

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, 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 shall pay the indebtedness, grant access to the safe deposit
17 box, deliver the personal estate or transfer or issue the
18 evidence of interest, indebtedness, property or right to
19 persons and in the manner specified in the affidavit or to an
20 agent appointed as hereinafter set forth.

21 (a-5) The small estate affidavit set forth in subsection
22 (b) may be used to transfer personal property in a decedent's
23 estate if:

(1) no letters of office are outstanding on the
decedent's estate and no petition for letters is
contemplated or pending in this State or in any other
jurisdiction; and

(2) the decedent's personal estate passing to any party by intestacy or under a will is limited to:

(A) excluding motor vehicles registered with the Secretary of State, tangible and intangible personal property not exceeding \$150,000; and

(B) motor vehicles registered with the Secretary
of State.

For purposes of this Section, if the small estate affidavit as set forth in subsection (b) is being used solely for a title transaction with the Secretary of State for the transfer of the decedent's motor vehicles, it may be used to transfer those motor vehicles in accordance with subsection (b) of Section 3-114 of Illinois Vehicle Code without consideration of the value of the decedent's personal estate.

(b) Small Estate Affidavit

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

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

(b) My residence address is: _____; and

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

1 is:

2 NAME.....

3 ADDRESS.....

4 CITY.....

5 TELEPHONE (IF ANY).....

6 I understand that if no person is named above as my agent for
7 service or, if for any reason, service on the named person
8 cannot be effectuated, the clerk of the circuit court of
9(County) (Judicial Circuit) Illinois is recognized by
10 Illinois law as my agent for service of process.

11 2. The decedent's name is ;

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

14 4. The decedent's place of residence immediately before
15 his death was ;

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

20 6. (a) Excluding motor vehicles registered with the
21 Secretary of State, the decedent's entire personal estate ~~The~~
22 ~~gross value of the decedent's entire personal estate,~~
23 ~~including the value of all property~~ passing to any party
24 either by intestacy or under a will, ~~7~~ does not exceed \$150,000
25 ~~\$100,000~~. (Here, list each asset, e.g., cash, stock, and its
26 fair market value.); and

1 (b) Any motor vehicles registered with the Secretary of
2 State in the decedent's entire personal estate passing to any
3 party either by intestacy or under a will. (Here, list a
4 description of each motor vehicle by make, body type, year,
5 and vehicle identification number.);

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

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

11 Class 1: funeral and burial expenses, which include
12 reasonable amounts paid for a burial space, crypt, or
13 niche; a marker on the burial space; and care of the burial
14 space, crypt, or niche; expenses of administration; and
15 statutory custodial claims as follows:

16

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

19

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

21

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

26

1 Class 5: money and property received or held in trust by
2 the decedent which cannot be identified or traced, as
3 follows:

4

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

8

9 Class 7: all other claims, as follows:

10

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

12 7.5. I understand that all valid claims against the
13 decedent's estate described in paragraph 7 must be paid by me
14 from the decedent's estate before any distribution is made to
15 any heir or legatee. I further understand that the decedent's
16 estate should pay all claims in the order set forth above, and
17 if the decedent's estate is insufficient to pay the claims in
18 any one class, the claims in that class shall be paid pro rata.

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

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

24 Name and	Place of	Age of
25 Relationship	Residence	minor child

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

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

10 (c) If there is no surviving spouse, the award allowable
11 to the minor children and adult dependent children of a
12 decedent who was an Illinois resident is \$..... (\$20,000,
13 plus \$10,000 multiplied by the number of minor children and
14 adult dependent children), to be divided among them in equal
15 shares.

16 10. (a) The decedent left no will. The names, places of
17 residence and relationships of the decedent's heirs, and the
18 portion of the estate to which each heir is entitled under the
19 law where decedent died intestate are as follows:

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

23 (b) The decedent left a will, which has been filed with the
24 clerk of an appropriate court. A certified copy of the will on
25 file is attached. To the best of my knowledge and belief the
26 will on file is the decedent's last will and was signed by the

1 decedent and the attesting witnesses as required by law and
2 would be admissible to probate. The names and places of
3 residence of the legatees and the portion of the estate, if
4 any, to which each legatee is entitled are as follows:

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

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

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

10 10.3. My relationship to the decedent or the decedent's
11 estate is as follows:

12 10.5. (The following paragraph should appear in bold type
13 and in not less than 14-point font):

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

this indemnification provision shall be entitled to reasonable attorney's fees and the expenses of recovery.

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

[illegible]

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

.....

Signature of Affiant

Signed and sworn before me on (insert date).

.....

Notary Public

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

(c) Appointment of Agent. If safe deposit access is involved or if sale of any personal property is desirable to facilitate distribution pursuant to the small estate affidavit, the affiant under the small estate affidavit may in writing appoint one or more persons as the affiant's agent for

1 that purpose. The agent shall have power, without court
2 approval, to gain access to, sell, and distribute the property
3 in the manner specified in paragraphs 7.5 and 11 of the
4 affidavit; and the payment, delivery, transfer, access or
5 issuance shall be made or granted to or on the order of the
6 agent. The affiant may appoint himself or herself as the
7 designated representative to exercise the powers and perform
8 the duties of an agent described in this subsection (c).

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

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

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

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

25 (g) Any action properly taken under this Section, as
26 amended by Public Act 93-877, on or after August 6, 2004 (the

1 effective date of Public Act 93-877) is valid regardless of
2 the date of death of the decedent.

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

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

11 (j) The changes made by this amendatory Act of the 104th
12 General Assembly apply to a decedent whose date of death is on
13 or after the effective date of this amendatory Act of the 104th
14 General Assembly.

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

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.