

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
BEFORE THE SPECIAL MASTER**

ELOUISE PEPION COBELL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	1:96CV01285 (TFH)
)	
Sally Jewell, Secretary of the Interior, et al.,)	
)	
Defendants.)	
)	

**UNOPPOSED MOTION TO PERMIT THE USE OF SMALL ESTATE
PROCEDURES FOR THE DISTRIBUTION OF
SETTLEMENT PROCEEDS TO ESTATES AND
HEIRS OF DECEASED CLASS MEMBERS**

Plaintiffs, in accordance with the *Order Granting Unopposed Motion to Modify Distribution of Settlement Proceeds to Estates and Heirs of Deceased Class Members* dated June 19, 2013 [Dkt. No. 3958] (“*Estate Distribution Order*”), hereby move the Special Master, without opposition from Defendants, for an order permitting use of the small estate procedures in the States of Arizona, Arkansas, California, Colorado, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wisconsin for the distribution of Historical Accounting and Trust Administration payments to the estates and heirs of deceased Class Members. In support thereof, plaintiffs respectfully show as follows:

1. On December 11, 2012, the district court ordered that distributions to the estates and heirs of deceased Class Members be made as follows:

For deceased members of the Historical Accounting Class, payment shall be made payable to the estate of the deceased beneficiary and delivered to the personal representative, administrator or executor of the estate of that beneficiary, where known, or payable to the heirs of the deceased beneficiary pursuant to an available final probate order of a state or tribal court. Where there is no known personal representative, administrator or executor of the estate of a deceased beneficiary and no available final probate order of a state or tribal court, the deceased beneficiary's payment shall remain in the Settlement Account at the Qualified Bank until further order of the Court or Special Master.

(See Order [Dkt. No. 3923] ¶ 2.)

2. To date, there have been approximately 1,205 payments to the estates of deceased Historical Accounting Class Members (or to the heirs of those Class Members) pursuant to the district court's orders. There remain approximately 38,220 deceased Historical Accounting Class Members for whom no distribution has been made. This is due principally to the absence of state or tribal probates for many deceased Class Members, as non-trust assets for these Class Members may be minimal and the only probate is the federal probate for distribution of trust assets. The cost and procedural requirements for opening a state or tribal probate in order to receive the settlement payment is a deterrent for many heirs of Class Members.

3. The district court, in its *Estate Distribution Order*, determined that with respect to the estates of those deceased members of the Historical Accounting and Trust Administration Classes for which there was no personal representative, executor or administrator, and where there existed no state or tribal probate order, "payments shall be made by [The Garden City Group, Inc. ("GCG"), the Claims Administrator] in accordance with orders of the Special Master as he may determine in his discretion, including using

procedures under applicable state or tribal law for small estates and federal probate orders for the disposition of trust property.” (*See Estate Distribution Order* [Dkt. No. 3958] ¶ 2.)

4. In accordance with the *Estate Distribution Order*, the Plaintiffs respectfully request that, where GCG has not been notified by the heir or heirs of a deceased Class Member of the identity of a personal representative, executor or administrator of the Class Member’s estate, and has not been provided either a copy of the Class Member’s will which has been accepted for probate or a state or tribal probate order disposing of the assets of the Class Member, that it be allowed to distribute settlement payments owed to deceased members of the Historical Accounting and Trust Administration Classes, or to their heirs, in accordance with applicable state procedures for small estates. In particular, interest has been expressed by the heirs of deceased Class Members, or their representatives, in using affidavit or summary proceedings for small estates in the following states: Arizona, Arkansas, California, Colorado, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wisconsin. The cost of using these procedures is substantially less than formal state probate proceedings. The following is a summary of these procedures by state:

ARIZONA

Arizona has special procedures for the administration of small estates where the value of the personal property does not exceed \$50,000 (\$75,000 effective September 13, 2013).¹

¹ Arizona Senate Bill 1232 (*see* Exhibit 1), increasing the amount for collection of personal property by affidavit to \$75,000, was signed into law on April 16, 2013. S. 1232, 51st Leg., 1st Reg. Sess. (Ariz. 2013). It is effective 91 days after the end of the legislative session that enacted it. Ariz. Const. art. 4, pt. 1, § 1(3) (“[N]o act passed by the legislature shall be operative for ninety days after the close of the session of the legislature enacting such measure, except such as require earlier operation to preserve the public peace, health, or safety, or to provide appropriations for the support and maintenance of the departments of the state and of state institutions.”). That session adjourned June 14, 2013, making the effective date September 13, 2013.

Ariz. Rev. Stat. Ann. § 14-3971 (B)(2)(a)–(b) (2012). *See* Exhibit 1 for the relevant Arizona statutes. A successor in interest may collect a deceased person’s personal property on presentation of an affidavit at least 30 days after the decedent’s death. The successor in interest must represent in the affidavit that:

1. Thirty days have elapsed since the death of the decedent.
2. Either:
 - (a) An application or petition for the appointment of a personal representative is not pending and a personal representative has not been appointed in any jurisdiction and the value of all personal property in the decedent’s estate, wherever located, less liens and encumbrances, does not exceed fifty thousand dollars [(\$75,000 on September 13, 2013)] as valued as of the date of death.
 - (b) The personal representative has been discharged or more than one year has elapsed since a closing statement has been filed and the value of all personal property in the decedent’s estate, wherever located, less liens and encumbrances, does not exceed fifty thousand dollars [(\$75,000 on September 13, 2013)] as valued as of the date of the affidavit.
3. The claiming successor is entitled to payment or delivery of the property.

