

Requirements Surviving Spouse's Affidavit in Lieu of Probate of Community Property

This Affidavit in Lieu of Probate is for a surviving spouse to remove the name of a deceased spouse from title to co-owned community property without having to go through court. An Affidavit in Lieu of Probate is only appropriate for community property where both spouses' names are on the title. 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 title is in both names, the Affidavit with a certified 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 made a will) naming the surviving spouse as sole heir, you will need to file the Affidavit, the certified copy of the death certificate, and a copy of the will that shows the surviving spouse is the sole heir.

If the estate has gone through probate, a personal representative was appointed by the court, the deceased had previous spouses or other children, the deceased left debts the surviving spouse cannot pay, or the property was vested to an individual by order of the court, then the Affidavit may not be at all appropriate. You should consult a lawyer for legal advice.

The Affidavit must be signed before a Notary Public and be recorded with a certified copy of the death certificate. (You can obtain a certified copy from the Bureau of Vital Statistics). If the deceased spouse left a will, a copy of the will must also be recorded with the Affidavit. Record the documents in the county where the property is located. The recording fee is \$10 for the first page and \$3 for each additional page per document. Idaho Death Certificates are 2 page documents, front and back. You can fill in the total number of pages you are recording at the bottom of the page.

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

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.

If the property was a spouse's separate property, this form will not work for you without a valid will leaving all property to the surviving spouse. Please consult a lawyer.

15-2-102. SHARE OF THE SPOUSE. The intestate share of the surviving spouse is as follows:

(a) As to separate property:

- (1) If there is no surviving issue or parent of the decedent, the entire intestate estate;
- (2) If there is no surviving issue but the decedent is survived by a parent or parents, one-half (1/2) of the intestate estate;
- (3) If there are surviving issue of the deceased spouse, one-half (1/2) of the intestate estate.

(b) As to community property:

- (1) The one-half (1/2) of community property which belongs to the decedent passes to the surviving spouse.

Surviving Spouse Affidavit Community Property Inheritance

I, (your name) _____, swear/affirm:

1. My spouse, (name) _____ died on (date) _____, in _____ County, _____ State. A certified copy of the death certificate is attached.

2. My deceased spouse and I were married on _____, and we were continuously married until the time of death.

3. The following real estate was co-owned community property at the time of death:
(insert legal description)

 _____, Latah County, Idaho.

4. a. My spouse died without a will and no administration of my spouse's estate has been started or is necessary. **or**

b. My spouse left a will naming me as sole heir and I have attached a copy of that will. **or**

c. My spouse and I executed and recorded under # _____ a Community Property (Devolution on Death) Agreement before my spouse died and I am entitled to my spouse's share of our community property without any estate administration.

5. I will pay any unpaid debts or creditors of my deceased spouse.

6. As a result of the foregoing facts and Idaho Code Sections 15-3-101 and 15-3-901, all right, title, and interest in the above-described real property should now be vested in me.

STATE OF _____)
) ss.
 COUNTY OF _____)

 Signature

Subscribed and sworn to before me on the _____ day of _____, _____, by _____.

 Notary Public for _____
 Residing at _____
 Commission Expires _____