PROBATE AND INTESTACY IN ARKANSAS
A Title Insurer's Perspective

I. Introduction

In the world of property, death can be said to divide people into one of two general categories: those with a valid estate plan, and those without one. While there are numerous ways of planning one's estate, the most common method is probably still by the use of a will. Accordingly, this distinction between the existence or non-existence of a valid will forms the central point of this material. Those with a valid will we refer to as having died "testate." For those without a valid will, we use the term "intestate."

Long ago, our legislature enacted certain statutes relating to decedents’ estates. In keeping with the distinction noted above, some of these statutes relate to those with a will, while others apply to those without one. Even still, some apply equally to both situations. Ultimately, the procedure to be followed when disposing of the property of a decedent is determined by applicable statutes and case law. However, as we in the title industry often find, a reference to the legal procedure for a given topic will not always answer every question encountered by a title examiner. Accordingly, this material will try to bridge the gap, so to speak. Hopefully, it will provide a general outline of relevant rules of law, along with underwriting guidelines for common situations encountered when insuring property that is part of a decedent's estate.

II. Alternatives to Probate or Intestacy Proceedings

A. Property Owned Jointly with Right of Survivorship

Before going any further, it is important to point out that real property can be transferred without reference to a will or to the statutes noted above. One way this can occur is when the decedent owned the property jointly with one or more other persons, with a right of survivorship. The effect of such ownership is that when one owner dies, the surviving owner or owners automatically obtain the deceased owner's interest in the property. This transfer takes place immediately upon death, without any need for court action and without reference to a will. The ownership estates allowing a right of survivorship in Arkansas are tenancy by the entirety and joint tenancy with right of survivorship.

Tenancy by the entirety is an estate of property that may only be held by a husband and wife. In fact, if a husband and wife acquire title to real property jointly in Arkansas while they are married and there is no language to indicate differently, they are presumed to own as tenants by the entirety.\(^1\) There is no need for the deed to state that they own as “husband and wife” or as “tenants by the entirety”. Upon the death of one spouse, the

\(^1\) Davies v. Johnson, 124 Ark. 390, 187 S.W. 323 (Ark. 1916)
surviving spouse automatically obtains full ownership of the property, assuming the parties have been continuously married until that time.

Joint tenancy with right of survivorship is an estate that is available to anyone owning property jointly in Arkansas; however, in order to take advantage of this form of ownership, one must use granting language in the deed that clearly indicates the intent to convey a right of survivorship. Ideally, the deed vesting title into the joint owners will state that they are taking as "joint tenants with right of survivorship." Even though the vesting language in a deed may not track the specific phrasing quoted above, Arkansas Courts will look to the intent evident in the “four corners of the deed” to see if a joint tenancy with right of survivorship was conveyed. Nevertheless, it is always better to be specific. If you run into questionable vesting language in a deed, contact underwriting counsel before assuming that you are dealing with a joint tenancy with right of survivorship.

In the event you have confirmed you are dealing with a joint tenancy with right of survivorship, title vests in the survivors immediately upon the death of the decedent/joint owner. If there is more than one surviving owner, they each obtain a share of the deceased owner's interest equivalent to their respective ownership interests. For instance, if there were four joint owners, each with equal shares, and one dies, the three surviving owners would each obtain an equal share of the deceased owner's interest (i.e. an additional 1/12th interest).

The bottom line is that property owned in one of these two estates is not subject to the probate and intestacy procedures. If all of the property you are being asked to insure falls in this category, absent other circumstances making such actions necessary, there is no need to refer to the decedent's will or to require an order from the probate court authorizing the sale of the property.

B. Beneficiary Deed

With the passage of Act 1918 of 2005, the Arkansas legislature introduced a new creature to the state's real estate field. The Act, codified as A.C.A. § 18-12-608 and later amended by Act 243 of 2007, allows for the use of a beneficiary deed as a form of conveyance. This device is relatively new to most in Arkansas, and has been a subject of discussion among many of the State's real estate practitioners since its introduction.

