

51 Flavors

A Survey of Small Estate Procedures Across the Country

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Properly navigating a probate administration in any one state can be challenging enough, but often the client's estate—and the attorney's practice—is not so neatly confined within one state's boundaries. Fortunately, for certain types of assets and smaller estates, clients can avoid full probate proceedings and, in some states, any court involvement whatsoever. This article and the accompanying chart of state-by-state options seek to provide a starting point for attorneys who find their clients' assets in unfamiliar territory.

The 50 states plus the District of Columbia generally implement one or both of two procedures for handling and disposing of assets in small estates: (1) a summary administrative procedure, whereby the personal representative must receive court approval to gather and distribute assets ("Summary Administration"); and (2) an independent affidavit procedure, whereby an appropriate person can prepare an affidavit to directly collect and distribute money or property owned by the decedent ("Affidavit Procedure"). In the simplest terms, Summary Administration requires court formalities *before* collecting assets, but the Affidavit Procedure requires *no* court action, that is, it is a self-executing affidavit. Another major point of distinction between the states is the maximum dollar amount, or "cap," under which an estate can qualify for a small estate procedure. Although these major distinctions are apparent, each state's experimentations have produced numerous fine distinctions—the 51 flavors of small estate administration.

Key Distinction: Court Administration vs. Self-Executing Affidavit

The key distinction among the states (including the District of Columbia) is a 17/34 split as to whether a person *must* go to court to collect any and all types of probate assets or whether individuals can gather at least some assets without court approval. Almost every state has a Summary Administration procedure as an alternative to full probate; the distinction here is whether such a court procedure is the *only* method available to collect the assets of a small estate.

Must Go to Court—Summary Administration. In 17 states, Summary Administration in court is the only available small estate procedure. In other words, an individual must go to court before receiving the assets in question. Some of these states give effect to an affidavit upon a clerk's approval, but others require a judge's approval. Others do not allow an affidavit procedure at all, instead facilitating property and title transfers via court orders or letters. The states in which Summary Administration is

the only available small estate procedure are as follows: Alabama, Arkansas, Connecticut, District of Columbia, Florida, Kentucky, Maryland, Missouri, New Hampshire, New Jersey, New York, Ohio, Rhode Island, Tennessee, Texas, Vermont, and West Virginia.

Some Assets Available Before Going to Court—Affidavit Procedure. A total of 34 states have some variation of an Affidavit Procedure allowing a person to directly change title or collect property *without a court order or approval*. With some exceptions, the individual can use an affidavit without ever filing in court. Attorneys should note that a waiting period—typically 30 to 60 days from death—must elapse before an affidavit can be used. Many jurisdictions provide forms. Most, but not all, Affidavit Procedure states follow the Uniform Probate Code. These 34 states can be further divided, as follows:

- **Pure Affidavit States:** These 26 states allow an affidavit for a wide variety of assets, including any personal property and, in some cases, real property. These states are clearly the least restrictive in the nation, though the cap on such estates varies widely, from \$10,000 to \$100,000. (Alaska, Arizona, California, Colorado, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Carolina, South Dakota, Utah, Virginia, Washington, and Wisconsin.)
- **Affidavit Anomalies:** Eight more states allow some variation on the ability to collect assets without court approval. Five of these states do not fit neatly in either category: Louisiana (affidavit only allowed if intestate); Massachusetts (affidavit must be filed with court); Oregon (affidavit effective 10 days after filing in court); North Carolina (affidavit only allowed if intestate and after delivery to the court); and Wyoming (affidavit must be filed with court). The other three states allow affidavits or independent re-titling, but only for a limited class of assets: Georgia (bank account up to \$10,000); Oklahoma (bank account up to \$20,000); and Pennsylvania (bank account up to \$10,000, \$5,000 in wages, and \$11,000 in life insurance).

