

Requirements for the Affidavit in Lieu of Probate

The purpose of an Affidavit in Lieu of Probate is to remove the name of a deceased spouse from ownership of property, by the surviving spouse without having to go through Probate. An Affidavit in Lieu of Probate is only appropriate for community property where both spouses are currently in ownership of the property. If the deceased's estate was not required to go through Probate or if it has been three or more years since the death of the spouse, the Assessor's Office will generally accept an Affidavit in Lieu of Probate.

If the deceased died intestate (without a will), and both spouses are currently in ownership of the property, the Affidavit along with a copy of the death certificate should be sufficient for the Assessor's Office to remove the deceased's name from ownership.

If the deceased died testate (having a will), the estate has gone through probate, a personal representative was appointed by the court, the deceased had previous spouses or other children, or the property was vested to an individual by order of the court, then the Affidavit may not be appropriate. You should consult a lawyer for legal advice.

The Affidavit must be signed before a Notary Public and be recorded together with a copy of the death certificate (preferably a certified copy of the death certificate, which can be obtained from the Bureau of Vital Statistics). These documents should be recorded in the county where the property is located. The recording fees are \$3 per page.

If you have any questions regarding the Affidavit or ownership of the property, please contact the Assessor's office in which the property is located or contact a lawyer for legal advice.

* This procedure is for Ada County. If the property is in another county, check at your county courthouse for any other or different local requirements.

The following are the Idaho Code sections cited in the Affidavit:

15-3-101. DEVOLUTION OF ESTATE AT DEATH -- RESTRICTIONS. The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates. Upon the death of a person, his separate property devolves to the persons to whom it is devised by his last will, or to those indicated as substitutes for them in cases involving lapse, renunciation or other circumstances affecting the devolution of testate estates, or in the absence of testamentary disposition to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting the devolution of intestate estates, and upon the death of a husband or wife, the decedent's share of their community property devolves to the persons to whom it is devised by his last will, or in the absence of testamentary disposition, to the surviving spouse, but all of their community property which is under the management and control of the decedent is subject to his debts and administration, and that portion of their community property which is not under the management and control of the decedent but which is necessary to carry out the provisions of his will is subject to administration; but the devolution of all the above described property is subject to rights to homestead allowance, exempt property and family allowances, to renunciation to rights of creditors, elective share of the surviving spouse and to administration.

15-3-901. SUCCESSORS' RIGHTS IF NO ADMINISTRATION. In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

AFFIDAVIT

STATE OF IDAHO)
) SS.
COUNTY OF _____)

I, _____, being first
sworn, depose and say:

1. that _____ died on (date)
_____, in _____ County, State of _____;
2. that said decedent and I were married on _____, and we were
continuously married until the time of death;
3. that the below-described property was community property at the time of death;

4. that said decedent died intestate, having failed at any time to execute a last will and
testament, and that no administration of said decedent's estate has been previously
commenced;
5. that there are no unpaid debts or creditors of said decedent owing in this state;
6. that as a result of the foregoing facts and Section 15-3-101 and 15-3-901 Idaho Code, all
right, title, and interest in the real property above described should now be vested in this
affiant.

Signature

On this _____ day of _____, 20____, before me a notary public for Idaho
personally appeared _____, proved to me on the
basis of satisfactory evidence to be the person whose name is subscribed to the within
instrument, and acknowledged to me that he/she executed the same.

Notary Public for Idaho
Residing at _____
Commission Expires _____