

INSTRUCTIONS FOR COMPLETING WISCONSIN'S TRANSFER BY AFFIDAVIT (\$50,000 gross and under)

WHEN YOU MAY USE THE TRANSFER BY AFFIDAVIT ("Affidavit"):

Pursuant to §867.03, Wis. Stats., when a deceased person ("decedent") dies with Wisconsin property subject to probate administration which does not exceed \$50,000 in gross value, a person entitled to sign the Affidavit (as set forth below) (the "Affiant") may collect, receive, and have the decedent's interest in property transferred to the Affiant. **By accepting the decedent's property, the Affiant assumes a duty to pay the decedent's debts and distribute any balance to the decedent's beneficiaries designated in the appropriate governing instrument (such as a will) or, if the decedent did not have a will or other governing instrument, to the decedent's heirs (as set forth below).**

WHAT PROPERTY MAY BE TRANSFERRED USING THE TRANSFER BY AFFIDAVIT:

All property which would otherwise be subject to a probate administration. This includes real property (an interest in real estate) and non-real property. Examples of non-real property which may be transferred using the Affidavit include, but are not limited to, interests in the following: a bank account, a certificated or uncertificated security, promissory note, digital property as defined in §711.03(10), Wis. Stats., and property that would otherwise be distributed to the decedent's estate via beneficiary designation.

WHO MAY BE AN AFFIANT AND SIGN THE AFFIDAVIT:

If the Affidavit is being used to transfer the decedent's interest in real estate or evidence of interest, obligation to, or right of the decedent in real estate (i.e. a mortgagee's interest or lien), then the Affiant must be: (i) an heir of the decedent (as set forth below), (ii) a trustee of a revocable trust created by the decedent, or (iii) a person who was guardian of the decedent at the time of the decedent's death.

If the Affidavit is being used to transfer the decedent's interest in only non-real property, then the Affiant must be: (i) an heir of the decedent (as set forth below), (ii) a trustee of a revocable trust created by the decedent, (iii) a person who was guardian of the decedent at the time of the decedent's death, or (iv) a person named in the decedent's will to act as personal representative.

WHO IS AN HEIR:

Section 852.01, Wis. Stats. defines who is an heir. See the Affidavit of Heirship form included as an addendum to the Affidavit form for additional help in determining a decedent's heir(s).

NOTICE TO THE STATE OF WISCONSIN:

If the decedent and/or the decedent's spouse ever received any of the services specified below, then the Affiant must send a copy of the Affidavit by certified mail, return receipt requested, to the Estate Recovery Program for the State of Wisconsin, Department of Health Services, along with proof of the certified mail delivery showing the delivery date, prior to furnishing the Affidavit to any party holding property of the decedent included in the Affidavit or recording the Affidavit with the Register of Deeds Office in any county in which an interest in real estate or a lien on real estate included in the Affidavit is located. The services are:

- Medical Assistance/Medicaid
- Family Care and/or Partnership benefits (through a Managed Care Organization)
- Community Options Program
- Wisconsin Chronic Disease Program
- Patient or inmate of a state or county hospital or institution, or responsible for any person owing an obligation to the state or county

Address for Estate Recovery Program:

Wisconsin Department of Health Services
Estate Recovery Program
P.O. Box 309
Madison, WI 53701-0309

NOTICE TO DECEDENT'S HEIRS (30-DAY NOTICE FOR REAL ESTATE):

If the Affiant is transferring the decedent's interest in real estate, or a lien on real estate, then the Affiant must first provide the following to the decedent's heirs at least 30 days before recording the Affidavit with the Register of Deeds Office in each county in which the subject real estate is located: (i) a copy of the Affidavit (including the Affidavit of Heirship and Affidavit of Service or Waiver of Notice forms), and (ii) notice that the Affiant intends to record the Affidavit with the Register of Deeds Office in each county in which the subject real estate is located. Notice to the decedent's heirs must be given by either: (i) certified mail, return receipt requested or (ii) personal service (see §867.03(1p), Wis. Stats.).

WHAT TO DO WITH THE AFFIDAVIT:

If the Affiant is not transferring the decedent's interest in real estate, or a lien on real estate, then, after complying with any required notice to the State of Wisconsin, Department of Health Services Estate Recovery Program, the Affiant may furnish the Affidavit to any party holding property of the decedent included in the Affidavit to implement the transfer(s) to the Affiant. NOTE: if the Affiant is a person named in the decedent's will to act as personal representative, the holder of the decedent's property may not transfer the property included in the Affidavit until 30 days after the day on which the Affidavit is received. If, within such 30-day period, the holder of the decedent's property receives an Affidavit for the same decedent from another person, then the holder is prohibited from transferring the decedent's property unless ordered to do so by a court (see §867.03(1j), Wis. Stats.).

If the Affiant is transferring the decedent's interest in real estate, or a lien on real estate, then 30 days after the Affiant provides the required notice to the decedent's heirs (or earlier if all of the heirs waive notice), and after complying with any required notice to the State of Wisconsin, Department of Health Services Estate Recovery Program, the Affiant may record the Affidavit with the Register of Deeds Office in each county in which the subject real estate is located. The recording of the Affidavit transfers the decedent's interest in the real estate (including lien rights) to the Affiant. NOTE: the Register of Deeds may require additional documentation, including a completed Wisconsin Electronic Real Estate Transfer Receipt (see §867.03(1p), Wis. Stats.).

OBLIGATIONS OF AFFIANT:

By signing the Affidavit, the Affiant is certifying that the contents of the Affidavit are true and correct, that the Affiant will pay the debts of the decedent according to Wisconsin law, and that the Affiant will distribute any balance to those persons designated in the appropriate governing instrument (such as a will), or if none, to the decedent's heirs.

MORE QUESTIONS?

The transfer by affidavit form and related instructions are not a substitute for legal advice. Please contact your attorney if you have any questions about how to complete this form.

REMINDER: If transferring an interest in real estate, do you have all attachments to submit to the Register of Deeds?

- Affidavit of Heirship
- Affidavit of Service OR Waiver of Notice
- If required, proof of Certified Mail Delivery to Estate Recovery Program showing the delivery date
- Legal Description of the real estate to be transferred
- Completed Wisconsin Electronic Real Estate Transfer Receipt

This form is maintained by the Real Property, Probate, and Trust Section of the State Bar of Wisconsin.