Id. § 14-3971(B).

An affidavit for personal property is presented directly to the person possessing the property. That person has no duty to inquire about the affidavit’s validity and, upon delivery, is discharged and released to the same extent as if he or she had dealt with the personal representative. *Id.* § 14-3972(A) (2013). If the person in possession of the decedent’s personal property refuses to deliver it, the affiant can bring a proceeding to compel payment, or delivery. *Id.* The affiant, upon delivery, is responsible to the personal representative, should one be appointed, or to any other person having a superior right. *Id.*²

² Arizona also provides for summary procedures for small estates where a personal representative is appointed if the value of the entire estate, less liens and encumbrances, does not exceed the homestead allowance, exempt property,

ARKANSAS

Arkansas provides for collection of small estates by a distributee where:

(1) no petition for appointment of a personal representative is pending or has been granted;

(2) 45 days has elapsed since the decedent's death;

(3) the value of the estate, less encumbrances and the homestead and statutory allowances for the benefit of the spouse or minor children, does not exceed \$100,000;

(4) an affidavit of one or more of the distributees is filed with the probate clerk in the county of proper venue stating there are no unpaid claims against the decedent and no pending rights to reimbursement from the Department of Human Services, and setting forth an itemized description and valuation of personal property, a legal description and valuation of any real property, the names and addresses of persons possessing the decedent's personal property or residing on any of the decedent's real property, and the names and addresses and the relationships to the decedent of the persons entitled to and who will receive the property; and,

(5) a copy of the affidavit, certified by the clerk, is provided to the person having custody of property of the decedent.

See Ark. Code Ann. § 28-41-101(a)(1)–(5) (2011). *See* Exhibit 2 for the relevant Arkansas statutes. The cost of filing the affidavit is \$25 and certified copies cost \$5 each. *Id.* § 28-41-

family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent. Ariz. Rev. Stat. Ann. § 14-3973 (2013).

101(b)(1)(B). No court order or other proceeding is required, nor are additional fees charged if a will is attached to the affidavit. *Id.* § 28-41-101(b)(1)(C)–(D).³

A distributee can compel transfer of property by bringing an action if a person to whom an affidavit is delivered refuses to pay the funds or deliver the subject property. *Id.* § 28-41-102(c). The person making payment is released to the same extent as if made to a personal representative of the decedent and is under no obligation to verify the truth of the affidavit or to insure that the funds are properly applied. *Id.* § 28-41-102(a). The distributee is accountable to anyone with a prior right or any subsequently appointed personal representative. *Id.* § 28-41-102(b)(1).

If the court determines, with or without administration, upon petition of an interested person, that the personal property owned by the decedent at the time of his or her death does not exceed that to which any surviving spouse, or minor children, is allowed by law free of debt, then the court can enter an order vesting the entire estate in the surviving spouse and/or the minor children. *Id.* § 28-41-103(a).

CALIFORNIA

California permits transfer of estates by affidavit or declaration. If the gross value of the decedent's real and personal property in California, less certain exclusions, does not exceed \$150,000, and if 40 days have elapsed since the death of the decedent, the successor

³ Non-substantive changes were made to § 28-41-101(b)(1)(C)–(D) in Arkansas House Bill 1265, which was approved March 1, 2013. *See* H. 1265, 89th Gen. Assem., Gen. Sess. (Ark. 2013) (attached as part of Exhibit 2). More significant changes were made to provisions regarding real property which have no application here. However, the amendments are not effective until 90 days after adjournment of the session at which they were enacted. *Fulkerson v. Refunding Bd.*, 147 S.W.2d 980, 983 (Ark. 1941) (“In the absence of an emergency clause, it is expressly provided by Amendment No. 7 [of the Arkansas Constitution] that legislative Acts become effective ninety days after the adjournment of the session at which they were enacted, and until the expiration of that period they are inoperative, and confer no powers, even though the Referendum is not invoked against them.”). The Arkansas Legislature convened on January 14, 2013, and remains in session.

of the decedent may, without procuring letters of administration or awaiting probate of the will, do any of the following with respect to the property:

(a) collect any particular item of property that is money due the decedent;

(b) receive any particular item of property that is tangible personal property of the decedent; and

(c) have any particular item of property that is evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred, whether or not secured by a lien on real property.

See Cal. Prob. Code § 13100 (West 2012). *See* Exhibit 3 for the relevant California statutes.

