**Instructions for Affidavit for Collection of Personal Property Form**

This is an informational guide to using an Affidavit for Collection of Personal Property to collect funds or property of a person who died, without using the formal probate process. There are situations where formal probate is required. If you have questions about the probate process, you are encouraged to seek legal advice from an attorney. The Mille Lacs Band Court of Central Jurisdiction staff cannot provide legal advice. Mille Lacs Band members may be eligible for legal services from Mille Lacs Band Member Legal Aid.

**What is an Affidavit for Collection of Personal Property?**

This is a form that can be used when the estate of the person who died is less than $75,000--instead of filing a probate case with the Mille Lacs Band Court of Central Jurisdiction. It is also sometimes referred to as a small estate affidavit. **This is not a Court form and should not be filed with the Court of Central Jurisdiction**

**Who can use this form?**

* Someone who is entitled to inherit the property of the person who died (“Decedent”)
* A person who has a legal interest in the Decedent’s property (like a creditor)

**When can an Affidavit for Collection of Personal Property be used?**

The Affidavit for Collection of Personal Property (“Affidavit”) can be used if the following conditions are met:

1. **The value of all the property** in the estate of the person who died, wherever it is located, minus the amount of loans, liens, and encumbrances on the property, **is $75,000 or less.**
2. **The property is listed only** in the name of the person who died. (There is no joint owner, joint tenant, or beneficiary).
3. **There is no real property** (land and/or buildings) in the Decedent’s estate.
4. **30 days have passed** since the person died.
5. **You have the legal authority** to submit an Affidavit to persons, agencies, or business who have the property of the person who died, or owe money to the person who died, as follows:
   1. You are named as a person to receive the property or funds in the will of the person who died.
   2. The person who died had no will, but you are entitled to the property or funds under the law. You would be known as a “successor.” Examples include:

* You are the spouse of the person who died
* You are a living child of the person who died, and there is no living spouse
* You are a living brother or sister of the person who died, and there are no living spouses, living children, grandchildren, or parents

1. **You have a certified copy of the death certificate** of the person who died.

**Who do I need to notify that I’m claiming the Decedent’s property?**

Before you may use the Affidavit to claim property, you must send or deliver the **Notice to Other Successors of Intent to File Affidavit for Collection of Personal Property** (“Notice”) to any other person who may also have a claim as a successor of the Decedent. For example, if you are the Decedent’s child, to other children of the Decedent, if the Decedent died without a will. ***You must wait ten (10) days from the date you mailed or delivered the Notice to Other Successors before using the Affidavit for Collection of Property.***

If you do not provide the **Notice to Other Successors** to the other possible heirs or successors before collecting the property, you may be held liable later. To avoid this situation, you must also provide to each successor the form, **Authorization to Claim Property on Behalf of Another** (“Authorization”)**.**  If the other successor(s) complete this form and return it to you, then your authority to collect the property and distribute it on their behalf is clear.

**What do you do after you have completed the Notice and Affidavit?**

Once the ten days have expired after you sent or delivered the Notice to other successors, complete the Affidavit. Attach a certified copy of the death certificate and any completed Authorization forms to the Affidavit.

1. **To collect personal property or funds,** take the Affidavit with the attached death certificate and any Authorization forms to the person or business that has the property or is holding the funds or owes a debt to the person who died.
2. **To collect a Mille Lacs Band per capita payment** that was paid on behalf of the person who died, you will need to file a copy of the Affidavit, a certified copy of the death certificate of the person who died, and any completed Authorizations with the Mille Lacs Band Office of Budget and Management (OMB). OMB may not be able to release the funds for a few weeks depending on when you file the Affidavit with them.
3. **To transfer title to a motor vehicle**, take the Affidavit with the attached death certificate and Authorizations, if any, to the motor vehicle division where the title is registered.

**What do I do after I have collected the Decedent’s property or funds?**

If there are other successors or heirs, you **must** distribute the property to each of them—**even if they did not respond to your Notice to Other Successors**. If the Decedent had a will, then distribute the property as directed by the will. If the Decedent did not have a will, then distribute the property according to the heirship rules set out in Minn. Stat. §§ 524.2-102 and 524.2-103.