

633.356 Distribution of property by affidavit.

1. When the gross value of the decedent's personal property that would otherwise be distributed by will or intestate succession does not exceed twenty-five thousand dollars and there is no real property or the real property passes to persons exempt from inheritance tax pursuant to section 450.9 as joint tenants with right of survivorship, and if forty days have elapsed since the death of the decedent, the successor of the decedent as defined in subsection 2 may, by filing an affidavit prepared pursuant to subsection 3 or 8, and without procuring letters of appointment, do any of the following with respect to one or more particular items of such personal property:

a. Receive any particular item of tangible personal property of the decedent.

b. Have any evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred.

c. Collect the proceeds from any life insurance policy or any other item of property for which a beneficiary has not been designated.

2. "Successor of the decedent" means:

a. If the decedent died testate, the beneficiary or beneficiaries who succeeded to the particular item of property of the decedent under the decedent's will. For the purposes of this subsection the trustee of a trust created during the decedent's lifetime is a beneficiary under the decedent's will if the trust succeeds to the particular item of property under the decedent's will.

b. If the decedent died intestate, the person or persons who succeeded to the particular item of property of the decedent under the laws of intestate succession of this state.

3. a. To collect money, receive tangible personal property, or have evidences of intangible personal property transferred under this chapter, the successor of the decedent shall furnish to the holder of the decedent's property an affidavit under penalty of perjury stating all of the following:

(1) The decedent's name, social security number, and the date and place of the decedent's death.

(2) That at least forty days have elapsed since the death of the decedent, as shown by an attached certified copy of the death certificate of the decedent.

(3) That the gross value of the decedent's personal property that would otherwise be distributed by will or intestate succession does not exceed twenty-five thousand dollars and there is no real property or the real property passes to persons exempt from inheritance tax pursuant to section 450.9 as joint tenants with right of survivorship.

(4) A description of the property of the decedent that is to be paid, transferred, or delivered to the successor.

(5) The name, address, and social security number of the successor of the decedent to the described property, and whether the successor is under a legal disability.

(6) If applicable, that attached copy of the decedent's will is the last will of the decedent and has been admitted to probate or otherwise filed in the office of a clerk of the district court.

(7) That no persons other than those listed in the affidavit have a right to the interest of the decedent in the described property.

(8) That the affiant requests that the described property be paid, delivered, or transferred to the successors of the decedent to the described property.

(9) That the affiant affirms under penalty of perjury that the affidavit is true and correct.

b. More than one person may execute an affidavit under this subsection.

4. a. If the decedent had evidence of ownership of the property described in the affidavit and the holder of the property would have the right to require presentation of the evidence of ownership before the duty of the holder to pay, deliver, or transfer the property to the decedent would have arisen, the evidence of the ownership, if available, shall be presented with the affidavit to the holder of the decedent's property.

b. If the evidence of ownership is not presented to the holder of the property, the holder may require, as a condition for the payment, delivery, or transfer of the property, that the successor provide the holder with a bond in a reasonable amount determined by the holder to be sufficient to indemnify the holder against all liability, claims, demands, loss, damages, costs, and expenses that the holder may incur or suffer by reason of the payment, delivery,

or transfer of the property. This subsection does not preclude the holder and the successor from dispensing with the requirement that a bond be provided, and instead entering into an agreement satisfactory to the holder concerning the duty of the successor to indemnify the holder.

c. Judgments rendered by any court in this state and mortgages belonging to a decedent whose personal property is being distributed pursuant to this section may, without prior order of court, be released, discharged, or assigned, in whole or in part, as to any particular property, and deeds may be executed in performance of real estate contracts entered into by the decedent, where an affidavit made pursuant to subsection 3 or 8 is filed in the office of the county recorder of the county wherein any judgment, mortgage, or real estate contract appears of record.

5. Reasonable proof of the identity of each successor of the decedent seeking distribution by virtue of the affidavit shall be provided to the satisfaction of the holder of the decedent's property.

6. a. If the requirements of this section are satisfied:

(1) The property described in the affidavit shall be paid, delivered, or transferred to the successor of the decedent's interest in the property.

(2) A transfer agent of a security described in the affidavit shall change registered ownership on the books of the corporation from the decedent to the person listed on the affidavit as the successor of the decedent's interest.

b. If the holder of the decedent's property refuses to pay, deliver, or transfer any property or evidence thereof to the successor of the decedent within a reasonable time, the successor may recover the property or compel its payment, delivery, or transfer in an action brought for that purpose against the holder of the property. If an action is brought against the holder under this subsection, the court shall award attorney's fees to the person bringing the action if the court finds that the holder of the decedent's property acted unreasonably in refusing to pay, deliver, or transfer the property to the person as required by this subsection.

7. a. If the requirements of this section are satisfied, receipt by the holder of the decedent's property of the affidavit under subsection 3 or 8 constitutes sufficient acquittance for the payment of money, delivery of property, or transferring the registered ownership of property pursuant to this chapter and discharges the holder from any further liability with respect to the money or property. The holder may rely in good faith on the statements in the affidavit and has no duty to inquire into the truth of any statement in the affidavit.

b. If the requirements of this section are satisfied, the holder is not liable for any debt owed by the decedent by reason of paying money, delivering property, or transferring registered ownership of property pursuant to this chapter.

8. a. When a deceased distributee is entitled to money or property claimed in an affidavit presented under this section with respect to a deceased person whose estate is being administered in this state, the personal representative of the person whose estate is being administered shall present the affidavit to the court in which the estate is being administered. The court shall direct the personal representative to pay the money or deliver the property to the person identified by the affidavit as the successor of the deceased distributee to the extent that the court determines that the deceased distributee was entitled to the money or property under the will or the laws of intestate succession.

b. When the department of human services is entitled to money or property of a decedent pursuant to section 249A.53, subsection 2, and no affidavit has been presented by a successor of the decedent as defined in subsection 2, within ninety days of the date of the decedent's death, the funds in the account or other property, up to the amount of the claim of the department, shall be paid to the department upon presentation by the department or an entity designated by the department of an affidavit to the holder of the decedent's property. Such affidavit shall include the information specified in subsection 3, except that the department may submit proof of payment of funeral expenses as verification of the decedent's death instead of a certified copy of the decedent's death certificate. The amount of the department's claim shall also be included in the affidavit, which shall entitle the department to receive the funds as a successor of the decedent. The department shall issue a refund within sixty days to any claimant with a superior priority pursuant to section

633.425, if notice of such claim is given to the department, or to the entity designated by the department to receive notice, within one year of the department's receipt of funds. This paragraph shall apply to funds or property of the decedent transferred to the custody of the treasurer of state as unclaimed property pursuant to chapter 556.

9. The procedure provided by this section may be used only if no administration of the decedent's estate is pending.

91 Acts, ch 36, §6; 2001 Acts, ch 140, §3 – 5; 2004 Acts, ch 1015, §2 – 6; 2006 Acts, ch 1104, §3; 2010 Acts, ch 1137, §6; 2013 Acts, ch 30, §261; 2013 Acts, ch 33, §5

[T] See Code editor's note on simple harmonization

[T] Code editor directive applied

[T] Subsection 3, paragraph a, subparagraph (3) amended