According to the statute, a beneficiary deed is "a deed without current tangible consideration that conveys upon the death of the owner an ownership interest in real property other than a leasehold or lien interest to a grantee designated by the owner and that expressly states that the deed is not to take effect until the death of the owner." The statute provides a form for the deed.

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2 Ark. Code Ann. § 18-12-106
4 Ark. Code Ann. § 18-12-608(a)(1)(A)
Pursuant to the Act, a beneficiary deed is not valid unless it has been executed by the owner and is recorded before his/her death. The statute indicates that the conveyance does not take effect until the death of the owner and is made subject to all conveyances and encumbrances made by the owner or to which the property was subject at the time of the owner's death, regardless of whether any such conveyance or encumbrance was created before or after the execution of the beneficiary deed. The conveyance is also subject to claims for reimbursement of federal or state benefits by the Department of Human Services from the estate of the grantor or the interest acquired by a grantee of the beneficiary deed under A.C.A. § 20-76-436.

Once executed, a beneficiary deed may be revoked at any time by the owner by recording a revocation in the office of the recorder of the county in which the property is located. As with the beneficiary deed itself, the revocation must be executed and recorded before the death of the owner.

The law does have its complexities. One in particular becomes evident when there is ownership by joint tenants with right of survivorship or by tenants by the entirety. In such an event, the beneficiary deed, to be valid, must at least be executed by and recorded before the death of the last surviving owner. Likewise, if a revocation is recorded but is not executed by all of the owners, the revocation is not effective unless it is executed by and recorded before the death of the last surviving owner. To get even more complex, if beneficiary deeds to different grantees are executed by different owners holding title to the same property as joint tenants with right of survivorship or tenants by the entirety, the deed executed by the last surviving owner would control.

Other points of interest regarding the beneficiary deed:

- Multiple grantees may be named, and title may be held as joint tenants with right of survivorship, tenants in common, tenancy by the entirety, or any other tenancy that is otherwise valid under the law;
- The grantor may name a grantee and one or more successor grantees, including one or more unnamed heirs of the original grantee(s);
- If an owner executes more than one beneficiary deed concerning the same property, the recorded beneficiary deed that is last signed before the owner's death controls, regardless of the sequence of recording;
- A beneficiary deed may be used to transfer real estate to a trust, even if the trust is revocable.
- A beneficiary deed that complies with the statute cannot be revoked, altered, or amended by the provisions of the owner's will.

Ultimately, since the beneficiary deed is a new and relatively untested tool for Arkansas, any agent who is asked to insure title to property based upon such a conveyance should contact underwriting counsel before proceeding.
C. Property Held in Trust

Another common alternative to probate is the use of a trust. The law governing trusts is complex enough to justify a separate discussion of that topic alone, so, in the interest of brevity, it will not be discussed at length in this material. Nevertheless, as an alternative to probate, it warrants mentioning. A trust is created by conveying property to one or more persons as trustee, to hold for the benefit of another. Generally, a trust agreement is executed to govern the use of the property and the terms by which the property is to be distributed. As the trust property is owned by the trustee(s) and not the individual, it is normally unnecessary for it to be administered through the probate process.

III. Probate and Intestacy

Assuming the subject property is not transferred upon death by one of the alternatives noted above, the steps necessary to insure title become a little more complex. Normally, in such a situation, there should be an action filed with the Probate Division of the Circuit Court to do one or both of the following: (1) probate the decedent's will, if one exists, or (2) to administer the estate of the decedent. The possibility of doing both is left open as there could be a will that does not provide for distribution of all of the property of the decedent, leaving such property subject to intestate distribution. The following sections discuss the rules of law and procedures applicable to these situations.

A. Property Sold Pursuant to Will - Probate Proceedings

The following section will detail some common issues that arise when insuring the property of an estate being sold pursuant to the terms of a will.

1. Probate of Will

Under Arkansas law, no will is valid to prove title until it is admitted to probate. Until such probate, title to real property is vested in the decedent’s heirs at law. Accordingly, if there is a will that distributes the subject property, you should look for a probate action filed in the name of the decedent, as well as an order admitting the will to probate and appointing a personal representative. The personal representative is the individual representing the estate and handling its affairs under the supervision of the probate court. Unless a will has been admitted to probate and we have the necessary authorizations from the appropriate persons or entities, we are not able to insure title to anyone claiming under the terms of such will. One additional note is that, except as to issues of concealment or a non-resident decedent, no will can be admitted to probate in Arkansas.