To collect the decedent's property, an affidavit or a declaration under penalty of perjury under the laws of California shall be furnished to the holder of the decedent's property stating all of the following:

(1) the decedent's name;

(2) the date and place of the decedent's death;

(3) that at least 40 days have elapsed since the death of the decedent, as shown in a certified copy of the decedent's death certificate attached to the affidavit or declaration;

(4) either

(a) that no proceeding is now being or has been conducted in California for administration of the decedent's estate; or

(b) that the decedent's personal representative has consented in writing to the payment, transfer, or delivery to the affiant or declarant of the property described in the affidavit or declaration;

(5) that the current gross fair market value of the decedent's real and personal property in California, excluding the property described in Section 13050 of the California Probate Code, does not exceed \$150,000;

(6) a description of the property of the decedent that is to be paid or delivered to the affiant or declarant;

(7) the name of the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the described property;

(8) either:

(a) that the affiant or declarant is the successor of the decedent to the decedent's interest in the described property; or

(b) that the affiant or declarant is authorized under Section 13051 of the California Probate Code to act on behalf of the successor of the decedent with respect to the decedent's interest in the described property;

(9) that no other person has a superior right to the interest of the decedent in the described property;

(10) that the affiant or declarant requests that the described property be paid, delivered, or transferred; and

(11) that the affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Id. § 13101(a)(1)–(11). A certified copy of the decedent's death certificate shall be attached to the affidavit or declaration. *Id.* § 13101(d).

If the requirements are met, the person or persons executing the affidavit or declaration are entitled to have the property described in the affidavit or declaration paid or

delivered to them. *Id.* § 13105(a)(1). If the holder of the decedent's property refuses to pay or deliver the personal property to the successor of the decedent within a reasonable time, the successor may recover the property or compel its payment or delivery in an action brought for that purpose. *Id.* § 13105(b).

The person who receives the property is personally liable for the unsecured debts of the decedent to the extent provided in Section 13112. *Id.* § 13109. Additionally, each person to whom payment or delivery of the decedent's property is made is personally liable to the extent provided in Section 13112 to any person having a superior right by testate or intestate succession from the decedent. *Id.* § 13110(a). Any person who fraudulently secures the payment, delivery, or transfer of the decedent's property by affidavit or declaration is liable to the person having such a superior right for three times the fair market value of the property. *Id.* § 13110(b).

COLORADO

Colorado permits collection of personal property by affidavit. Ten or more days after the death of the decedent, any person indebted to the decedent or having possession of "any personal property, including but not limited to funds on deposit at any financial institution," shall pay such property to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor. Colo. Rev. Stat. Ann. § 15-12-1201(1) (West 2011).⁴ *See* Exhibit 4 for the relevant Colorado statutes. The affidavit shall state:

⁴ The language "any personal property, including but not limited to funds on deposit at any financial institution" was included in an amendment to § 15-12-1201 dated May 11, 2013, in Colorado Senate Bill 13-077. *See* S. 13-077, 69th Gen. Assem., 1st Reg. Sess. § 6 (Colo. 2013) (attached as part of Exhibit 4). The effective date of the amendment is 91 days after the legislature adjourned on May 9, 2013, which is August 8, 2013. *See id.* § 19.

(a) the fair market value of property owned by the decedent at the time of his or her death, less liens and encumbrances, does not exceed \$60,000;

(b) at least ten days have elapsed since the death of the decedent;

(c) no application for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(d) each claiming successor is entitled to payment or delivery of the property in the respective proportion set forth in such affidavit.

See. id. § 15-12-1201(1)(a)–(d).

If any person to whom an affidavit is delivered refuses to pay or deliver any personal property, it may be recovered or its payment or delivery in a proceeding brought for that purpose. *Id.* § 15-12-1202. The person making payment is released to the same extent as if made to a personal representative of the decedent and is under no obligation to verify the truth of the affidavit or to insure that the funds are properly applied. *Id.*⁵

MINNESOTA

Minnesota allows collection of personal property by affidavit. Thirty days after the death of a decedent, any person having possession of personal property shall make payment of or deliver the property to a person claiming to be a successor of the decedent upon being presented a certified death record of the decedent and an affidavit made by or on behalf of the successor. *See* Minn. Stat. Ann. § 524.3-1201(a) (West 2009). *See* Exhibit 5 for the relevant Minnesota statutes. The affidavit must state that:

⁵ Colorado also provides for summary procedures for small estates where a personal representative is appointed if the value of the entire estate, less liens and encumbrances, does not exceed the homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent. Colo. Rev. Stat. § 15-12-1203 (2013).

(1) the value of the entire probate estate, determined as of the date of death, including specifically any contents of a safe deposit box, less liens and encumbrances, does not exceed \$50,000;

(2) 30 days have elapsed since the death of the decedent or, in the event the property to be delivered is the contents of a safe deposit box, 30 days have elapsed since the filing of an inventory of the contents of the box;

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(4) if presented, by a state or county agency with a claim authorized by section 256B.15, to a financial institution with a multiple-party account in which the decedent had an interest at the time of death, the amount of the affiant's claim and a good faith estimate of the extent to which the decedent was the source of funds or beneficial owner of the account; and

(5) the claiming successor is entitled to payment or delivery of the property.

Id. § 524.3-1201(a)(1)–(5).