Hybrid Approach—Affidavit or Summary Administration, Based on Size of Estate. Many of the Affidavit Procedure states use a multi-tier approach, allowing self-executing affidavits for smaller estates and Summary Administration for mid-sized estates (for example, Iowa, \$25,000/\$100,000, and Minnesota, \$50,000/\$100,000). This approach maintains some level of court (and attorney) oversight for mid-sized estates—typically \$25,000 to \$100,000—without requiring full probate. As a result, courts are only involved when the costs of administration can be better absorbed by the estate, while the smallest transfers of probate assets can occur by an Affidavit Procedure.

Maximum Value of the Estate

Summary Administration and Affidavit Procedures are only available for small estates, but what constitutes “small” is a matter of distinction among the states.

States’ maximum values (“caps”) for small estate procedures range from \$10,000 to \$275,000. The most common amounts are either \$100,000 (10 states) or in the \$30,000 to \$50,000 range (18 states). Utah has a cap of \$100,000, but it also allows re-titling of four automobiles, boats, trailers, or semi-trailers, regardless of value. Some states have not increased their caps for decades. Two states (Alabama and

Michigan) allow the caps to increase based on inflation. The advantage of a cap indexed for inflation is that the figure is never antiquated; however, it also produces odd figures, along with the requirement for practitioners to “re-learn” the figure each year.

Some states (Oregon, Nebraska, Arizona, and California, to name a few) create caps that vary based on the type of property at issue. For example, Arizona allows an Affidavit Procedure for up to \$75,000 in personal property or \$100,000 in real estate. See Ariz. Rev. Stat. § 14-3971. Oregon has the nation’s largest total cap at \$275,000, but that includes a cap of only \$75,000 for personal property and \$200,000 for real property, and Oregon requires the affidavit to be filed in court before it becomes effective. See Or. Rev. Stat. § 114.505–114.560. Again, the majority of states do not allow small estate procedures for real estate.

Some caps vary based on whether the spouse is the sole heir. For example, Maryland sets its cap at \$50,000, but the cap is \$100,000 if the spouse is the sole heir. See Md. Est. & Trusts Code §§ 5-601–5-607.

Rather than provide a dollar amount for small estates, numerous states allow the Summary Administration procedure “where the value of the estate does not exceed homestead and other allowances,” which typically includes family allowance, administration, funeral expenses, and medical expenses of the last illness.

Publication Requirement

The vast majority of states do not require a published notice for Summary Administration (many require direct notice to known creditors, which is at least arguably a constitutional due process requirement to bind known creditors). Only about five states require publication for all estates.

Policy Considerations

A variety of factors and policy choices are involved in a state’s choice of small estate procedures. Although the overriding goal may seem simple—to get a relatively small amount of assets into the hands of heirs with minimal cost and delay—the means of reaching that goal carry implications for beneficiaries, creditors, attorneys, and the courts.

Perhaps the greatest state interest is in protecting against improper distribution of assets. Because every state provides for some type of small estate procedure, it is fundamental that each state intends to accept some risk of improper administration in exchange for reducing the costs and burden of handling an estate. The question, then, is not *if* a state will accept risk, but *how much*.

The two ends of the risk spectrum can be expressed simply: A low dollar cap with more procedural requirements will prevent a greater number of frauds, but a high cap with less red tape will allow more fraud. But even though a low dollar cap may prevent a *greater number* of frauds, this greater number is of *smaller dollar amounts*. A state’s broad interest is in preventing improper administration. The involvement of attorneys and judges indeed adds protection against fraud or negligent failure to follow the law and notify creditors. But at some dollar amount, the protections are not worth the costs.

Another state interest is in relieving the burden on the courts. A full probate proceeding typically lasts at least six months, and often years. Summary Administration, particularly in a state that requires publication, commonly lasts at least six months. Summary Administration reduces the courts' dockets compared to full probate proceedings, but only the Affidavit Procedure takes those cases out of the court system altogether.

Finally, attorney involvement is an important factor in some states. Certain states explicitly require small estates to hire an attorney. Others do so implicitly: although some individuals may be comfortable filing their matter in court without representation, very few would be comfortable drafting or handling a publication notice. On the one hand, the additional costs of an attorney, publication, and bond (depending on the jurisdiction) may consume a relatively large share of the assets that would otherwise go to beneficiaries or creditors. On the other hand, attorney involvement should help ensure proper distribution of the assets, which may be particularly desirable for decedents without wills.

