

When Someone Dies: Settling Small Estates

New York Small Estate Affidavits and Family Protections

New York law allows families of persons who die with personal property having a value of \$50,000 or less to collect money and property of the decedent (the person who died) without court administration. If the decedent had \$50,000 or less in personal property and there is no need to sell any real estate that they owned, an "Affidavit of Voluntary Administration," also known as the "small estate affidavit" may be used. Details and Do It Yourself forms are available at <https://nycourts.gov/courthelp/WhenSomeoneDies/index.shtml>.

New York Estates Powers and Trust law (section 5-3.1) also provides that assets of the decedent, up to \$25,000 cash, plus one motor vehicle (value up to \$25,000) and certain other property, can go to their family, safe from creditors. This law helps survivors who need money from their deceased family member to pay current bills.

Additionally, certain surviving relatives of a deceased person can collect up to \$30,000 and other property owed to the decedent, without filing papers in court, provided there is no beneficiary already named on the account.

Who Can Use the Surrogate's Court Procedure Act Section 1310* Small Estate Affidavit?

The SCPA 1310 Small Estates Affidavit allows payment of money owed to the deceased person's:

- surviving spouse,
- parent, sibling, adult child, niece or nephew, grandchild, grandparent, aunt, uncle and first cousins,
- certain creditors, and

- a person who has paid or incurred funeral expenses of the decedent, upon the request of the surviving spouse or relatives.

A surviving spouse may immediately collect up to \$30,000 by presenting a small estate affidavit and a death certificate. The affidavit must show that the payment and all other payments received by the spouse from all institutions do not exceed \$30,000.

30 days after a death, certain relatives or a funeral creditor may collect up to \$15,000 including the spouse, children, parents, siblings, nieces and nephews or a creditor who has paid the funeral expenses. This list of relatives is in order of entitlement; if the decedent was survived by a spouse, only the spouse can collect. If the decedent was survived by children but no spouse, only the children may collect. The surviving spouse is included in both sections to maintain the order of entitlement: a surviving spouse always has first priority.

At least six months after the decedent's death, a debtor may pay up to \$5,000 to more distantly related distributees (grandchildren, grandparents, aunts, uncles and first cousins).

Under SCPA 1310, the following conditions apply:

- There must be no administrator, executor, or other fiduciary already appointed by a court to handle the decedent's estate.
- A person who receives a payment under this section is accountable for it to a fiduciary later appointed in the estate.
- To the extent that a surviving spouse receives payments that do not exceed the value of the property exempt from creditors under EPTL 5-3.1, s/he does not have to account for it.

This form is helpful for relatives and/or non-relatives who have paid funeral expenses and need to be repaid. Someone who has covered funeral expenses at the request of a close relative can recover up to \$15,000 after 30 days have passed since the death. If there was no request from a close relative the reimbursement request can be made six months after the death for up to \$5,000.

Most banks, credit unions, insurance companies have their own forms that can be used to obtain decedent funds. The New York Office of the Comptroller in Albany

also has a SCPA 1310 form for abandoned funds. It is available at:
<https://www.osc.ny.gov/files/unclaimed-funds/2017-10/ouf-form-small-estates-affidavit.pdf>

Below is an example of what is needed in a 1310 affidavit:

STATE OF NEW YORK)

COUNTY OF [Name of County]) ss.

I, [Name of decedent's surviving spouse], being duly sworn, depose and say:

1. I reside at [address of decedent's surviving spouse].
2. I am the surviving spouse of [Name of decedent], deceased.
3. The said decedent died on [date of decedent's death].
4. No fiduciary has qualified or been appointed.
5. I am entitled to receive the money paid.
6. This payment being requested and all other payments made under this section by all debtors known to the affiant after diligent inquiry, do not in the aggregate exceed \$[dollar amount] which is less than the dollar limitation under this section of an amount not to exceed \$30,000.

[attach notarization]

*New York Surrogate's Court Procedure Act 1310 also allows up to \$5,000 to be paid to the department of social services where the money is on deposit with a facility for the personal needs of the deceased creditor while residing in a medical institution or other facility, and the deceased is indebted to the department or district on account of medical assistance furnished to the deceased creditor.

This is general legal information. For legal advice specific to you, please contact an attorney.

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This article provides general information about this subject. Laws affecting this subject may have changed since this article was written. For specific legal advice about a problem you are having, get the advice of a lawyer. Receiving this information does not make you a client of our office.

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