If any person to whom an affidavit is delivered refuses to pay or deliver any personal property, it may be recovered or its payment or delivery compelled in a proceeding brought for that purpose. *Id.* § 524.3-1202. The person making payment is released to the same extent as if made to a personal representative of the decedent and is under no obligation to verify the truth of the affidavit or to insure that the funds are properly applied. *Id.*

Minnesota also provides for summary proceedings for small estates in the absence of a personal representative. If, upon petition by an interested person, the court determines there is no need for appointment of a personal representative and the administration should be closed summarily as all the property in the estate is exempt from debts and charges in the

probate court, a distribution order may be entered. *See id.* § 524.3-1203 (Subd. 2). In addition, in any summary, special, or other administration in which it appears that the estate will not be exhausted in payment of the priority items enumerated in subdivisions 1 to 4 of Minn. Code Ann. § 524.3-1203, the estate may nevertheless be summarily closed without further notice, and the property assigned to the proper persons, if the gross probate estate, exclusive of any exempt homestead or other statutorily defined exempt property, does not exceed the value of \$100,000. *See id.* at Subd. 5. But if the closing and distribution of assets is made pursuant to the terms of a will, no decree shall issue until a hearing has been held for formal probate of the will. *Id.*

MONTANA

Montana provides for collection of personal property by affidavit. *See* Mont. Code Ann. § 72-3-1101 (2005). *See* Exhibit 6 for the relevant Montana statutes. One claiming to be a successor in interest to a decedent may present an affidavit to an obligor of the decedent stating that:

(1) the value of the entire estate, less liens and encumbrances, does not exceed \$50,000[, except that the Montana Department of Revenue may refund unclaimed property to a successor of the decedent if the value of the unclaimed property is \$5,000 or less regardless of the value of the estate]⁶;

(2) 30 days have passed since the decedent's death;

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

⁶ The provision regarding unclaimed property was added by Montana House Bill 89 on March 27, 2013, with an effective date of October 1, 2013. *See* H. 89, 2013 Leg., Reg. Sess. (Mont. 2013) (attached as part of Exhibit 6).

(4) the claiming successor is entitled to payment or delivery of the property.

Id. § 72-3-1101(1).

If any person to whom an affidavit is delivered refuses to pay or deliver any personal property, it may be recovered or its payment or delivery compelled in a proceeding brought for the purpose. *Id.* § 72-3-1102(2). The person making payment is released to the same extent as if made to a personal representative of the decedent and is under no obligation to verify the truth of the affidavit or to insure that the funds are properly applied. *Id.* § 72-3-1102(1).⁷

NEBRASKA

Nebraska allows collection of personal property by affidavit. Thirty days after the death of a decedent, any person indebted to the decedent or having possession of personal property belonging to the decedent shall make payment of the indebtedness or deliver the personal property upon being presented an affidavit made by or on behalf of the successor. Neb. Rev. Stat. § 30-24,125(a) (2013). *See* Exhibit 7 for the relevant Nebraska statutes. The affidavit shall state:

(1) the value of all of the personal property in the decedent's estate, less liens and encumbrances, does not exceed \$50,000;

(2) 30 days have elapsed since the death of the decedent as shown in a certified or authenticated copy of the decedent's death certificate attached to the affidavit;

(3) the claiming successor's relationship to the decedent or, if there is no relationship, the basis of the successor's claim to the personal property;

⁷ Montana also provides for summary procedures for small estates where a personal representative is appointed if the value of the entire estate, less liens and encumbrances, does not exceed the homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent. Mont. Code Ann. § 72-3-1103 (2013).

(4) the person or persons claiming as successors under the affidavit swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement may subject the person or persons to penalties relating to perjury under section 28-915;

(5) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(6) the claiming successor is entitled to payment or delivery of the property.

Id. § 30-24,125(a)(1)–(6).

If any person to whom an affidavit is delivered refuses to pay or deliver any personal property, it may be recovered or its payment or delivery compelled in a proceeding brought for that purpose. *Id.* § 30-24,126. The person making payment is released to the same extent as if made to a personal representative of the decedent and is under no obligation to verify the truth of the affidavit or to insure that the funds are properly applied. *Id.*⁸

NEVADA

Nevada permits collection of property in small estates by affidavit. Forty days after the death of the decedent, if a decedent leaves no real property, nor interest therein, nor mortgage or lien thereon, in Nevada, and the gross value of the decedent's property in Nevada, over and above any amounts due to the decedent for services in the Armed Forces of the United States, does not exceed \$20,000, a person who has a right to succeed to the property of the decedent pursuant to the laws of succession for a decedent who died intestate or pursuant to the valid will of a decedent who died testate, on behalf of all persons entitled

⁸ Nebraska also provides for summary procedures for small estates where a personal representative is appointed if the value of the entire estate, less liens and encumbrances, does not exceed the homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent. Neb. Rev. St. § 30-24,127 (2013).

to succeed, may collect any money due the decedent upon furnishing an affidavit. *See Nev. Rev. Stat. Ann. § 146.080(1)* (West 2013). *See Exhibit 8* for the relevant Nevada statutes.