5 A.C.A. § 28-40-104.
6 Heir: “At common law, the person appointed by law to succeed to the estate in case of intestacy.” Black’s Law Dictionary
7 A.C.A. § 28-9-203(c)(1)
8 A.C.A. § 28-48-101 et seq.
after five years from the date of death of the decedent.\(^9\)

### 2. Notice to Creditors

Promptly after the personal representative has been appointed by the court, the agent should also find of record a Notice of Appointment of Personal Representative, which is commonly known as the Notice to Creditors.\(^{10}\) This notice must contain specific language indicated by statute, must be published in a newspaper of general circulation in the county where the probate action is filed, and must be sent directly to any known creditors and other interested persons, including heirs of the decedent or devisees. As to all creditors, the notice provides six months from the date of the first publication of the notice within which they may assert any claim they have against the decedent's estate.\(^{11}\) Any creditor claims not filed within the applicable time periods are barred. Heirs and/or devisees\(^{12}\) receiving such notice pursuant to A.C.A. § 28-40-111 would generally have three months from the date of the first publication within which to contest the will.\(^{13}\)

A title agent should contact their underwriting counsel or consult their underwriting manual to determine their underwriter’s stance on this issue.

### 3. Will Contest and Elective Share

In these situations, we also must be mindful of a potential contest of the will or election of a surviving spouse to take against the will. As stated above, most devisees have three months from the first publication of the notice to contest the will. If an agent has any reason to believe that a will contest is likely, we would certainly want to wait until the time period had run for such an action to be filed.

A surviving spouse who has been continuously married to the decedent for more than one year prior to the decedent's death has a right to elect against the will.\(^{14}\) Essentially, this means that if the surviving spouse is not satisfied with the share he or she would take under the decedent's will, such spouse may elect to instead take whatever interest he or she would be entitled to under the intestacy statutes.

The time period for electing to take against the will is one month after the expiration of the time for filing claims against the estate.\(^{15}\) Basically, this amounts to seven months from the first publication of the notice to creditors. Given this, when the decedent has a surviving spouse, if the agent has any indication that the spouse may elect against the will and that such election may involve the subject property, we would want to wait for the

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\(^{9}\) A.C.A. § 28-40-103.

\(^{10}\) See A.C.A. § 28-40-111.

\(^{11}\) This used to be split between three months for certain creditors and six months for other creditors; however, the statute was amended by Act 217 of 2009 to provide six months for all creditors.

\(^{12}\) Devisee: “The person to whom lands or other real property are devised or given by will.” Black’s Law Dictionary.

\(^{13}\) A.C.A. § 28-40-113.

\(^{14}\) A.C.A. § 28-39-401

\(^{15}\) A.C.A. § 28-39-403
election period to run before agreeing to insure.

4. Authority to Sell Property

Commonly, title agents are presented with a scenario in which the estate of the decedent will be selling the property to a third party by way of a deed from the estate's personal representative. In such situations, we must ensure that the personal representative has authority to carry out the sale.

Arkansas law provides that real property belonging to an estate may be sold under court order when necessary to pay claims, to pay a monetary gift provided for under the will, to preserve or protect the assets of the estate, to make distribution of the estate or any part thereof, or for any other purpose in the best interest of the estate. Further, the personal representative is vested with authority to sell real property when the will specifically directs that he sell the property. If the court finds the property should be sold for any of these reasons or if the will so provides, the court can authorize the personal representative to carry out the sale. In such a situation, the title agent should require an order from the court authorizing the personal representative to sell the property.

