 9 and in not less than 14-point font):

10 I understand that the decedent's estate must be
 11 distributed first to satisfy claims against the decedent's
 12 estate as set forth in paragraph 7.5 of this affidavit
 13 before any distribution is made to any heir or legatee. By
 14 signing this affidavit, I agree to indemnify and hold
 15 harmless all creditors of the decedent's estate, the
 16 decedent's heirs and legatees, and other persons,
 17 corporations, or financial institutions relying upon this
 18 affidavit who incur any loss because of reliance on this
 19 affidavit, up to the amount lost because of any act or
 20 omission by me. I further understand that any person,
 21 corporation, or financial institution recovering under
 22 this indemnification provision shall be entitled to
 23 reasonable attorney's fees and the expenses of recovery.

24 11. After payment by me from the decedent's estate of all
 25 debts and expenses listed in paragraph 7, any remaining
 26 property described in paragraph 6 of this affidavit should be

1 distributed as follows:

2	Name	Specific sum or property to be distributed
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3 The foregoing statement is made under the penalties of
4 perjury* .

5

6 Signature of Affiant

7 Signed and sworn before me on (insert date) .

8

9 Notary Public

10 *(Note: A fraudulent statement made under the penalties of
11 perjury is perjury, as defined in Section 32-2 of the Criminal
12 Code of 2012.)

13 (c) Appointment of Agent. If safe deposit access is
14 involved or if sale of any personal property is desirable to
15 facilitate distribution pursuant to the small estate
16 affidavit, the affiant under the small estate affidavit may in
17 writing appoint one or more persons as the affiant's agent for
18 that purpose, provided that the writing contains the signature
19 of each person, is witnessed by 2 persons unrelated to the
20 affiant and is notarized, and also shows the written consent of
21 the surviving spouse and all adult children. The agent shall
22 have power, without court approval, to gain access to, sell,

1 and distribute the property in the manner specified in
2 paragraphs 7.5 and 11 of the affidavit; and the payment,
3 delivery, transfer, access or issuance shall be made or granted
4 to or on the order of the agent. The affiant may appoint
5 himself or herself as the designated representative to exercise
6 the powers and perform the duties of an agent described in this
7 subsection (c).

8 (d) Reliance and Release. Any person, corporation, or
9 financial institution who, upon examination and approval of all
10 documents presented by the affiant with this small estate
11 affidavit, acts in good faith reliance on a copy of a document
12 purporting to be a small estate affidavit that is substantially
13 in compliance with subsection (b) of this Section shall be
14 fully protected and released upon payment, delivery, transfer,
15 access or issuance pursuant to such a document to the same
16 extent as if the payment, delivery, transfer, access or
17 issuance had been made or granted to the representative of the
18 estate. Such person, corporation, or financial institution is
19 not required to see to the application or disposition of the
20 property; but each person to whom a payment, delivery,
21 transfer, access or issuance is made or given is answerable
22 therefor to any person having a prior right and is accountable
23 to any representative of the estate.

24 (e) Distributions pursuant to an affidavit substantially
25 in the form set forth in subsection (b) of this Section may be
26 made to the affiant, if so specified in paragraph 11,

1 notwithstanding the disclosure of known unpaid debts. The
2 affiant, acting on behalf of the decedent's estate, is
3 obligated to pay all valid claims against the decedent's estate
4 before any distribution is made to any heir or legatee. The
5 affiant signing the small estate affidavit prepared pursuant to
6 subsection (b) of this Section shall indemnify and hold
7 harmless all creditors, heirs, and legatees of the decedent and
8 other persons, corporations, or financial institutions relying
9 upon the affidavit who incur loss because of such reliance.
10 That indemnification shall only be up to the amount lost
11 because of the act or omission of the affiant. Any person,
12 corporation, or financial institution recovering under this
13 subsection (e) shall be entitled to reasonable attorney's fees
14 and the expenses of recovery.

15 (f) The affiant of a small estate affidavit who is a
16 non-resident of Illinois submits himself or herself to the
17 jurisdiction of Illinois courts for all matters related to the
18 preparation or use of the affidavit. The affidavit shall
19 provide the name, address, and phone number of a person whom
20 the affiant names as his agent for service of process. If no
21 such person is named or if, for any reason, service on the
22 named person cannot be effectuated, the clerk of the circuit
23 court of the county or judicial circuit of which the decedent
24 was a resident at the time of his death shall be the agent for
25 service of process.

26 (g) Any action properly taken under this Section, as

1 amended by Public Act 93-877, on or after August 6, 2004 (the
2 effective date of Public Act 93-877) is valid regardless of the
3 date of death of the decedent.

4 (h) The changes made by this amendatory Act of the 96th
5 General Assembly apply to a decedent whose date of death is on
6 or after the effective date of this amendatory Act of the 96th
7 General Assembly.

8 (i) The changes made by this amendatory Act of the 98th
9 General Assembly apply to a decedent whose date of death is on
10 or after the effective date of this amendatory Act of the 98th
11 General Assembly.

12 (Source: P.A. 97-1150, eff. 1-25-13; 98-836, eff. 1-1-15.)