The affidavit must state:

(a) the affiant's name and address, and that the affiant is entitled by law to succeed to the property claimed;

(b) the date and place of death of the decedent;

(c) that the gross value of the decedent's property in Nevada, except amounts due the decedent for services in the Armed Forces of the United States, does not exceed \$20,000, and that the property does not include any real property nor interest therein, nor mortgage or lien thereon;

(d) that at least 40 days have elapsed since the death of the decedent, as shown in a certified copy of the certificate of death of the decedent attached to the affidavit;

(e) that no petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(f) that all debts of the decedent, including funeral and burial expenses, and money owed to the Department of Health and Human Services as a result of the payment of benefits for Medicaid, have been paid or provided for;

(g) a description of the personal property and the portion claimed;

(h) that the affiant has given written notice, by personal service or by certified mail, identifying the affiant's claim and describing the property claimed, to every person whose right to succeed to the decedent's property is equal or superior to that of the affiant, and that at least 14 days have elapsed since the notice was served or mailed;

(i) that the affiant is personally entitled, or the Department of Health and Human Services is entitled, to full payment or delivery of the property claimed or is entitled to payment or delivery on behalf of and with the written authority of all other successors who have an interest in the property; and

(j) that the affiant acknowledges an understanding that filing a false affidavit constitutes a felony.

Id. § 146.080(2).

If the affiant submits an affidavit which does not meet the requirements of subsection 2 or which contains statements which are not entirely true, any money or property the affiant receives is subject to all debts of the decedent. *Id.* § 146.080(3)(a). Moreover, if the affiant fails to give notice to other successors, any money or property the affiant receives is held by the affiant in trust for all other successors who have an interest in the property. *Id.* § 146.080(3)(b). A person who receives an affidavit containing the information required by subsection 2 is entitled to rely on that information and is immune from civil liability for actions based on good faith reliance on the affidavit. *Id.* § 146.080(4).

Nevada also provides for summary procedures for estates. If the estate is less than \$100,000, after deducting any encumbrances, the estate must not be administered but must be set apart for the support of the surviving spouse or minor child or minor children, by order. *Id.* § 146.070(1). If there is no surviving spouse or minor child of the decedent and the gross value of a decedent's estate, after deducting any encumbrances, does not exceed \$100,000, upon good cause shown, the court shall order that the estate not be administered upon, but the whole estate be assigned according to statute, including payment for funeral expenses, among other things, with any balance remaining to those entitled to distribution under a will,

or if there is no will, pursuant to intestate succession. *Id.* § 146.070(2)(a)–(b). Proceedings must not begin until at least 30 days after the death of the decedent and must be originated by a petition containing:

- (a) a specific description of all the decedent's property;
- (b) a list of all the liens and mortgages of record at the date of the decedent's death;
- (c) an estimate of the value of the property;
- (d) a statement of the debts of the decedent so far as known to the petitioner; and
- (e) the names and residences of the heirs and devisees of the decedent and the age of any who is a minor and the relationship of the heirs and devisees to the decedent, so far as known to the petitioner.

Id. § 146.070(3).⁹

NORTH DAKOTA

North Dakota permits collection of personal property by affidavit. Thirty days after the death of a decedent, any person having possession of personal property shall make payment to or delivery of the property to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor. N.D. Cent. Code § 30.1-23-01 (2013). *See* Exhibit 9 for the relevant North Dakota statutes. The affidavit must state that:

- (a) the value of the entire estate subject to distribution or succession under chapters 30.1-01 through 30.1-23, less liens and encumbrances, does not exceed \$50,000;
- (b) thirty days have elapsed since the death of the decedent;

⁹ Certain amendments to this section were proposed on May 18, 2013, in Nevada Senate Bill 307. *See* S. 307, 77th Leg., Reg. Sess. (Nev. 2013). To date, this bill has passed only the Nevada Senate.

(c) an application or petition for the appointment of a personal representative is not pending or has not been granted in any jurisdiction; and

(d) the claiming successor is entitled to payment or delivery of the property.

Id. § 30.1-23-01(1)(a)–(d).

If any person to whom an affidavit is delivered refuses to pay, its payment may be compelled upon proof of the persons' right in a proceeding brought for the purpose. *Id.* § 30.1-23-02. The person making payment is released to the same extent as if made to a personal representative of the decedent and is under no obligation to verify the truth of the affidavit or to insure that the funds are properly applied. *Id.*

OKLAHOMA

Oklahoma allows payment or delivery of property to a successor by affidavit. Ten days after the date of death of a decedent, any person indebted to the decedent or having possession of personal property belonging to the decedent shall make payment of the indebtedness or shall deliver the personal property to a person claiming to be the successor of the decedent upon presentation of an affidavit. Okla. Stat. Ann. tit. 58, § 393(A) (West 2013). *See* Exhibit 10 for the relevant Oklahoma statutes. The affidavit made by or on behalf of the successor must state that:

(1) the fair market value of property located in Oklahoma owned by the decedent and subject to disposition by will or intestate succession at the time of the decedent's death, less liens and encumbrances, does not exceed \$20,000;

(2) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(3) each claiming successor is entitled to payment or delivery of the property in the respective proportions set forth in the affidavit; and

(4) all taxes and debts of the estate have been paid or otherwise provided for or are barred by limitations.

Id. § 393(A)(1)–(4).

The person making payment is released to the same extent as if made to a personal representative of the decedent and is under no obligation to verify the truth of the affidavit or to insure that the funds are properly applied. *Id.* § 394. An affiant can compel payment or delivery of property by bringing a lawsuit against a person who refuses to do so. *Id.*¹⁰

OREGON

Oregon allows collections for estates by affidavit where:

(1) the fair market value of the estate, without reduction for liens or other debts, is \$275,000 or less;

(2) no more than \$75,000 of the fair market value of the estate is attributable to personal property; and

(3) no more than \$200,000 of the fair market value of the estate is attributable to real property.

