

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 and adding Section 11-13.4 as follows:

6 (755 ILCS 5/11-13.4 new)

7 Sec. 11-13.4. Financial institution; guardianship accounts
8 established on behalf of minors.

9 (a) If an account at a financial institution is a
10 guardianship account established on behalf of a minor, the
11 terms of the account must provide for compliance with orders of
12 the court, if any, regarding the establishment and management
13 of that account. A financial institution has a duty to inquire
14 as to the existence of any court orders when opening a
15 guardianship account on behalf of a minor. If the financial
16 institution holds an account that is subject to a court order,
17 the financial institution must obtain a court order granting
18 the authority to release funds from the account. An order
19 authorizing the disbursement of funds in the account may be
20 granted only upon a showing of good cause.

21 (b) A guardian of a minor that establishes an account with
22 a financial institution on behalf of the minor pursuant to a
23 court order has a duty to present the court order to the

1 financial institution at the time the account is opened.

2 (c) As used in this Section, "financial institution"
3 includes, but is not limited to, a bank, credit union,
4 investment company, savings bank, savings and loan
5 association, securities dealer, and trust company.

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, ~~or~~ corporation, or financial
10 institution (1) indebted to or holding personal estate of a
11 decedent, (2) controlling the right of access to decedent's
12 safe deposit box or (3) acting as registrar or transfer agent
13 of any evidence of interest, indebtedness, property or right is
14 furnished with a small estate affidavit in substantially the
15 form hereinafter set forth, that person, ~~or~~ corporation, or
16 financial institution, upon examining and approving the
17 documents presented by the affiant which are attached to the
18 small estate affidavit, shall pay the indebtedness, grant
19 access to the safe deposit box, deliver the personal estate or
20 transfer or issue the evidence of interest, indebtedness,
21 property or right to persons and in the manner specified in
22 paragraph 11 of the affidavit or to an agent appointed as
23 hereinafter set forth.

24 (a-5) A person, corporation, or financial institution may
25 not pay the indebtedness, grant access to the safe deposit box,

1 deliver the personal estate, or transfer or issue the evidence
 2 of interest, indebtedness, property or right as provided in
 3 subsection (a) of this Section, unless the affiant, or his or
 4 her agent, has first obtained a court order as provided in this
 5 subsection (a-5). A judge shall grant an order under this
 6 subsection (a-5) if the affiant presents: (i) the small estate
 7 affidavit; (ii) evidence of notice having been given to the
 8 heirs or legatees identified in paragraph 10 of the affidavit;
 9 and (iii) a petition asking the court to find that the
 10 affidavit does not appear to have been fraudulently executed
 11 and to grant access to property in the manner specified in
 12 paragraph 11 of the affidavit. A person, corporation, or
 13 financial institution has a duty to inquire as to the existence
 14 of any court orders before taking action under this Section.

(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 is:

NAME.....

ADDRESS.....

CITY.....

TELEPHONE (IF ANY).....

1 I understand that if no person is named above as my agent for
 2 service or, if for any reason, service on the named person
 3 cannot be effectuated, the clerk of the circuit court of
 4(County) (Judicial Circuit) Illinois is recognized by
 5 Illinois law as my agent for service of process.

6 2. The decedent's name is ;

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

9 4. The decedent's place of residence immediately before his
 10 death was ;

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

15 6. The gross value of the decedent's entire personal
 16 estate, including the value of all property passing to any
 17 party either by intestacy or under a will, does not exceed
 18 \$100,000. (Here, list each asset, e.g., cash, stock, and its
 19 fair market value.);

20 7. (a) All of the decedent's burial and funeral expenses
 21 have been paid, or (b) The amount of the decedent's unpaid
 22 burial and funeral expenses, medical bills, credit card bills,
 23 and real property taxes and the name and post office address of
 24 each person entitled thereto are as follows:

25 Name and post office	Amount
-------------------------	--------

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

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

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

6	Name and Relationship	Place of Residence	Age of minor child
---	--------------------------	-----------------------	-----------------------

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

10 (b) The award allowable to the surviving spouse of a
11 decedent who was an Illinois resident is \$..... (\$20,000,
12 plus \$10,000 multiplied by the number of minor children and
13 adult dependent children who resided with the surviving spouse
14 at the time of the decedent's death. If any such child did not
15 reside with the surviving spouse at the time of the decedent's
16 death, so indicate).

17 (c) If there is no surviving spouse, the award allowable to
18 the minor children and adult dependent children of a decedent
19 who was an Illinois resident is \$..... (\$20,000, plus
20 \$10,000 multiplied by the number of minor children and adult
21 dependent children), to be divided among them in equal shares.
22 If there is no surviving spouse and there are minor children,
23 the affiant must be a court appointed guardian for one or more
24 of the children. If this provision applies, the date of the
25 court order making this appointment was, and I have

1 attached a copy of the court order.