Conclusion

Because of the many competing policy goals regarding small estate procedures, states have developed a wide range of options and limitations for collecting assets without full probate proceedings, and some without any court involvement. Very few states deal with small estates identically, however. Attorneys and clients should be aware that simplified proceedings are available in all states, but they should nevertheless proceed with caution, as "simplified" does not mean "simple." n

STATE	SUMMARY ADMINISTRATION and/or AFFIDAVIT	STATUTE—SUMMARY ADMINISTRATION	\$ CAP FOR SUMMARY ADMINISTRATION	WHO CAN OPEN SUMMARY ADMINISTRATION	STATUTE—AFFIDAVIT	\$ CAP FOR AFFIDAVIT	WHO CAN SIGN AFFIDAVIT
ALABAMA	Court only (affidavit requires judge order)	Ala. Code §§ 43-2-690–696	\$25,000 (plus inflation adjustment)	Spouse then Distributees	n/a	n/a	n/a
ALASKA	Both	Alaska Stat. §§ 13.16.690–695	Exemptions > assets	P.R.	Alaska Stat. §§ 13.16.680–685	\$100,000 vehicles and \$50,000 other pers. prop.	Successor(s)
ARIZONA	Both	Ariz. Rev. Stat. §§ 14-3973–3974	Exemptions > assets	P.R.	Ariz. Rev. Stat. §§ 14-3971–3972	\$75,000 pers. prop./\$100,000 real prop.	Successor(s)
ARKANSAS	Court only (affidavit requires court filing)	Ark. Code §§ 28-41-101–102	\$100,000	Distributee	n/a	n/a	n/a
CALIFORNIA	Affidavit only (summary court proceedings only for limited purposes)	Cal. Prob. Code §§ 13150–13158	\$150,000 (only if real prop. included in estate)	Successor	Cal. Prob. Code §§ 13100–13116	\$150,000 (real prop. & pers. prop.)	Successor/Any authorized party
COLORADO	Both	Colo. Rev. Stat. §§ 15-12-1203–1205	Exemptions > assets	P.R.	Colo. Rev. Stat. §§ 15-12-1201–1202	\$60,000	Any interested party
CONNECTICUT	Court only (affidavit requires judge order)	Conn. Gen. Stat. §§ 45a-273–277	\$40,000	Spouse then next of kin then interested party	n/a	n/a	n/a
DELAWARE	Affidavit only	n/a	n/a	n/a	12 Del. Code §§ 2306–2307	\$30,000	P.R./Trustee/Spouse/Descendant/Executor/Funeral Director
D.C.	Court only (affidavit only for automobiles)	D.C. Code §§ 20-351–355	\$40,000	P.R.	D.C. Code §§ 20-357	Vehicles only	Surviving joint owner
FLORIDA	Court only (other affidavit requires court order)	Fla. Stat. §§ 735.201–2063	\$75,000	Beneficiary/P.R.	Fla. Stat. § 735.301	Exempt pers. prop. or pers. prop. < funeral and hospital expenses	Any interested party— Requires court approval
GEORGIA	Court only (except affidavit for bank account up to \$10,000)	Ga. Code Ann. §§ 53-2-40–42	Any amount, if all creditors and heirs consent	All heirs (via P.R.)	Ga. Code Ann. § 7-1-239	\$10,000 in bank acct.	Spouse, children, heirs
HAWAII	Both	Haw. Rev. Stat. §§ 560:3-1203–1205	Exemptions > assets	P.R.	Haw. Rev. Stat. §§ 560:3-1201–1202	\$100,000 plus vehicles	Successor(s)
IDAHO	Both	Idaho Code §§ 15-3-1203–1205	Exemptions > assets	P.R.	Idaho Code §§ 15-3-1201–1202	\$100,000	Successor(s)