Or. Rev. Stat. Ann. § 114.515(2) (West 2013). *See* Exhibit 11 for the relevant Oregon statutes. The affiant may be :

(1) one or more of the claiming successors¹¹ of the decedent;

¹⁰ Where a personal representative is appointed, Oklahoma permits summary procedures for certain estates where the value of the estate does not exceed \$150,000. Okla. Stat. Ann. tit. 58, § 241 (West 2013).

¹¹ A “Claiming Successor” is defined as: the heir or heirs of the decedent if the decedent died intestate or if there is no heir, an estate administrator of the Department of State Lands; the devisee or devisees of the decedent if the decedent died testate; and any creditor of the estate entitled to payment or reimbursement from the estate who has

(2) if the decedent died testate, any person named as personal representative in the decedent's will; and

(3) under certain circumstances, the Director of Human Services, the Director of the Oregon Health Authority, or an attorney approved by statute.¹²

Id. § 114.515(1).

The affidavit must be filed with the clerk of the probate court in a county of proper venue and must request appointment of a personal representative for the estate. *Id.* It may not be filed until 30 days after the death of the decedent, *id.* § 114.515(3), and must:

(1) state the name, age, domicile, post-office address and Social Security number of the decedent;

(2) state the date and place of the decedent's death, with a certified copy of the death certificate¹³ attached to the affidavit;

(3) describe and state the fair market value of all property in the estate, including a legal description of any real property;

(4) state that no application for the appointment of a personal representative has been granted in Oregon;

(5) state whether the decedent died testate or intestate, and if the decedent died testate, attach the will to the affidavit;

not been paid or reimbursed the full amount owed within 60 days after the decedent's death. Or. Rev. Stat. Ann. § 114.505(2) (West 2013).

¹² One minor amendment to this section, having no application here, was passed by the Oregon House on May 28, 2013, in Oregon House Bill 2859. It has not been signed by the governor, but, if signed, it would become effective January 1, 2014. *See* H. 2859, 77th Leg. Assem., Reg. Sess. §§ 17, 105 (Or. 2013) (attached as part of Exhibit 11).

¹³ This section has been amended by Oregon House Bill 2093, replacing the word "certificate" with the word "record," effective January 1, 2014. *See* H. 2093, 77th Leg. Assem., Reg. Sess. §§ 60, 89 (Or. 2013) (attached as part of Exhibit 11).

(6) list the heirs of the decedent and the last address of each heir as known to the affiant, and state that a copy of the affidavit showing the date of filing and a copy of the will, if the decedent died testate, will be delivered to each devisee or mailed to the devisee at the last-known address;

(7) if the decedent died testate, list the devisees of the decedent and the last address of each devisee as known to the affiant and state that a copy of the will and a copy of the affidavit showing the date of filing will be delivered to each devisee or mailed to the heir at the last-known address;

(8) state the interest in property described in the affidavit to which each heir or devisee is entitled and the interest, if any, that will escheat;

(9) state that reasonable efforts have been made to ascertain creditors of the estate, with a list of the expenses of and claims against the estate remaining unpaid or on account of which the affiant or any other person is entitled to reimbursement from the estate, including the known or estimated amounts thereof and the names and addresses of the creditors as known to the affiant, and state that a copy of the affidavit showing the date of filing will be delivered to each creditor who has not been paid in full or mailed to the creditor at the last-known address;

(10) separately list the name and address of each person known to the affiant to assert a claim against the estate that the affiant disputes and the known or estimated amount thereof and state that a copy of the affidavit showing the date of filing will be delivered to each such person or mailed to the person at the last-known address;

(11) state that a copy of the affidavit showing the date of filing will be mailed or delivered to the Department of Human Services or to the Oregon Health Authority, as prescribed by rule by the authority; and

(12) state that claims against the estate not listed in the affidavit or in amounts larger than those listed in the affidavit may be barred unless:

(a) a claim is presented to the affiant within four months of the filing of the affidavit at the address stated in the affidavit for presentment of claims; or

(b) a personal representative of the estate is appointed within the time allowed pursuant to statute.

Id. § 114.525(1)–(12). If the affidavit lists one or more claims that the affiant disputes, the affidavit must also state that any such claim may be barred unless: (a) a petition for summary determination is filed within four months of the filing of the affidavit; or (b) a personal representative of the estate is appointed within the time allowed by statute. *Id.* § 114.525(13).

Ten days after the filing of an affidavit under Or. Rev. Stat. § 114.515, the affiant may deliver a certified copy of the affidavit to any person who was indebted to the decedent or who has possession of personal property belonging to the estate. Upon receipt of the copy, the person shall pay or deliver the personal property to the affiant. *Id.* § 114.535(1). A person that pays or delivers property of a decedent is discharged and released from liability or responsibility for the property in the same manner and with the same effect as if the property had paid or delivered to a personal representative of the estate. *Id.* § 114.535(4).

