

Small Estate Law

"Elvis has left the building."

-- Announcement by Horace Logan, radio producer (1916-2002) at the end of the Elvis Presley concert in Shreveport, Louisiana on December 12, 1956. (Fred R. Shapiro, editor of "The Yale Book of Quotations," notes this became a regular closing line at Elvis Presley's concerts and is now "a phrase connoting finality.")

When a Tennessee resident dies and leaves property totaling \$25,000 or less, then the 'Small Estate law' may apply. Here is information about this helpful law.

Q. What is the small estate law?

Tennessee's small estate law makes it simpler and less expensive for heirs to obtain the property of the deceased person without full probate proceedings. The law applies whether the deceased person left a will or not, but there are certain conditions.

Q. What is the dollar limit for a small estate?

"Estate" means the belongings of a deceased person. Under Tennessee law, "small estate" means that the value of the personal property of the estate is \$25,000 or less.

"Personal property" basically includes all belongings other than real estate or land. It includes insurance on the deceased person's life that is payable to the estate. It does not include insurance payable to beneficiaries other than the estate. It also does not include personal property held jointly with right of survivorship, such as many joint bank accounts.

Q. Is it necessary to hire a lawyer?

No. Each county probate court clerk (often the Chancery Court Clerk & Master) has a free form that can be used. The form is a fill-in-the-blank affidavit. The person who files it must sign before a notary and confirm that it is true and correct.

Q. What is the process for starting a small estate?

1. The heir or next of kin usually waits 45 days (or less, if allowed by the court). The small estate procedure may be used when:

(A) No other person has filed a petition to probate the will or administer the estate if there is no will, and

(B) The estate of the decedent is a small estate (\$25,000 or less).

2. A filing fee is paid to the probate court in the county where the deceased person legally resided.
3. An affidavit is filed to show:
 - (A) Whether there is a will (if so, it must be attached);
 - (B) A list of the unpaid debts which shows amounts and creditors;
 - (C) An itemized description of the property;
 - (D) A list of the persons having possession of any of the property;
 - (E) All insurance payable to the estate;
 - (F) A list of the persons entitled to receive any of the property; and
 - (G) Whether the person signing the affidavit will give notice to creditors through newspaper publication.

Q. Who can file to administer a small estate?

1. An adult designated in the will;
2. If no will, an heir or next of kin;
3. Any competent adult accepted by those named in the will or the heirs or next of kin; or
4. The largest creditor of the estate.

The court may require a bond to be filed, unless a will waives the bond or the person filing the affidavit is the sole heir. The bond is discharged when a state tax receipt or commissioner's certificate is issued and when another affidavit shows that each debt is paid.

by Jim Hawkins, Managing Attorney, Gallatin office, Legal Aid Society

Note: This column is not intended to take the place of legal advice. All cases are different and need individual attention. Consult with a private attorney of your choice to review the facts and law specific to your case.

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