

## SMALL ESTATE AFFIDAVITS

Here are some common questions we frequently hear regarding small estates or transferring assets that have little value:

What if a person dies and only has a few assets?

What is considered a “small estate” in Kansas?

What value does an estate have to have before probate is required?

What do we do when a person dies and all of his or her property transfers by some recognized non-probate transfer, such as through a revocable living trust, beneficiary designations or joint tenancy with the right of survivorship, with the exception of a small account or personal property that has very little value?

When is probate administration required?

In an attempt to answer these questions, we often explain to clients that probate administration of assets of a decedent is required when one or more assets of the decedent are in the decedent’s name and there is no other way recognized by law to transfer title and ownership without obtaining a court order. The process we then go to is known as probate. However, there are various forms of probate administration. The two most common probate administration proceedings are Formal Administration and Simplified Administration. In these two proceedings the District Court issues a document referred to as either “Letters Testamentary” (if there was a will) or “Letters of Administration” (if there was no will) to the person or entity authorized to represent the estate. However, when the size of the estate is limited or small, there are other options.

First of all, probate administration is not required when assets can be transferred at death through recognized non-probate transfers such as joint tenancy with the right of survivorship, beneficiary designations (including Pay on Death-POD, Transfer on Death –TOD), and through distribution from a revocable living trust that has been funded.

However, there are probate and statutory procedures available that do not require formal administration or simplified administration of an estate when these recognized non-probate transfers have not been accomplished. They are:

1. Informal Administration
2. Determination of Descent
3. Refusal to Grant Letters
4. Affidavit Showing Entitlement (sometimes referred to as a small estate affidavit)

The first three require some form of pleading and filing in the District Court. The last, small estate affidavit, does not.

A brief summary of each is as follows:

1. **Informal Administration:** The petition must specifically describe all assets, the proposed distribution, whether or not there was a will, how debts will be satisfied, how income will be applied or distributed, a request that someone be authorized to carry out the court's order, and an explanation why Informal Administration is Appropriate.
2. **Determination of Descent:** In this case the decedent must have been dead for more than 6 months, no will has been filed, no other proceeding begun, and the petition must set forth what property is in the name of the decedent and who the heirs at law are. This is typically used to deal with title to real estate, although it can be used for personal property.
3. **Refusal to Grant Letters:** This proceeding requires a petition to be filed in the District Court. This proceeding only applies in two situations, and they are (1) if the value of the property of the estate does not exceed \$25,000 in value, there is a surviving spouse and/or minor children, and the value of the property does not exceed the amount of exempt property or family allowance to which they would be entitled, or (2) the value of the property of the estate does not exceed \$25,000 and such exemptions or allowances are waived or there is not a surviving spouse or minor children.
4. **Small Estate Affidavit:** This relates to the transfer of personal property, such as investment accounts, bank accounts, stock related investments, and the value of the assets which would otherwise be subject to probate do not exceed \$20,000. An affidavit showing entitlement and providing a discharge of liability pursuant to K.S.A. 59-1507b may be provided without any pleading being filed in the District Court.

Please consult with a knowledgeable attorney if you have questions or concerns about these issues or any issues relating to estate planning or elder law.

We hope that you find this information helpful.

**Tim J. Larson, JD, PA has offices in Wichita, Kansas. Tim J. Larson and Logan M. Brown are members of Wealth Counsel, the Wichita Estate Planning Council, and *e.Planners*, a select group of nationally known and recognized Estate-planning Attorneys.**