SOUTH DAKOTA

South Dakota permits collection of personal property by affidavit from a decedent's small estate. *See* S.D. Codified Laws § 29A-3-1201 (2013). *See* Exhibit 12 for the relevant South Dakota statutes. Thirty days after the death of a decedent, any person indebted to the decedent or having possession of personal property belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(1) the value of the entire estate, less liens and encumbrances, does not exceed \$50,000;

(2) thirty days have elapsed since the death of the decedent;

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(4) the decedent has not incurred any indebtedness to the South Dakota Department of Social Services for medical assistance for nursing home or other medical institutional care; and

(5) the claiming successor is entitled to payment or delivery of the property.

Id. § 29A-3-1201(a).

The person paying or delivering personal property pursuant to the affidavit is discharged and released just as if the person had dealt with a personal representative of the decedent, and is not required to see to the application of the personal property or to inquire into the truth of any statement in the affidavit. *Id.* § 29A-3-1202(a). If any person to whom an affidavit is delivered refuses to pay or deliver any personal property, it may be recovered

in a proceeding by or on behalf of the persons entitled to receive it upon proof of the facts required to be stated in the affidavit. *Id.* § 29A-3-1202(b). Any person to whom payment or delivery is made is liable and accountable therefor to any personal representative of the estate or to any other person having a superior right. *Id.* § 29A-3-1202(c). The affiant is responsible for seeing that the property is applied to liens and encumbrances, homestead allowance, exempt property, family allowance, funeral expenses, expenses of administration and creditor claims, as required by law, and that any remaining property is distributed to heirs and devisees. *Id.* § 29A-3-1202(d).

TEXAS

Texas allows for collection of small estates upon affidavit. Where a decedent dies intestate and the assets, exclusive of homestead and exempt property, exceed the known liabilities of the estate, exclusive of liabilities secured by homestead and exempt property, the distributees of the estate shall be entitled thereto, without awaiting the appointment of a personal representative, when:

(1) no petition for the appointment of a personal representative is pending or has been granted;

(2) 30 days have elapsed since the death of the decedent;

(3) the value of the entire assets of the estate, not including homestead and exempt property, does not exceed \$50,000;

(4) there is filed with the clerk of the court having jurisdiction and venue an affidavit sworn to by two disinterested witnesses, by all such distributees that have legal capacity, and, if warranted, by the natural guardian or next of kin of any minor or the guardian of any other

incapacitated person who is also a distributee, which affidavit shall be examined by the judge of the court having jurisdiction and venue;

(5) the affidavit shows the existence of the foregoing conditions and includes a list of all of the known assets and liabilities of the estate, the names and addresses of the distributees, and the relevant family history facts concerning heirship that show the distributees' rights to receive the money or property of the estate or to have such evidences of money, property, or other rights of the estate as are found to exist transferred to them as heirs or assignees;

(6) the judge, in his or her discretion, finds that the affidavit conforms to the terms of this section and approves the affidavit; and

(7) a copy of the affidavit, certified by the clerk, is furnished by the distributees of the estate to the person or persons owing money to the estate or having custody or possession of property of the estate.

Tex. Prob. Code Ann. § 137(a)(1)–(7) (Vernon 2013).¹⁴ See Exhibit 13 for the relevant Texas statute. This section does not affect disposition of property under a will. *Id.* § 137(b). If the judge approves the affidavit under this section, the affidavit is to be recorded as an official public record under Chapter 194, Local Government Code. *Id.* § 137(d).

UTAH

Utah permits collection of personal property by affidavit. Thirty days after the death of the decedent, any person indebted to or having personal property belonging to the decedent shall pay the indebtedness or deliver the personal property to a person claiming to

¹⁴ This section is being recodified, without substantive change, in § 205 of the Estates Code, enacted effective January 1, 2014, as part of the Texas Probate Code being repealed and the Estates Code being enacted. See Acts 2011, H. 2759, 82nd Leg., Reg. Sess., ch. 823 (Tex. 2011); Acts 2011, S. 1198, 82nd Leg., Reg. Sess., ch. 1338 (Tex. 2011); Acts 2009, H. 2502, 81st Leg., Reg. Sess., ch. 680 (Tex. 2009).

be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor. *See* Utah Code Ann. § 75-3-1201(1) (West 2013). *See* Exhibit 14 for the relevant Utah statutes. The affidavit must state that:

(a) the value of the entire estate subject to administration, wherever located, less liens and encumbrances, does not exceed \$100,000;

(b) 30 days have elapsed since the death of the decedent;

(c) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(d) the claiming successor is entitled to payment or delivery of the property.

Id. § 75-3-1201(1)(a)–(d).

