

HEIRSHIP AND THE INFORMAL APPLICATION

Spouse and/ or children survive – the descendants.

Identifying and labeling the heirs of a decedent is a must for every application to commence an informal probate. TESTATE OR INTESTATE CASE YOU MUST LABEL THE HEIRS .The application has an allegation that all heirs have survived the decedent by 120 hours. You cannot make that allegation without identifying the heirs on the Interested Party List. Type in next to the name of every heir the word HEIR. MN Statutes 524.3-302 states that the Registrar “shall issue a written statement of informal probate if at least 120 hours have elapsed since the decedent’s death.”

In a testate estate you cannot assume the court will find the Will is valid therefor all heirs who would have a right to take under the intestacy statutes must be given notice.

Who is an heir? To be labelled an heir of a decedent you must be a living breathing person on the 5th day after a decedent died. A charity, a trust, any inanimate object is NOT an heir.

A person who survives the statutory 5 days (120 hours) as an heir may not survive until the application is filed. Label the person as an heir but add the words “now deceased” and give the date of death.

Only persons with a legal interest are listed on the application. A relationship to the decedent is not sufficient. A legal interest would be for example, an heir, a devisee, a trustee or a creditor.

Where to begin?

A. Spouse as heir.

Was the decedent married at the time of death? Yes

A surviving spouse is always an heir.

Did the decedent have any children, natural or adopted, legitimate or illegitimate? NO

Then you stop looking for heirs. The spouse is the sole heir. The spouse may not be the only devisee/distributee of a Will but they will be the only heir in the absence of surviving children or grandchildren.

Other than the failure to identify any heirs, the place the Registrars find the most errors in heirship identification in informal applications as well as formal petitions is when there is no surviving spouse.

B. Decedent has surviving children (issue) only.

The children are labelled as heirs if they survive the decedent by 5 days (120 hours). Type in the word HEIR next to each of their names.

Because there is a right of representation at this level of heirship you need to take the next step and ask if there are any predeceased children. If the answer is all the children of the decedent

survived the decedent. Then your heirship list is complete when you list and label the children as heirs.

However, if a child predeceased the decedent, we like to see the date of death so we can affirm that the death occurred before and not after the decedent's death, you still name deceased child on the interested party list.

For example,

Susan Smith daughter, predeceased 1/1/1999

Survived by: Mary Smith granddaughter heir

The right of representation now comes into this situation. Ask the question did Susan have any surviving children (issue)? Yes, list in the application under Susan's name the children who survived her. Their relationship will be grandchild because you are focused on the connection to the decedent who is the subject of the application. The grandchild becomes an HEIR because their parent, the child of the decedent, predeceased the decedent or did not survive the 5 days (120 hours). If the grandchild is a minor this can determine the type of probate process that is available to you.

The listing of the named predeceased child (e.g. Mary Smith, predeceased child, no issue) who died with no surviving descendants should contain the words "no issue".

A specifically omitted child if he/she survives the decedent is still an heir. The application for informal probate must show an address for the person and they will need to be given notice.

Surviving only child or children of the decedent are all minors. Many mistakes are made in this type of application or petition. Being a minor doesn't make the person any less an heir. The decedent's parents and/ or siblings **DO NOT BECOME HEIRS** because decedent's surviving children are minors. Do not list the parents/siblings when minor children survive unless they are a creditor or have been nominated to serve as the personal representative. The children of the decedent no matter their age are the descendants of the decedent and they are designated as the sole heirs. (This scenario would **not** be acceptable for informal probate.)

For purposes of priority for appointment and notice you ask the question – What adult stands in the shoes of the minor child(ren) to represent their interest in this estate? Any court appointed Guardian or Conservator or if no court appointed authority the "natural" guardian of the child usually the surviving parent.

No surviving spouse or children (issue) or children of predeceased children.

This is the point where you then go UP in the decedent's ancestry rather than down.

Another instruction sheet will follow on the next level of heirs.