Under A.C.A. § 28-51-303, the order authorizing the sale should describe the property, indicate whether the property is to be sold at public auction or private sale, list the proposed sale amount, and indicate the terms, conditions, restrictions and reservations applicable to the sale. If the property is to be sold at public auction, it must sell for no less than 3/4 of the appraised value. If the property is to be sold at private sale, it must sell for the appraised value. In addition, the agent should require an order confirming the sale and authorizing the Personal Representative to execute the instruments necessary to close the transaction, pursuant to A.C.A. § 28-51-305. The order should state that the transaction is made in conformity with the law and that the subject property will be free and clear of any and all claims against the Estate, including federal and/or state taxes which may become due through the administration of the Estate. A certified copy of the order confirming the action of the estate should be recorded with the necessary title instruments.

It is possible to close the deal prior to obtaining the order confirming the sale, provided that the petition for authority to sell the property included a copy of the contract of sale, the court's order authorizing the sale approved the sale pursuant to the terms of the contract, and the sale was closed in strict compliance with the court's order. In addition, the order must also indicate that the sale is free and clear of any and all claims against the estate, including federal taxes, state taxes and any claim of the Department of Human Services, all of which may become due through administration of the estate. In this case, the agent should still require an order confirming the sale; however, the deal may be closed prior to obtaining such order.

16 A.C.A. § 28-51-103
17 A.C.A. § 28-49-101(b)(1)
18 A.C.A. § 28-51-303
The personal representative may be able to sell property of the estate without a court order, provided the will directs that the personal representative sell the property in question and that he may do so without seeking court approval. The language of the will in this regard must be clear and unambiguous. When presented with such a request, the agent should always contact underwriting counsel to confirm that a court order is not needed.

In the absence of one of these situations, the personal representative would normally lack the authority to sell real property of the estate. Who then has the authority to convey? If the decedent left a will that has been duly probated, the property would generally be vested in the devisees named in the will. Nonetheless, because of the uncertainty that can sometimes arise as to whether or not real property may be needed by the estate for one of the reasons noted in the paragraphs above (e.g. to satisfy claims, to pay a gift under the will, etc.), the devisees under the will cannot be assured of their respective interests until the estate has been fully administered, all claims have been satisfied, and the estate has been closed.

For this reason, before relying upon a conveyance from devisees pursuant to an open estate, the title agent should require an order from the court distributing the real property to the devisees under the will. The order of distribution should provide that the notice period for claims of creditors and all claims have been paid or that there are none, and that proper clearance has been obtained for federal taxes, state taxes and any claim of the Department of Human Services (i.e. a release, waiver, etc.).

B. Property Sold Pursuant to Intestate Succession

This section will detail common issues that may arise when insuring a transaction involving property of a decedent being sold pursuant to intestate succession.

1. Determination of Heirship

If an individual passes away leaving real property not disposed of by one of the alternative methods listed in Section II or by the terms of a will, such property is subject to distribution according to the intestacy statutes of the state.

Such real estate generally transfers immediately upon death to the heirs of the decedent, subject to the right of the personal representative to mortgage, lease, exchange, sell, or possess it for the payment of claims or legacies, the preservation or protection of assets of the estate, the distribution of the estate, or any other purpose in the best interest of the estate. In addition, the interest of such an heir is also subject to other rights. Under A.C.A. § 28-9-206, the order for distribution of the real property of an intestate decedent is as follows:

1. Dower/courtesy rights of the surviving spouse

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19 See A.C.A. § 28-53-102 (partial distribution) and 28-53-103 through 105 (final distribution)
20 A.C.A. § 28-9-203
2. Homestead rights of the surviving spouse and children of the intestate
3. Administration of the estate, if any
4. Remainder passes through intestacy according to the Table of Descents

2. Dower/Curtesy Rights

The exact amount of any dower or courtesy interest depends upon whether or not the
decedent left surviving children. If so, the dower or courtesy interest is basically equal to a
one-third life estate in favor of the surviving spouse. If not, the surviving spouse
inherits a one-half interest in fee; however, as against creditors, the surviving spouse is
only entitled to a one-third fee interest.

