

THE RISELING REPORT

EXCLUSIVELY FOR THE ESTATE PLANNING PROFESSIONAL

\$20,000 ESTATE CAN AVOID PROBATE BY USING AFFIDAVIT

Oklahoma law will allow assets of \$20,000 or less (net of liens and encumbrances) to be transferred without the necessity of probate--if certain conditions are met and the successor in interest signs an Affidavit. This can be very helpful if a small value asset (such as an automobile, several shares of stock, etc.) is inadvertently left out of a person's revocable trust.

Oklahoma Statute 58 O.S. §393 provides as follows:

A. At any time ten (10) or more days after the date of death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, chose in action, or stock brand belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or instrument evidencing a debt, obligation, stock, chose in action, or stock brand to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor. COMMENT: What is a "stock brand"? The statute uses this term. It could be a typo. If you know what it means, call us and let us know.

B. The transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of the affidavit.

C. The public official having cognizance over the registered title of any personal property of the decedent shall change the registered ownership from the decedent to the successor or successors upon the presentation of the affidavit. (Note use of the word "**shall**").

D. This procedure is available as long as a probate has not been commenced and the decedent's debts and taxes have been paid or otherwise provided for. This can be proven by the affidavit itself. In addition, the statute provide that the asset value is net of liens and encumbrances—this means assets of more than \$20,000 in fair market value can be subject to the new procedure under the right circumstances!

Will the transfer agent or person indebted to the decedent or having possession of the property be liable for making the transfer to the successor? No. Pursuant to the statute, “the person paying, delivering, transferring, or issuing personal property or the evidence thereof to the successor or successors named in the affidavit is discharged and released to the same extent as if the person dealt with a personal representative of the decedent. Such person is not required to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in an proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right. “ (Emphasis added).

PRACTICE POINT: In the past, a common concern about the use of revocable living trusts is that one asset with minimal value might be inadvertently omitted, requiring a probate of that asset. This new law will allow the Trustee to sign an Affidavit for incidental properties inadvertently not titled in the name of the Trust and avoid a probate.

If you have any questions or have a client needing assistance in preparing an Affidavit please call us.

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