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ILLINOIS	Affidavit only	n/a	n/a	n/a	755 Ill. Comp. Stat. § 5/25-1	\$100,000	Any interested party
INDIANA	Both	Ind. Code §§ 29-1-8-3-4	\$50,000	P.R.	Ind. Code §§ 29-1-8-1-2, 4,5	\$50,000	Claimant
IOWA	Both	Iowa Code §§ 635.1, et seq.	\$100,000	P.R.	Iowa Code § 633.356	\$25,000	Successor(s)
KANSAS	Both	Kan. Stat. Ann. § 59-1507	Exemptions > assets	Executor/Administrator	Kan. Stat. Ann. § 59-1507b	\$40,000	Successor(s)
KENTUCKY	Court only	Ky. Rev. Stat. § 395.455	Exemptions > assets	Spouse/P.R.	n/a	n/a	n/a
LOUISIANA	Both (affidavit only allowed if intestate)	La. Code. Civ. Proc. art. 3001, et seq.	Any amount, if all heirs consent and no debts	n/a	La. Code Civ. Proc. art. 3421, et. seq.	\$75,000 (only allowed if intestate)	Pub. Admin./Two heirs
MAINE	Both	Me. Rev. Stat. tit. 18-A, §§ 3-120-1204	Exemptions > assets	P.R.	Me. Rev. Stat. tit. 18-A, §§ 3-1201-1202	\$20,000	Successor(s)
MARYLAND	Court only	Md. Code Ann., Est. & Trusts §§ 5-601-607	\$50,000/\$100,000 if spouse is sole heir	Heir/P.R./Any interested party	n/a	n/a	n/a
MASSACHUSETTS	Both (but affidavit must be filed in court)	Mass. Gen Laws. ch. 190B, §§ 3-1203-1204	Exemptions > assets	P.R.	Mass. Gen Laws. ch. 190B, §§ 3-1201-1202	\$25,000	Any interested party
MICHIGAN	Both	Mich. Comp. Laws §§ 700.3982, et seq.	\$15,000 (plus inflation adjustment)	P.R.	Mich. Comp. Laws §§ 700.3983-3984	\$15,000 (plus inflation adjustment)	Spouse/Heir
MINNESOTA	Both	Minn. Stat. §§ 524.3-1203-1204	\$100,000	Any interested party	Minn. Stat. §§ 524.3-1201-1202	\$50,000	Successor(s)
MISSISSIPPI	Affidavit only	n/a	n/a	n/a	Miss. Code Ann. § 91-7-322	\$50,000	Successor(s)/Heir
MISSOURI	Court only ("affidavit" requires court filing)	Mo. Rev. Stat §§ 473.097, .100, .107	\$40,000	Distributees	n/a	n/a	n/a

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MONTANA	Both	Mont. Code Ann. §§ 72-3-1103–1104	Exemptions > assets	P.R.	Mont. Code Ann. §§ 72-3-1101–1102	\$50,000	Successor(s)
NEBRASKA	Both	Neb. Rev. Stat. §§ 30-24,127–128	Exemptions > assets	P.R.	Neb. Rev. Stat. §§ 30-24,125–126, 129–130	\$30,000 for real estate/ \$50,000 for pers. prop. and automobiles	Successor(s)
NEVADA	Both	Nev. Rev. Stat. § 146.070	\$100,000	Any interested party	Nev. Rev. Stat. § 146.080	\$20,000	Successor(s)/Public administrator
NEW HAMPSHIRE	Court only (affidavit requires judge approval)	N.H. Rev. Stat. §§ 553:33	Any amount, if no debts and all legatees assent	Administrator	n/a	n/a	n/a
NEW JERSEY	Court only (affidavit requires court filing)	N.J. Stat. §§ 3B:10-3–4	\$20,000 if spouse, \$10,000 if heir	Spouse/Heir	n/a	n/a	n/a
NEW MEXICO	Both	N.M. Stat. §§ 45-3-1203–1204	Exemptions > assets	P.R.	N.M. Stat. §§ 45-3-1201–1202, 1205–1206	\$50,000/home- stead	Successor(s)
NEW YORK	Court only (affidavit requires court filing)	N.Y. Surr. Ct. Pro. §§ 1301–1312	\$30,000	Spouse/Heirs/Creditors	n/a	n/a	n/a
NORTH CAROLINA	Both (but affidavit only allowed if intestate and must be delivered to court)	N.C. Gen. Stat. §§ 28A-28-1–7	Available only to spouse if sole heir	Spouse	N.C. Gen. Stat. §§ 28A-25-1–7	\$30,000 if sole spouse, \$20,000 otherwise (only allowed if intestate)	Spouse/Heirs
NORTH DAKOTA	Both	N.D. Cent. Code §§ 30.1-23-03–05	Exemptions > assets	P.R.	N.D. Cent. Code §§ 30.1-23-01–02	\$50,000	Successor(s)
OHIO	Court only	Ohio Rev. Code §§ 2113.01–.14	\$35,000, or \$100,000 if spouse is sole heir or sole devisee survives	Any interested party	n/a	n/a	n/a
OKLAHOMA	Court only, except affidavit OK for \$20,000 bank account only	Okla. Stat. tit. 58, §§ 241–247	\$150,000	P.R.	Okla. Stat. tit. 6, § 906	\$20,000, bank acct. only	Heirs
OREGON	Both (but affidavit must be filed in court)	Or. Rev. Stat. §§ 114.550–.560	\$75,000 pers. prop. & \$200,000 real prop. (\$275,000 total)	Successor(s)/P.R./State medical agencies	Or. Rev. Stat. §§ 114.505–.545	Same	Same