3. Homestead

The distribution of a homestead interest, if any, is also determined by whether or not the
decedent left surviving children. If the decedent is survived by a spouse but no children
under the age of 21, the surviving spouse is entitled to all of the rents and profits from the
homestead property for his or her life. If the decedent also left children under the age of
21, the spouse is only entitled to one-half the rents and profits, with the children each
having a share of the other half until reaching the age of 21. The homestead rights do not
come into effect unless the decedent and the surviving spouse were married continuously
for at least one year prior to the decedent's death. Further, in order to reserve the
homestead, the surviving spouse must file a petition with the probate clerk.

4. Administration of the estate

This category applies to costs of administration, if any. These costs can be paid from
proceeds of the sale of real estate, if necessary or if the court finds that such action is in
the best interest of the estate. Examples of such costs might be auction fees, personal
representative fees, and other costs related to the distribution or sale of the decedent's
property.

5. Table of Descents

After giving priority to the interests noted above, the remainder of any real property of
the decedent is distributed according to the Table of Descents, as set out in A.C.A. §§ 28-
9-214 and 28-9-215. This order of distribution is as follows:

1. Children of the intestate and descendants of each child who may have predeceased
   the intestate.
2. If no children or descendants of children survive, to the surviving spouse in fee

21 A.C.A. § 28-11-301
22 A.C.A. § 28-11-307
23 A.C.A. § 28-39-201
24 A.C.A. § 28-39-201
simple, provided they were married continuously for three years prior to the
decedent's death. If they were married less than three years continuously, the
surviving spouse only takes a one-half, fee simple interest.
3. If the decedent is survived by no descendant or spouse, to the decedent's surviving
parents, sharing equally, or to the sole surviving parent.
4. If none of the above exist, to the decedent's brothers and sisters and the
descendants of any brothers and sisters who may have predeceased the decedent.
5. If none of the above exist, to the decedent's surviving grandparents, uncles and
aunts, making no distinction between the paternal and maternal sides. If an uncle or
aunt should predecease the intestate, the descendants of same shall take the aunt's or
uncle's interest.
6. If none of the above exist, same as in (5), except to the surviving great-
grandparents, great-aunts, and great-uncles, or the descendants of any of same who
predecease the decedent.
7. To the surviving spouse, even though they haven't been married for three
continuous years.
8. To the heirs of the deceased spouse of the decedent. If the decedent was married
more than once, this means the spouse to whom the decedent was last married prior to
death.
9. To the county wherein the decedent resided at death.

If all of the inheriting members are of the same class, the property is divided per capita.
A.C.A. § 28-9-204.

Example: If the decedent was survived by all of his three children, the children
would all take an equal 1/3 interest.

If any of the inheriting members are of a different class, the parties take per stirpes (by

Example: If the decedent was survived by two of his three children and the two
children of his child who predeceased him (i.e. two grandchildren), the two
children would each take a 1/3 interest, and the two grandchildren would split
their parent's 1/3 interest, leaving each of them with a 1/6 interest.

6. Affidavits of Heirship

One of the more critical underwriting issues regarding decedent's estates involves the use
of affidavits of heirship. An affidavit of heirship is a document used to determine the
heirs of a given decedent. Claims issues have arisen over the years in the title insurance
industry resulting from reliance upon incorrect or fraudulent affidavits of heirship. As a
result, we encourage all of our agents to be very careful when basing a determination of
title on such affidavits.

If at all possible, it is best to have determinations of heirship made by the court handling
the administration of the decedent's estate. However, if this cannot be done, such
affidavits may be used, given that the agent observes the following guidelines:

1. Must have affidavits from at least two disinterested third parties in substantially the same form as Exhibit A, attached hereto.

2. At a minimum, we require that affidavits state the following:
   - When and where the decedent died and whether the decedent died testate or intestate;
   - The relationship, if any, of the affiant to the decedent and the source of knowledge concerning the decedent;
   - The marital status of the decedent and, if married, the duration of the marriage last preceding death;
   - The name of the spouse if the decedent was married; the number of times married and divorced; whether the spouse is alive and, if not, the time and place of death;
   - The names of any children of the decedent, whether natural born or adopted, and whether now living or deceased;
   - With regard to any deceased children, the same information noted in the items above must be provided;
   - Whether any of the persons named were under some type of disability, guardianship or in the military service;

3. It is preferable that affiant have known decedent for a very significant portion of the decedent’s life. Our main concern here is that the agent obtains a good level of comfort with the affiant's familiarity with the decedent and his or her heirs. Obviously, the length of time the affiant has known the decedent is a significant factor; however, there are other factors, including the nature of the relationship (i.e. long-time friend, co-worker, pastor, neighbor, etc.), the distance between the residence of decedent and that of affiant, and the frequency of contact between them.

