

2017 Arkansas Code

§ 28-41-101. Collection of small estates by distributee

Universal Citation: [AR Code § 28-41-101 \(2017\)](#)

- (a) The distributee of an estate may collect and distribute the assets of an estate under this section without the appointment of a personal representative when:
 - (1) No petition for the appointment of a personal representative is pending or has been granted;
 - (2) Forty-five (45) days have elapsed since the death of the decedent;
 - (3)
 - (A) The value, less encumbrances, of all property owned by the decedent at the time of death does not exceed one hundred thousand dollars (\$100,000).
 - (B) When calculating the value of all property owned by the decedent under subdivision (a)(3)(A) of this section, the value of the decedent's homestead and the value of any statutory allowances for the benefit of a spouse or minor children, if any, shall be excluded;
 - (4) One (1) or more of the distributees files an affidavit with the probate clerk of the circuit court of the county of proper venue for administration stating:
 - (A) That there are no unpaid claims or demands against the decedent or his or her estate, that the Department of Human Services furnished no federal or state benefits to the decedent, or, that if such benefits have been furnished, the department has been reimbursed in accordance with state and federal laws and regulations;
 - (B) An itemized description and valuation of the personal property and a legal description and valuation of any real property of the decedent, including the homestead;
 - (C) The names and addresses of persons having possession of the personal property and the names and addresses of any persons possessing or residing on any real property of the decedent; and
 - (D) The names, addresses, and relationship 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 furnished to any person owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right.
- (b) (1) (A) The clerk shall file the affidavit, assign it a number, and index it as required by § 28-1-108(1).
 - (B) He or she shall make a charge of twenty-five dollars (\$25.00) for filing the affidavit and five dollars (\$5.00) for each certified copy.
 - (C) An order of the court or other proceeding is not necessary.
 - (D) An additional fee shall not be charged if a will is attached to the affidavit.
 - (2)
 - (A) If an estate collected under this section contains real property, in order to allow for claims against the estate to be presented, the distributee shall cause a notice of the decedent's death and the filing of an affidavit for the collection of his or her estate to be published within thirty (30) days after the affidavit has been filed.
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- (B) The notice shall be in substantially the following form:

"In the Circuit Court of County, Arkansas

Probate Division

In the Matter of the Estate of, Deceased. No.

Name of decedent

Last known address

Date of death

On, an affidavit for collection of small estate by distributee was filed with respect to the estate of, deceased, with the clerk of the probate division of the circuit court of County, Arkansas, under Ark. Code Ann. § 28-41-101.

All persons having claims against the estate must exhibit them, properly verified, to the distributee or his or her attorney within three (3) months from the date of the first publication of this notice or they shall be forever barred and precluded from any benefit of the estate.

The name, mailing address, and telephone number of the distributee or distributee's attorney is:
.....

This notice first published, 20...".

- (C) Publication of the notice shall be as provided in §§ 28-1-112(b)(4) and 28-40-111(a)(4).

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§ 28-41-102. Payment, transfers, or deliveries pursuant to affidavit

Universal Citation: [AR Code § 28-41-102 \(2017\)](#)

- (a) The person making payment, transfer, or delivery pursuant to the affidavit described in § 28-41-101 shall be released to the same extent as if made to a personal representative of the decedent, and he or she shall not be required to see to the application thereof or to inquire into the truth of any statement in the affidavit.
- (b)
 - (1) The distributee to whom payment, transfer, or delivery is made, as trustee, shall be answerable to any person having a prior right and shall be accountable to any personal representative thereafter appointed.
 - (2) However, if notice to creditors of the decedent's death and the collection of his or her estate is published as provided by § 28-41-101, all claims as to real property within the estate, in any event, shall be forever barred at the end of three (3) months after the date of the first publication of the first notice.
 - (3) Nothing in this section shall affect or prevent any action or proceeding to enforce any mortgage, pledge, or other lien arising under contract or statute upon the property of the estate.
- (c) If the person to whom the affidavit is delivered refuses to pay, transfer, or deliver the property as provided in this section, the property may be recovered or delivery compelled in an action brought in a court of competent jurisdiction for such a purpose by or in behalf of the distributee entitled to the property upon proof of the facts required to be stated in the affidavit.
- (d) If the distributee who is entitled to the transfer or delivery of real property complies with the affidavit and notice requirements under § 28-41-101, the three-month period required under § 28-41-101 lapses, and a claim is not presented to the distributee within the three-month period or all claims against the estate that were presented to the distributee within the three-month period are satisfied, then the distributee shall:
 - (1) Be authorized to issue to himself or herself a deed of distribution for the real property of the decedent as if made by a personal representative of the decedent; and
 - (2) Deliver notice of the transfer of ownership to the county assessor of each county where the real property is located.
- (e)
 - (1) If a claim against an estate is presented to the distributee of the estate within three (3) months from the date of the first publication of the notice required under § 28-41-101, then the distributee shall file a petition for the administration of the estate in accordance with § 28-40-101 et seq.
 - (2)
 - (A) A distributee is not required to comply with subdivision (e)(1) of this section if the claim against the estate is satisfied without using property owned by the decedent at the time of death.
 - (B) If a claim against the estate is satisfied in the manner described under subdivision (e)(2)(A) of this section, the claimant shall present to the distributee an acknowledgement of the satisfied claim.
 - (3)
 - (A) If a petition for the administration of an estate is filed as required under subdivision (e)(1) of this section, then a new notice shall be published in accordance with § 28-40-111.

- (B) The publication of notice filed by a distributee in accordance with § 28-41-101 is insufficient notice with regard to a petition for the administration of an estate filed as required under this subsection.
- (4)
 - (A) The distributee shall pay a new filing fee when a petition for the administration of an estate is filed as required under this subsection.
 - (B) A distributee is not entitled to a credit or refund of the fee paid to file the affidavit of small estate required under § 28-41-101.

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