

How to Use an Affidavit to Get Personal Property from an Estate

Note: Use these instructions and form to get personal property from the estate of a person who died.

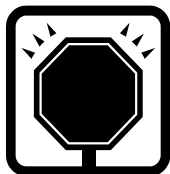
Laws dealing with the property of someone who has died are very complicated. These instructions and forms may not be right for your case. They cannot take the place of advice from a lawyer. Talk to a lawyer if you have **any** questions.

Print the form in this packet single-sided, with writing on one side of the page. Do not change the form. If you change the form, you might lose language you need.

Who Can Use This Form?

You can use this form if you:

- Are the successor to the person who died (read about this on page 2);
- Know that the person died more than 30 days ago;
- Know that no one has gone to court to be appointed personal representative for the estate; and
- Know the estate is worth \$50,000 or less, after subtracting any liens or encumbrances.



Note: You **cannot** use this packet if the estate is worth more than \$50,000.

You **cannot** use this packet for real property, like land or a house.

If you can't use this packet, you may be able to use another packet called "How to Be the Personal Representative for a Small Estate." Read that packet to learn more.

What Form Will I Need?

To get personal property by using an affidavit, you will need the following form:

- Affidavit for Collection of Personal Property

The **Affidavit for Collection of Personal Property** transfers property from the person who has died to the next legal owner of the property.

Note: If you want to transfer the title of a vehicle, you will also need a form called **Application for Title of a Vehicle by Right of Survivorship (Form MV12)** from the Montana Department of Justice Motor Vehicle Division. That form is not included in this packet. The form is available at <http://www.doj.mt.gov/driving/forms.asp>. You must pay a fee when you turn in the Application form. The form says how much the fee is.

How Do I Know If I Am the Successor?

You are probably the successor if the person who died had a will leaving the property to you. Or you could be the successor if you are the only living relative of the person who died. When there isn't a will, the surviving spouse is usually the successor. Or if there isn't a will and there also isn't a surviving spouse, the successor is usually a child of the person who died. But this isn't always true. The laws about who gets the property of someone who died can be complicated. Ask a lawyer if you have any questions.



What Types of Property Can I Use the Affidavit to Collect?

Note: There are situations when you should not need to use the form in this packet to collect certain types of property. For example, the person who died might have named you as a beneficiary of an account. Or you might have co-owned a joint account with the person who died. Before you fill out the form, it is a good idea to ask the bank, credit union, or other property holder if you need to use an Affidavit to collect the property.



You can use the Affidavit to collect most types of personal property in an estate worth \$50,000 or less. Personal property includes financial things like bank accounts and paychecks, as well as

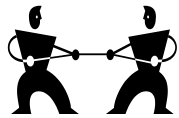


furniture and other physical objects. To transfer the title of a vehicle, use the Application for Title of a Vehicle by Right of Survivorship (Form MV12). You can get the Application from <http://www.doj.mt.gov/driving/forms.asp>.

Personal property is NOT land, a house, or a building. You cannot use the Affidavit to collect land, a house, or a building.

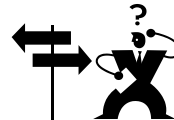
What If Someone Refuses to Give Me the Property?

If someone refuses to give you the property when you show the affidavit, it is a good idea to try talking with the person. The person may not know how the affidavit works. Or the person may have questions about why you believe you are the successor. You can show the person a copy of the laws. Read “Where Can I Get More Information?” below to find where you can get a copy of the laws.



If the person will not give you the property after you talk, you may need to file a lawsuit in court to get the property. This packet cannot help you file a lawsuit. It is a good idea to talk to a lawyer if this happens to you.

How Do I Use This Form?



1. Make Sure This Form Is Right For You.

- Make sure the estate is worth \$50,000 or less, after you subtract liens and encumbrances. Example: if a car is worth \$5,000 and there is a \$2,000 lien on the car, the car is worth \$3,000. **Note:** In this situation, the lien would likely stay on the car when you get title.
- Be sure you believe you are the successor. If there are other people who might be the successor, talk with them. You might ask them to write and sign a paper in front of a Notary Public saying they give up the right to be the successor. You could show that paper to anyone who doesn't think you are the successor.

- If you know someone has gone to court to become the Personal Representative of the estate, you cannot use this form.

2. Fill In The Form

- Fill in the blanks on the Affidavit for Collection of Personal Property.
- Sign and date the Affidavit in front of a notary public. When you sign the Affidavit you are promising that everything in the Affidavit is true, including the parts you didn't write.
- If you are transferring the title of a vehicle, go to <http://www.doj.mt.gov/driving/forms.asp> and download Form MV12, the Application for Title of a Vehicle by Right of Survivorship. Follow the instructions on that form to pay the fee and mail it in.

3. Make Copies

- Make at least one copy of both the completed Affidavit and the Application for Title of a Vehicle by Right of Survivorship (if you are collecting title to a vehicle) for your records.
- If you need to go to more than one property holder, make enough copies of the Affidavit to give each property holder.
- Some property holders may ask you for a copy of the death certificate to prove the person died. Make at least one copy of the death certificate, keep it, and make more copies as needed.



4. Give a Copy of the Affidavit to Each Property Holder

- Give each current property holder a copy of the signed Affidavit for Collection of Personal Property. It is a good idea to give the holder a copy of the death certificate too. You can bring the papers to the property holder in person, or you can mail them. If you mail them, it is a good idea to get a certificate of mailing from the post office. It will cost more, but it will prove that



you mailed the papers if a property holder says he or she didn't get them.

- Some property holders may ask you to sign a contract saying the holder is not responsible if it is wrong to give you the property. If you sign that kind of contract, you could later be required to pay if someone proves the property holder was wrong.

Where Can I Get More Information?

The laws of Montana are in the Montana Code Annotated (MCA). The laws about using an affidavit to collect personal property are in Title 72, Chapter 3, Part 11. You can find the MCA at your local library or on the Montana State Law Library website at: www.lawlibrary.mt.gov. Click on the "Laws" option near the top of the page on that website, and then click on "MCA."



Field Code Changed



Where Can I Get Legal Help?

These organizations may be able to help you:

- **Montana Legal Services Association (MLSA)** gives free legal help to low-income people. To find out if you qualify for MLSA, call the MLSA HelpLine at 1-800-666-6899.
- **The State Bar Lawyer Referral and Information Service (LRIS)** refers people to Montana lawyers who might be able to help. Call LRIS at 1-406-449-6577.
- **The State Law Library** can help you find and use legal resources such as books, forms, and websites. You can visit the Law Library website at www.lawlibrary.mt.gov. Or you can contact a Reference Librarian at (800) 710-9827 or by email at mtlawlibrary@mt.gov.

Please Take a Short Survey About This Form.

When you are done with the form, please take our online survey at this address:

http://www.surveymonkey.com/s.aspx?sm=fCBhbJ4MdOWw_2fjsCjlg_3d_3d



Or you can access the survey on the "Forms" page of the State Law Library website, at www.lawlibrary.mt.gov. Your answers will help make the form better. Thank you!

7. I am entitled to payment of any money the person who died was owed. I am entitled to all tangible personal property that belonged to the person who died. I am entitled to any papers showing a debt, obligation, stock or chose in action that belonged to the person who died.

I have read the above statements, and they are all true.

Signature: _____
(sign your name in front of the notary public)

Printed Name: _____
(print your name)

(part below to be filled out by notary)

SIGNED AND SWORN to before me on this _____ day of _____, 20____
by _____.

(SEAL)

Name: _____
(Printed): _____
Notary Public for the State of Montana
Residing at _____
My Commission Expires _____