4. The agent should interview any person providing an affidavit of heirship prior to relying on same.

As stated above, it is much preferred that the court handling the estate make the determination of heirship; however, if affidavits of heirship must be used, it is important to proceed with a great deal of caution. If there is any question about the validity of a given affidavit or the propriety of relying upon same in a given situation, the agent should contact underwriting counsel.

**IV. Other Interests of Concern**

1. **Federal and State Taxes**

Another concern with regard to the estate of any decedent is whether or not the estate is subject to estate taxes for federal and state tax purposes. The general limitations period
for the filing of tax claims by the state or federal government is 10 years from the date of
death.\footnote{State: A.C.A. § 26-18-701; Federal: 26 U.S.C. § 6502} State and federal estate taxes are a lien against all the assets of the decedent, and may become a lien even without a recorded notice. For this reason, it is important when handling a transaction pursuant to a decedent’s estate to confirm that the appropriate steps have been taken with regard to estate taxes. Generally, the examiner should be furnished one of the following:

- If the estate is not taxable, a non-taxable certificate from the state of Arkansas and/or the federal government; or
- A receipt from the state of Arkansas and/or federal government for payment of taxes; or
- Waiver from the state of Arkansas and/or federal government waiving the government’s lien as to a particular property.
- A final order from the court confirming the disposition of any estate tax obligations.

2. Department of Human Services

Another party with a potential interest in the estate of a decedent is the Arkansas Department of Human Services. The Department of Human Services is the arm of the state government that, among other things, administers medical benefits to needy and aged residents pursuant to Medicaid and other programs. In connection with the provision of such benefits, the Department may have a right to recoup certain of its costs from the estate of a decedent.\footnote{See A.C.A. § 20-76-436. See also Estate of Wood v. Arkansas Dep’t of Human Servs., 319 Ark. 697, 894 S.W.2d 573 (1995).} In view of this potential right, Arkansas law requires that the Department be given a copy of the Notice of Appointment of a Personal Representative if it is known or could be reasonably ascertained that the Department rendered services to the decedent.\footnote{A.C.A. § 28-40-111}

Accordingly, the agent must confirm that the proper notice was provided to the Department. If the Department claims no interest, this may come in the form of a disclaimer or release from the Department. Another method of confirmation would be an order from the court confirming that notice was provided to the Department, that the time for filing claims against the estate has passed, and that the Department has filed no claim against the estate. If a claim is filed by the Department, as with any other creditor’s claim, the agent should require that it be satisfied prior to insuring title.

V. Probate of a Small Estate

Occasionally, requests are made to insure title in the name of an heir or devisee without a formal probate proceeding. In Arkansas, this is sometimes possible. In certain situations, Arkansas law allows for the distribution of the property of a decedent's estate without a
formal probate proceeding. In order to insure title under this procedure, we have ordinarily required the following:

(1) There can be no petition for the appointment of a personal representative pending or granted;

(2) Forty-five (45) days must have passed since the death of the decedent;

(3) The value, less mortgages, liens or other encumbrances, of all property owned by the decedent at the time of death, excluding the homestead and statutory allowances of the decedent's spouse or minor children, if any, must not exceed $100,000;

(4) An affidavit from one or more of the distributees of the estate must be filed with the probate clerk of the circuit court of the county in which the property is located setting forth:

(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, must be 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.

