

JAN 26 2011

A BILL FOR AN ACT

RELATING TO SUMMARY ADMINISTRATION OF SMALL ESTATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 560, Hawaii Revised Statutes, is
2 amended by adding six new sections to part 12 of article 3 to be
3 appropriately designated and to read as follows:
4 "§560:3-A Small estates containing real property; closing
5 by petition; generally. If a decedent dies leaving real
6 property in the State, the gross value of the decedent's real
7 and personal property in the State does not exceed \$100,000, and
8 at least forty days have elapsed since the death of the
9 decedent, then the successor of the decedent to an interest in a
10 particular item of property that is real property, without
11 procuring letters of administration or awaiting the probate of
12 the will, may file a petition with the court requesting a court
13 order determining that the petitioner has succeeded to that real
14 property. A petition under this section may include an
15 additional request that the court make an order determining that
16 the petitioner has succeeded to personal property described in
17 the petition.



1 §560:3-B Small estates containing real property; closing
2 by petition; contents of petition. (a) The petition filed
3 pursuant to section 560:3-A shall be verified by each
4 petitioner, shall contain a request that the court make an order
5 under this section determining that the property described in
6 the petition is property passing to the petitioner, and shall
7 state all of the following:

8 (1) The gross value of the decedent's real and personal
9 property in the State, as shown by the inventory and
10 appraisal attached to the petition, does not exceed
11 \$100,000;

12 (2) A description of the particular item of real property
13 in the State that the petitioner alleges is property
14 of the decedent passing to the petitioner, and a
15 description of the personal property that the
16 petitioner alleges is property of the decedent passing
17 to the petitioner if the requested order also is to
18 include a determination that the described personal
19 property is property passing to the petitioner;

20 (3) The facts upon which the petitioner bases the
21 allegation that the described property is property
22 passing to the petitioner;



- 1 (4) Either of the following, as appropriate:
- 2 (A) A statement that no proceeding is being or has
- 3 been conducted in the State for administration of
- 4 the decedent's estate; or
- 5 (B) A statement that the decedent's personal
- 6 representative has consented in writing to use of
- 7 the procedure provided by this section;
- 8 (5) Whether estate proceedings for the decedent have been
- 9 commenced in any other jurisdiction and, if so, where
- 10 those proceedings are pending or were conducted;
- 11 (6) The name, age, address, and relation to the decedent
- 12 of each heir and devisee of the decedent, the names
- 13 and addresses of all persons named as executors of the
- 14 will of the decedent, and, if the petitioner is the
- 15 trustee of a trust that is a devisee under the will of
- 16 the decedent, the names and addresses of all persons
- 17 interested in the trust, so far as known to any
- 18 petitioner; and
- 19 (7) The name and address of each person serving as
- 20 guardian or conservator of the estate of the decedent
- 21 at the time of the decedent's death, so far as known
- 22 to any petitioner.



1 (b) There shall be attached to the petition an inventory
2 and appraisal of the decedent's real and personal property in
3 the State. The inventory and appraisal shall follow the
4 requirements of section 560:3-706. The petitioner may appraise
5 the assets that a personal representative is authorized to
6 appraise under section 560:3-706. The petitioner may employ an
7 appraiser under the terms under section 560:3-707.

8 (c) If the petitioner bases the petitioner's claim to the
9 described property upon the will of the decedent, a copy of the
10 will shall be attached to the petition.

11 (d) If the decedent's personal representative has
12 consented to use of the procedure provided by this part, a copy
13 of the consent shall be attached to the petition.

14 **§560:3-C Small estates containing real property; closing**
15 **by petition; notice.** Notice of the hearing shall be given as
16 provided in section 560:1-401 to each of the persons named in a
17 petition pursuant to section 560:1-403.

18 **§560:3-D Small estates containing real property; closing**
19 **by petition; order.** (a) If the court makes the determinations
20 required under subsection (b), the court shall issue an order
21 determining:



1 (1) That real property, to be described in the order, of
2 the decedent is property passing to the petitioners
3 and the specific property interest of each petitioner
4 in the described property; and

5 (2) If the petition so requests, that personal property,
6 to be described in the order, of the decedent is
7 property passing to the petitioners and the specific
8 property interest of each petitioner in the described
9 property.

