

Department of State

§ 72.43

country in which the death occurred, or in the country in which the decedent was residing at the time of death, the consular officer should endeavor to obtain sufficient funds from the legal representative, next of kin or other interested person. See § 72.32 concerning funds found in another consular district. Fees are not charged on funds so furnished (§ 72.53). If sufficient funds cannot be assembled from the foregoing sources, the consular officer should sell at auction (see § 72.37), such portion of the personal estate as may be necessary to pay the debts and expenses. Should occasion arise for sale of motor vehicles, airplanes or powered watercraft, title to which and liens upon which in the United States and almost universally are matters of official record, care should be taken to conform with applicable registration requirements. Articles which are most marketable, and at the same time least likely to be desired by the heirs of the decedent, should be sold first. Jewelry, heirlooms and articles which may have sentimental value to relatives, regardless of intrinsic value, should be sold only in case of necessity, and in the order named. Members of the decedent's family should be notified of the necessity for the sale, if practicable, in order that they may purchase these articles if they desire. Proceeds from the sale are regarded as forming part of the personal estate and should be included in the gross amount thereof for the assessment of Foreign Service fees (see § 72.52).

§ 72.40 Consular officer not to act as administrator of estate.

The consular officer normally should not accept appointment from any foreign state or from a court in the United States to act as administrator, or to assist (except as provisional conservator) in administering the personal estate of a deceased citizen who has died, or was residing at the time of death, within his consular district. Neither should he accept appointment as guardian or in any other fiduciary capacity in the settlement of the estate without:

(a) Having previously obtained the permission of the Secretary of State to accept such appointment; and

(b) Having assured himself that he has authority so to act under treaty provisions, local law or usage.

If authorization is received as to appointment in any of the capacities indicated above, the consular officer will be required to execute bond, with surety to be approved by the Secretary of State (22 U.S.C. 1178, 1179).

§ 72.41 Consular officer not to perform legal services or to employ counsel.

Owing to the legal restriction against engaging in foreign business or professional activity (22 U.S.C. 805), the consular officer shall not act as attorney or agent for the estate. Neither shall he employ counsel at the expense of the United States Government, or the estate, in collecting and disposing of the personal estate of a deceased citizen. If legal assistance is requested of the consular officer, he may furnish the names of several attorneys or inform the inquirer as to sources through which the names of suitable attorneys may be obtained.

§ 72.42 Consular officer not to assume financial responsibility.

The consular officer, as provisional conservator of the personal estate of a deceased citizen, is neither authorized nor expected to assume any financial responsibility, not to incur any expense in behalf of the estate, in excess of funds available for that purpose (see § 72.39(a)).

§ 72.43 Conditions under which estate can be released by consular officer.

The consular officer is responsible to the United States court having probate jurisdiction over the estate and to the parties in interest for the personal estate in his possession. He must be prepared to deliver the estate to, or otherwise dispose of it according to the wishes of, the legal representative of the decedent upon the presentation of satisfactory evidence of the latter's right to receive the estate, and upon the payment of the prescribed Foreign Service fees (§ 72.52). Determination of what constitutes satisfactory evidence of a claimant's right to the personal estate of a deceased citizen is also the responsibility of the consular officer. The

§ 72.44

consular officer, therefore, must satisfy himself that the evidence which he accepts is sufficient to relieve him as provisional conservator. Friends, traveling companions, employers, and business associates are not competent to relieve the consular officer of the duties and responsibilities enumerated in the regulations in this part, unless duly authorized as legal representatives of the estate (see § 72.18). Satisfactory evidence of a claimant's right to the personal estate of a decedent may be supplied in the manner indicated in § 72.44.

§ 72.44 Evidence of claimant's right to estate.

(a) *Letters testamentary.* A certified copy of the letters testamentary (an instrument issued by a court of law under which a person, named as executor by a will, formally takes charge of the estate and proceeds to carry out the directions in the will) is prima-facie evidence of the executor's right to take possession of the personal estate.

(b) *Letters of administration.* A certified copy of the letters of administration (an instrument issued by a court of law in intestate proceedings appointing an administrator to take charge of the property of a decedent) is prima-facie evidence of the administrator's right to take possession of the personal estate.

(c) *Affidavit of next of kin.* When a decedent dies intestate, and the personal estate consists only of clothing and similar personal effects appraised at little or no commercial value, or in cases where the consular officer is fully satisfied of the legal right of the claimant and the value of the estate does not warrant the expense of probate proceedings, he may be justified in considering as satisfactory evidence an affidavit executed by the decedent's next of kin. The affidavit of the next of kin should be corroborated by the sworn statements of two persons acquainted with the affiant and familiar with the facts of the case. In any event, the consular officer must satisfy himself of the legal right of the claimant or claimants to the decedent's effects before releasing the property that he has in his possession, and he must decide whether

22 CFR Ch. I (4-1-01 Edition)

an affidavit is acceptable in lieu of a certified copy of the letters testamentary or the letters of administration.

§ 72.45 Shipment of personal estate to the United States.

(a) When the consular officer is requested to ship to the United States the personal estate in his possession, he should deliver it to a forwarding company selected by the legal representative. Clearance by Customs in the United States will be facilitated if the personal estate is accompanied by a consular certificate identifying it and indicating its nature. If the entire shipment is covered by a single bill of lading, a certificate attached to the original bill of lading covering the shipment would be sufficient; otherwise a certificate should accompany each parcel, box or case.

(b) Extra copies of the bill of lading can serve as a receipt from the forwarding company, one copy to be attached to the consular officer's final statement of account (§ 72.50), and one copy to be retained in the office files. If shipment by registered or insured parcel post, or by other safe means covered by receipt, is possible, there is no objection to forwarding the estate in this fashion, and postal or other receipts should be disposed of in the manner described above, with the original attached to the final statement of account. The personal effects of Foreign Service personnel (see § 72.27) and of personnel of other Government agencies (except Department of Defense and Coast Guard personnel) should be consigned to the United States despatch agent at the port of entry, for forwarding to the legal representative.

§ 72.46 Consular action on disagreements between claimants.

If rival claimants or administrators (administrators may be appointed in different jurisdictions) demand the personal estate in the consular officer's possession, he should refuse to deliver the estate until an agreement has been reached, or judgment rendered, as to which claimant or administrator should receive it, and the consular officer so informed in writing. If, after one year, agreement has not been reached