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PENNSYLVANIA	Court, but affidavits allowed for certain assets	20 Pa. Cons. Stat. Ann. §§ 3101–3102	\$50,000	Any interested party	20 Pa. Cons. Stat. Ann. § 3101	\$11,000 life ins., \$5,000 wages, \$10,000 banks and patient accts.	Heirs
RHODE ISLAND	Court only (affidavit requires court filing)	R.I. Gen. Laws §§ 33-24-1–2	\$15,000	Any interested party	n/a	n/a	n/a
SOUTH CAROLINA	Both	S.C. Code §§ 62-3-1203–1204	\$25,000	P.R./Sole heir	S.C. Code §§ 62-3-1201–1202	\$25,000	Successor(s)
SOUTH DAKOTA	Affidavit only	n/a	n/a	n/a	S.D. Codified Laws §§ 29A-3-1201–1202	\$50,000	Successor(s)
TENNESSEE	Court only (except wages up to \$10,000)	Tenn. Code §§ 30-4-101–105	\$25,000	Any interested party, with consent of all next of kin	Tenn. Code § 30-2-103	n/a (except wages up to \$10,000)	Spouse/Children
TEXAS	Court only (affidavit requires judge approval)	Tex. Est. Code §§ 205.001–.008	\$50,000 (pers. prop. & “Homestead” if only real prop. in estate)	Heirs	n/a	n/a	n/a
UTAH	Both	Utah Code §§ 75-3-1203–1204	Exemptions > assets	P.R.	Utah Code §§ 75-3-1201–1202	\$100,000; and 4 automobiles/boats/trailers	Successor(s)
VERMONT	Court only	14 Vt. Stat. Ann. §§ 1901–1903	\$10,000	Administrator or Executor	n/a	n/a	n/a
VIRGINIA	Both	Va. Code. § 64.2-602	\$15,000	Successor(s)	Va. Code § 64.2-601	\$50,000	Successor(s)
WASHINGTON	Affidavit only	n/a	n/a	n/a	Wash. Rev. Code §§ 11.62.010–.020	\$100,000	Successor(s)
WEST VIRGINIA	Court only	W. Va. Code §§ 44-3A-5	\$100,000, or unlimited if PR/spouse is sole beneficiary	P.R./Spouse if sole beneficiary	n/a	n/a	n/a
WISCONSIN	Both	Wis. Stat. §§ 876.01–.02	\$50,000 or if exemptions > assets	Any person named in will; Any interested party	Wis. Stat. § 867.03	\$50,000	Heir/Guardian/Trustee
WYOMING	Both (but affidavit must be filed with county clerk)	Wyo. Stat. § 2-1-205	\$200,000	Distributees	Wyo. Stat. § 2-1-201	\$200,000	Distributees