Further, in order for us to insure the transaction, we require that the distributee, as allowed by A.C.A. § 28-41-101(b)(2), publish a notice of the decedent's death and the filing of an affidavit for collection of his or her estate. The notice must contain the following information:

(1) The name of the decedent and his or her last known address;

(2) The date of death;
(3) A statement that the affidavit was filed, the date of the filing, and a legal
description of all real property listed in the affidavit;

(4) A statement requiring all persons having claims against the estate to exhibit them,
properly verified, within three (3) months from the date of the first publication of
the notice, or they shall be forever barred and precluded from any benefit in the
estate;

(5) The name and mailing address of the distributee or his or her attorney; and

(6) The date the notice was first published.

Publication of the notice must be made as follows:

(1) By publishing one (1) time a week for two (2) consecutive weeks in a
newspaper published and having a general circulation in the county, with
the first day of publication to be at least fifteen (15) days prior to the date
set for the hearing.

(2) Within one (1) month after the first publication of the notice, a copy of the
notice shall also be served by ordinary mail upon each heir and devisee
whose name and address are known and upon all unpaid creditors whose
names, status as creditors, and addresses are known to or reasonably
ascertainable by the personal representative, including the Department of
Human Services if it is known or could reasonably be ascertained that the
Department has rendered services to the decedent. A copy of the affidavit
and the decedent's social security number shall be attached to the notice
served upon the Department.

Finally, as any creditor would have three (3) months from the date of the first publication
of the notice to make a claim, the sale of the property should not be carried out before
this time period has run.

The actual requirement to be used in any commitment where we know the seller is opting
for this method of distribution is as follows:

Furnish sufficient proof of compliance with the requirements of Arkansas
Code, Sections 28-41-101 through 102, including the publication of notice
as allowed by Section 28-41-101(b)(2) of said Code. Further, provide
sufficient proof that there are no claims against the estate of the decedent
or that any claims previously existing have been satisfied in full, and that
the period for filing of claims has run.

Historically, it does not seem that this method of settling an estate has been used all that
frequently as to estates containing real property. However, with a recent amendment to
the legislation increasing the property amount to $100,000, it would seem that the title
insurance industry may see more estates distributed in this manner. In addition, those
opting to process an estate by this method may find the assistance of competent legal counsel to be cost prohibitive. Considering all of this, it is important that agents apply the guidelines above to ensure that the proper procedures have been followed.
EXHIBIT A

AFFIDAVIT OF HEIRSHIP

STATE OF ARKANSAS
COUNTY OF _____________

On this ___ day of ____________, 20__, before me personally appeared _________________, "Affiant," who having been duly sworn, deposes and says:

That he/she understands this affidavit is given under penalty of perjury for any false information provided herein;

That he/she is at least eighteen (18) years of age and is a resident citizen of _________________ County, ______________, residing at _________________;

That he/she was personally acquainted with _________________________, "Decedent," during Decedent's lifetime and was familiar with Decedent's family history;

That Decedent died on or about _____________________ a resident citizen of _________________ County, Arkansas, residing at ______________________;

That Decedent did/did not (please circle one) leave a will;

That Decedent was survived by the following persons:

- Surviving Spouse:
  - If there was a surviving spouse, please provide the following additional information:
    - Duration of the marriage between the decedent and surviving spouse?
    - Whether they were ever divorced?
    - If so, when, and how long were they continuously married leading up to the time of the decedent’s death?
    - Whether the spouse is now alive?
    - If not, the time and place of death?

- Surviving Children (adopted, natural born, legitimate, or illegitimate):

- Deceased Children (adopted, natural born, legitimate, or illegitimate):
• Spouses and Children of Deceased Children (as to children: adopted, natural 
born, legitimate, or illegitimate):

• If any of the persons named above are under the age of 18, please identify them and list their age:

• If any of the persons named above are disabled, under the care of a guardian or conservator, or in military service, please identify them and explain:

That he/she acknowledges and agrees that all statements and representations in this Affidavit will be relied upon by ______________ (name of underwriter) in the issuance of its title policy covering the premises described as follows:

[Insert description of subject property or attach as Exhibit]

Further the Affiant sayeth not.

____________________________________
Affiant

SUBSCRIBED AND SWORN TO before me this ____ day of _____________, 2006.

____________________________________
Notary Public

My Commission Expires: ___________________