10 (b) The court may make an order under this section only if
11 the court makes all of the following determinations:

12 (1) The gross value of the decedent's real and personal
13 property in the State does not exceed \$100,000;

14 (2) No less than forty days have elapsed since the death
15 of the decedent;

16 (3) Whichever of the following is appropriate:

17 (A) No proceeding is being or has been conducted in
18 the State for administration of the decedent's
19 estate; or

20 (B) The decedent's personal representative has
21 consented in writing to use of the procedure
22 provided by this part; and



1 (4) The property described in the order is property of the
2 decedent passing to the petitioner.

3 (c) If the petition has attached an inventory and
4 appraisal that satisfies the requirements of section 560:3-B(b),
5 the determination required by subsection (b)(1) shall be made on
6 the basis of the verified petition and the attached inventory
7 and appraisal, unless evidence is offered by a person opposing
8 the petition that the gross value of the decedent's real and
9 personal property in the State exceeds \$100,000.

10 **§560:3-E Small estates containing real property; closing**
11 **by petition; finality.** Upon becoming final, an order under this
12 part determining that property is property passing to the
13 petitioner is conclusive on all persons, whether or not they are
14 in being.

15 **§560:3-F Small estates containing real property; closing**
16 **by petition; effect.** (a) Subject to subsections (b), (c), and
17 (d), the petitioner who receives the decedent's property
18 pursuant to an order under section 560:3-D is personally liable
19 for the unsecured debts of the decedent.

20 (b) The personal liability of any petitioner shall not
21 exceed the fair market value at the date of the decedent's death
22 of the property received by that petitioner pursuant to an order



1 under this part, less the amount of any liens and encumbrances
2 on the property.

3 (c) In any action or proceeding based upon an unsecured
4 debt of the decedent, the petitioner may assert any defense,
5 cross-complaint, or setoff which would have been available to
6 the decedent if the decedent had not died.

7 (d) Nothing in this section permits enforcement of a claim
8 that is barred under article III, part 8 of this chapter."

9 SECTION 2. Section 560:1-201, Hawaii Revised Statutes, is
10 amended by adding three new definitions to be appropriately
11 inserted and to read as follows:

12 "Particular item of property" means the real property of
13 the decedent, or particular real and personal property of the
14 decedent, for which the successor of the decedent seeks a court
15 order determining succession under sections 560:3-A through
16 560:3-F.

17 "Property of the decedent" means property that becomes part
18 of the decedent's estate upon the decedent's death, whether by
19 designation of the estate as beneficiary under an insurance
20 policy on the decedent's life, under the decedent's retirement
21 plan, or otherwise.

22 "Successor of the decedent" means:



1 (1) If the decedent died leaving a will, the sole
2 beneficiary or all of the beneficiaries who succeeded
3 to a particular item of property of the decedent under
4 the decedent's will; provided that for the purposes of
5 this chapter, a trust is a beneficiary under the
6 decedent's will if the trust succeeds to the
7 particular item of property under the decedent's will;
8 or

9 (2) If the decedent died without a will, the sole person
10 or all of the persons who succeeded to the particular
11 item of property of the decedent under applicable
12 intestate succession provisions or, if the law of
13 another jurisdiction governs succession to the
14 particular item of property, under the law of the
15 other jurisdiction."

16 SECTION 3. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 4. New statutory material is underscored.

20



1 SECTION 5. This Act shall take effect upon its approval.

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Report Title:

Probate; Small Estate Closing by Petition Without Probate

Description:

Authorizes the successor to a small estate to close the estate through a petition process, rather than requiring the successor to close the estate through probate. Allows the successor to obtain a court order covering both personal and real property. Applies to small estates worth \$100,000 or less, where forty or more days have elapsed since the decedent passed away.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