2 10. (a) The decedent left no will. The names, places of
3 residence and relationships of the decedent's heirs, and the
4 portion of the estate to which each heir is entitled under the
5 law, after all just debts and expenses described in paragraph 7
6 are fully paid, where decedent died intestate are as follows:

7	Name, relationship	Age of	Portion of
8	and place of residence	minor	Estate
9		OR	

10 (b) The decedent left a will, which has been filed with the
11 clerk of an appropriate court. A certified copy of the will on
12 file is attached. To the best of my knowledge and belief the
13 will on file is the decedent's last will and was signed by the
14 decedent and the attesting witnesses as required by law and
15 would be admissible to probate. The names and places of
16 residence of the legatees and the portion of the estate, if
17 any, to which each legatee is entitled are as follows:

18	Name, relationship	Age of	Portion of
19	and place of residence	minor	Estate

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

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

23 10.1. I,(the affiant) state that I am the
24 surviving spouse and the decedent and I resided together as

1 husband and wife and we were not legally separated, or
2 otherwise separated, at the time of decedent's death.

3 10.2. I, (the affiant) state that my
4 relationship to the decedent is and (check
5 all that apply):

6 ... there is no surviving spouse; or

7 ... there is a surviving spouse, but the surviving spouse is:

8 ... unable to prepare the small estate affidavit for
9 medical reasons as shown by the attached letter of a physician
10 for the surviving spouse, based upon the physician's
11 examination of the surviving spouse within 90 days prior to the
12 date of the affidavit, attesting to and describing this
13 disabling medical condition; or

14 ... has declined, refused, or asked affiant to prepare the
15 small estate affidavit. The reason that the affiant has
16 prepared this small estate affidavit rather than the surviving
17 spouse is that (state here the precise time, date, and
18 circumstances of the surviving spouse declining, refusing, or
19 asking affiant to prepare the small estate affidavit):

20

21 Attached is a statement of the surviving spouse in which
22 the surviving spouse expressly declines or states that he or
23 she refuses to prepare the small estate affidavit or expressly
24 requests that the affiant prepare the small estate affidavit.
25 This statement must be signed by the surviving spouse,
26 witnessed by 2 persons unrelated to the affiant, and be

1 notarized.

2 11. The property described in paragraph 6 of this affidavit
3 should be distributed, after all just debts and expenses
4 described in paragraph 7 are fully paid, as follows:

5	Name	Specific sum or property to be distributed
---	------	--

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

8	
9		Signature of Affiant

10 *(Note: A fraudulent statement made under the penalties of
11 perjury is perjury, as defined in Section 32-2 of the Criminal
12 Code of 1961.)

13 (c) Appointment of Agent. If safe deposit access is
14 involved or if sale of any personal property is desirable to
15 facilitate distribution pursuant to the small estate
16 affidavit, all persons named in paragraph 11 of the small
17 estate affidavit (excluding minors and unascertained or
18 disabled persons) may in writing appoint one or more persons as
19 their agent for that purpose, provided that the writing
20 contains the signature of each person, is witnessed by 2
21 persons unrelated to the affiant and is notarized, and also
22 shows the written consent of the surviving spouse and all adult
23 children. The agent shall have power, without court approval,
24 to gain access to, sell, and distribute the property for the

1 benefit of all persons named in paragraph 11 of the affidavit;
2 and the payment, delivery, transfer, access or issuance shall
3 be made or granted to or on the order of the agent.

4 (d) Release. Upon examination and approval of all documents
5 presented by the affiant with this small estate affidavit,
6 payment, delivery, transfer, access or issuance pursuant to a
7 properly executed affidavit, the person, ~~or~~ corporation, or
8 financial institution is released to the same extent as if the
9 payment, delivery, transfer, access or issuance had been made
10 or granted to the representative of the estate. Such person, ~~or~~
11 corporation, or financial institution is not required to see to
12 the application or disposition of the property; but each person
13 to whom a payment, delivery, transfer, access or issuance is
14 made or given is answerable therefor to any person having a
15 prior right and is accountable to any representative of the
16 estate.

17 (e) The affiant signing the small estate affidavit prepared
18 pursuant to subsection (b) of this Section shall indemnify and
19 hold harmless all creditors and heirs of the decedent and other
20 persons relying upon the affidavit who incur loss because of
21 such reliance. That indemnification shall only be up to the
22 amount lost because of the act or omission of the affiant. Any
23 person recovering under this subsection (e) shall be entitled
24 to reasonable attorney's fees and the expenses of recovery.

25 (f) The affiant of a small estate affidavit who is a
26 non-resident of Illinois submits himself or herself to the

1 jurisdiction of Illinois courts for all matters related to the
2 preparation or use of the affidavit. The affidavit shall
3 provide the name, address, and phone number of a person whom
4 the affiant names as his agent for service of process. If no
5 such person is named or if, for any reason, service on the
6 named person cannot be effectuated, the clerk of the circuit
7 court of the county or judicial circuit of which the decedent
8 was a resident at the time of his death shall be the agent for
9 service of process.

10 (g) Any action properly taken under this Section, as
11 amended by Public Act 93-877, on or after August 6, 2004 (the
12 effective date of Public Act 93-877) is valid regardless of the
13 date of death of the decedent.

14 (h) The changes made by this amendatory Act of the 96th
15 General Assembly apply to a decedent whose date of death is on
16 or after the effective date of this amendatory Act of the 96th
17 General Assembly.

18 (Source: P.A. 96-968, eff. 7-2-10.)