If any person to whom an affidavit is delivered refuses to pay or deliver any personal property, it may be recovered or its payment compelled in a proceeding brought for that purpose. *Id.* at § 75-3-1202. The person making payment is released to the same extent as if made to a personal representative of the decedent and is under no obligation to verify the truth of the affidavit or to insure that the funds are properly applied. *Id.*¹⁵

WASHINGTON

Washington allows collection of small estates by affidavit where the estate is not valued in excess of \$100,000. Wash. Rev. Code Ann. § 11.62.010 (West 2013). *See* Exhibit 15 for the relevant Washington statutes. At any time after 40 days from the date of a decedent's death, any person who is indebted to or who has possession of any personal property belonging to the decedent or to the decedent and his or her surviving spouse or

¹⁵ Utah also provides for summary procedures for small estates where a personal representative is appointed if the value of the entire estate, less liens and encumbrances, does not exceed the homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent. Utah Code Ann. § 75-3-1203 (West 2013).

surviving domestic partner as a community, which debt or personal property is an asset which is subject to probate, shall pay such indebtedness or deliver such personal property, or so much of either as is claimed, to a person claiming to be a successor¹⁶ of the decedent upon receipt of proof of death and of an affidavit made by said person setting forth the following:

(a) the claiming successor's name and address, and that the claiming successor is a 'successor' as defined in Wash. Rev. Code § 11.62.005;

(b) that the decedent was a resident of the state of Washington on the date of his or her death;

(c) that the value of the decedent's entire estate subject to probate, not including the surviving spouse's or surviving domestic partner's community property interest in any assets which are subject to probate in the decedent's estate, wherever located, less liens and encumbrances, does not exceed \$100,000;

(d) that 40 days have elapsed since the death of the decedent;

(e) that no application for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(f) that all debts of the decedent, including funeral and burial expenses, have been paid;

(g) a description of the personal property and the portion thereof claimed, together with a statement that such personal property is subject to probate;

¹⁶ "Successor" is defined as one claiming under a will or, if there is no will, by intestate succession, the surviving spouse or domestic partner to the extent he or she is entitled to the property claimed as his or her undivided one-half interest in community property, under certain circumstances the department of social and health services to the extent of funds expended or paid, and the state with respect to escheat property. Wash. Rev. Code Ann. § 11.62.005(2)(a)(i)-(iv) (West 2013). Creditors are not included in the definition of a successor unless encompassed in § 11.62.005(2)(a)(i)-(iv). *Id.* § 11.62.005(2)(b).

(h) that the claiming successor has given written notice, either by personal service or by mail, identifying his or her claim, and describing the property claimed, to all other successors of the decedent, and that at least 10 days have elapsed since the service or mailing of such notice; and

(i) that the claiming successor is either personally entitled to full payment or delivery of the property claimed or is entitled to full payment or delivery thereof on the behalf and with the written authority of all other successors who have an interest therein.

Id. § 11.62.010(2)(a)–(i). A copy of the affidavit, including the decedent’s social security number, shall be mailed to the state of Washington, department of social and health services, office of financial recovery. *Id.* § 11.62.010(5).

The person paying or delivering property pursuant to an affidavit under Wash. Rev. Code § 11.62.010 is discharged and released to the same extent as if such person had dealt with a personal representative of the decedent, unless at the time of such payment or delivery such person had actual knowledge of the falsity of any statement which is required by Wash. Rev. Code § 11.62.010(2). *Id.* § 11.62.020. Such person is not required to verify the accuracy of any statement in the affidavit, to see to the application of any personal property, or to verify the payment of any estate tax liability. *Id.* If any person to whom an affidavit and proof of death is delivered refuses to pay or deliver personal property, it may be recovered or its payment or delivery compelled in a proceeding brought for that purpose. *Id.*

WISCONSIN

Wisconsin allows for the collection of the property of small estates by affidavit. When a decedent leaves property subject to administration in Wisconsin which does not exceed \$50,000 in value, any heir of the decedent or person who was guardian of the

decedent at the time of the decedent's death may collect any money or property due the decedent if the heir or guardian provides to the person owing the money or holding the property a copy of any notice to the department of health services, if the decedent or the decedent's spouse received certain governmental benefits, and an affidavit in duplicate containing the following:

(a) a description of and the value of the property to be transferred;

(b) the total value of the decedent's property subject to administration in Wisconsin at the date of decedent's death; and

(c) stating whether the decedent or the decedent's spouse ever received the family care benefit under section 46.286,¹⁷ medical assistance under subch. IV of ch. 49, long-term community support services funded under section 46.27(7) or aid under section 49.68, 49.683 or 49.685.

See Wis. Stat. Ann. § 867.03(1g) (West 2013). *See* Exhibit 16 for the relevant Wisconsin statutes.

Upon payment or delivery, the transferor is released to the same extent as if the transfer had been made to the personal representative of the estate. *Id.* § 867.03(2). The affiant is required to properly distribute the funds or property received. *Id.* § 867.03(2g).

Wisconsin also has procedures for the summary disposition of estate property, in the absence of a personal representative, where the value of the estate is less than \$50,000. *See generally, id.* § 867.01–.02.

¹⁷ An amendment to this section would change this language to “services provided as a benefit under a long-term care program, as defined in s. 49.496(1)(bk)).” Assemb. 40, 101st Leg., Reg. Sess. § 2299 (Wis. 2013). The bill has not yet been signed by the governor. Once signed the effective date will be the later of October 1, 2013, or the 90th day after publication.

11. Plaintiffs respectfully request that GCG be permitted to use these procedures to facilitate distribution of settlement funds to the estates of deceased Class Members and their heirs. Additionally, as GCG receives similar documentation for states not detailed above, the additional states will be presented for review and approval to the Special Master.

Respectfully submitted this 2nd day of July, 2013.

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