

PROBATE 101:
AFFIDAVIT COLLECTION OF PERSONAL PROPERTY
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Horry County Judge of Probate

Quite often a person passes away and owns very little property. They don't own a home or any land. Maybe they just have a small checking account at their local bank or maybe a savings account. Or, maybe they have a final paycheck that their family wants to pick up from their employer or they're due a capital credits check from HTC.

Often these are people who died too young with little time to acquire and accumulate any amount of wealth or property, or maybe they're an elderly person who disposed of all of their assets and property during their lifetime and was living in a nursing home when they died. Or they could be a person of modest or perhaps moderate means that happened to plan well enough so that all of their property passed outside of probate except for one or two items that must now be dealt with by the family. Even though these people may not have owned very much when they died or had very little property or assets in their name at their death, their family is still entitled to what they had and what they're due, and our Probate Code makes it easy for their family to get this property.

The South Carolina Probate Code allows a deceased person's family to collect a limited amount of property on behalf of the deceased person and distribute it to those persons, usually family members, entitled under law to such property. This collection can be accomplished without going through probate administration in our Probate Court and without appointing a personal representative to collect, handle or retitle such property. This collection procedure is called "Affidavit Collection of Personal Property" and is available under the following conditions:

- (1) The total value of the deceased person's "**probate property**" (less liens and encumbrances) does not exceed \$10,000 and does not include any real estate (remember, most jointly owned property with rights of survivorship is non-probate property and most beneficiary designated property such as life insurance, IRAs and annuities is also considered non-probate);
- (2) Thirty (30) days has passed since the person's death; and
- (3) No personal representative has previously been appointed by the Probate Court (and no application or petition for appointment of a personal representative is pending in the Court).

If all of these conditions are met, those persons entitled to the deceased person's property under their Last Will and Testament (or by state law if such person died without a Will) may collect and divide the deceased person's probate property using the Affidavit Collection of Personal Property procedure. This procedure requires the following:

- (1) The filing of a written Affidavit (Form #420 PC) in the Probate Court in the county of the deceased person's residence attesting to the truth of the conditions listed above, along with a copy of such person's death certificate and, if applicable, original Last Will and Testament;
- (2) Having the Affidavit approved and countersigned by the Probate Judge of such county; and
- (3) Presenting a copy of such filed and countersigned Affidavit to the person or entity having possession of such deceased person's tangible personal property or having possession of any instrument evidencing a debt, obligation, stock, etc. belonging to the deceased person.

Upon being presented with an Affidavit, the person having possession of such deceased person's tangible personal property or an instrument evidencing a debt, obligation, stock, etc. is directed by the Affidavit (and by our Probate Code) to make payment of the debt or obligation or deliver such property to the person(s) indicated in the Affidavit who are entitled to such property.

This procedure can be used to obtain the deceased person's bank account balance, final paycheck, refunds due, investment accounts balances, and other types of intangible personal property or monies due or payable to such deceased person. In addition, our Code also specifically provides that this Affidavit procedure can be used to change the registered ownership of any security on the books of a corporation. It may also be used under certain circumstances to retitle a vehicle with the S.C. Department of Motor Vehicles (although the Department of Motor Vehicles has their own form called an Affidavit of Inheritance of a Vehicle that might work instead).

The persons entitled to the deceased person's property under the Affidavit of Collection are determined based upon whether the deceased person had a Last Will and Testament. If there is a Will, then those persons named as beneficiaries under the Will would be entitled to the property; provided that the Will must be filed or probated in the Probate Court along with the Affidavit. If the deceased person died without a Will, then his family or legal heirs would be entitled to his property in accordance with state law.

This procedure for the collection of personal property is most often available without having to go through a complete probate administration. It is an invaluable method of collecting small amounts of personal property that can be accomplished quickly with little paperwork. I encourage anyone who can, to take

advantage of this Affidavit Collection of Personal Property procedure. It's simple, inexpensive, and quick, and it may be all that you need. *(The information provided in this article is for informational purposes only and is of a general nature. The information should not be construed as legal advice. If you have any questions about the subject matter of this article or related matters, you should consult with a professional advisor for advice. The Horry County Probate Court is located in the Horry County Government and Judicial Center, 1301 2nd Avenue, Conway, South Carolina. The telephone number for Judge Edmonds and the Court is (843) 915-5370. Office Hours are 8:00 A.M. to 5:00 P.M. The Horry County Probate Court also has a satellite office located in Little River at the Ralph Ellis Building, 107 Highway 57 North, Little River, South Carolina 29566. The telephone number is (843) 399-5533. Hours are 8:00 A.M. to 12:30, 1:30 P.M. to 5:00 P.M., Monday until 4:00 P.M.)*