

7 FAM 200 DEATHS AND ESTATES OF U.S. NATIONALS ABROAD

7 FAM 210 INTRODUCTION

(CT:CON-290; 04-01-2009)
(Office of Origin: CA/OCS/PRI)

7 FAM 211 SUMMARY

(CT:CON-290; 04-01-2009)

- a. Sympathy, Compassion, Composure, Professionalism: Providing assistance to the relatives of U.S. citizens who die abroad is one of the most difficult and important services performed by consular officers, requiring sensitivity, tact, and a high degree of competence, particularly in those cases where death occurs under unusual circumstances. Officers must deal sympathetically and effectively with the decedent's surviving spouse, next of kin (NOK) and other family members or friends who are experiencing emotional stress, and who are often unprepared, financially and otherwise, for the important decisions that must be made in an atmosphere of urgency. The consular officer's actions are governed by the desires of the surviving spouse, closest relative or legal representative, who is usually in the United States, far from the scene of death, and unfamiliar with foreign laws concerning death and the disposition of remains. All arrangements relating to the death of a U.S. citizen overseas must be handled with care, empathy, and understanding.

See: 7 FAM 200 Appendix D Identifying Next of Kin or Legal Representative.

- b. Responsibility of the Host Country: Consular officers should be familiar with the provisions of consular treaties in force, pertaining to estates or between the United States and the host country. Treaty provisions may specify the time period in which notification of the death of a national must be made by the host country to the consular officer and procedures to be followed regarding disposition of the personal estate of a national. (See 7 FAM 212 Authorities). The texts of the Vienna Convention on

Consular Relations (VCCR) and bilateral consular conventions are also available on the CA Internet page and the CA/OCS Intranet treaties feature. Article 5(g) of the VCCR provides that consular functions include safeguarding the interests of deceased U.S. citizens in accordance with the laws of the host country. In addition, Article 37 of the VCCR requires notification by host country officials “without delay” in instances of the death of a foreign national. For a list of parties to the Convention, (see Treaties in Force on the Department of State Internet page.)

- c. **Critical Contact Information:** Consular officers must become familiar with their responsibilities and the procedures to be followed. Each post should maintain an information sheet listing the contacts and telephone numbers of host country offices or agencies which must be dealt with when deaths occur. Advance preparation will assist greatly in carrying out the wishes of the NOK and significantly reduce the potential for criticism.

Contacts should include, but not be limited to:

- Police
- Hotel managers
- Local morticians and funeral directors
- Local coroners and medical examiners
- Local air carriers, including customer service, cargo and special care experts
- U.S. Customs Service representatives
- U.S. Customs and Public Health Service representatives at U.S. ports of entry (POE)

- d. **Critical Host Country Law and Practice:** It is also vital that you be generally familiar with the laws and practices of the host country regarding disposition of remains, autopsies, issuance of death certificates, including presumptive death findings, probate and other matters related to estates, and bereavement and mourning customs. (See 7 FAM 200 Appendix B). You should have contacts that will be able to answer questions about these issues. It is recommended that you make this information available on your post web page.

For example:

- U.S. Embassy Tokyo – Death of A Loved One
- U.S. Embassy Mexico City – Death of a U.S. Citizen
- U.S. Embassy Singapore – Death of a U.S. Citizen
- U.S. Embassy Seoul – Death of a U.S. Citizen

• U.S. Embassy San Jose – Death of a U.S. Citizen

- e. Estate Function of Consuls: For over 200 years consular officers have been empowered to dispose of the personal estates of citizens who die abroad. As early as 1792, laws were enacted by Congress giving consular officers certain powers and authority with respect to estates of deceased citizens. While most estates of U.S. citizens who die while visiting abroad involve a small number of personal items, U.S. citizens working and residing abroad may have much more complicated estates and a surprising number have no wills and no legal representation. CA/OCS/ACS, with legal guidance from CA/OCS/PRI and L/CA, stand ready to assist you in this often complex work.

7 FAM 212 AUTHORITY

(CT:CON-290; 04-01-2009)

- a. Treaties: Article 5(g) of the VCCR provides that consular functions include safeguarding the interests of deceased U.S. citizens in accordance with the laws of the host country. In addition, Article 37 of the VCCR requires notification without delay by host country officials in instances of the death of a foreign national. Bilateral consular conventions contain similar provisions. (See 7 FAM 211 b).
- b. Statutes: *The statutory authority for diplomatic or consular officers to act in the event of the death of a U.S. citizen abroad is contained in:*
- (1) 22 U.S.C. 2715b Notification of Next of Kin; Reports of Death;
 - (2) *22 U.S.C. 2715 Procedures Regarding Major Disasters and Incidents Abroad Affecting United States Citizens;*
 - (3) *22 U.S.C. 2715c Conservation and Disposition of Estates;*
 - (4) 22 U.S.C. 4196 Notification of Death of Decedent; Transmission of Inventory of Effects;
 - (5) 22 U.S.C. 4197 Following testamentary directions; assistance to testamentary appointee;
 - (6) 22 U.S.C. 2729 Report to Congress Death by Non-Natural Causes;
 - (7) 46 U.S.C. 10702 Duties of Masters;
 - (8) 46 U.S.C. 10703 Procedures of Masters;
 - (9) 46 U.S.C. 10704 Duties of Consular Officers; and
 - (10) 46 U.S.C. 11301 Logbook and Entry Requirements
- c. Regulations: Consular regulations regarding deaths and estates were revised in 2006-2007. *The Final Rule was published as Public Notice*

5702, Federal Register 72, No. 39, February 28, 2007, pages 8887-8894.

The Proposed Rule was published in Federal Register, Vol. 71, No. 205, October 24, 2006, 62219-62226. In addition, federal regulations issued by the Public Health Service and the Coast Guard also pertain to certain consular responsibilities. 42 CFR 71.21 (Public Health Service Radio Report of Death or Illness); 42 CFR 71.35 (Report of Death or Illness on Carrier During Stay in Port); 42 CFR 71.55 (Dead Bodies); and 7 FAM 760 and 46 CFR 4.04-1 (Reports of Potential Vessel Casualty); 46 CFR 4.05-1 (Notice of Marine Casualty); 46 CFR 122.202 (Notice of Marine Casualty); 46 CFR 122.220 (Records Of A Voyage Resulting In A Marine Casualty).

- d. Local Law: The extent to which a consular officer can exercise the authorities and responsibilities established by U.S. statutes and regulations, or otherwise be of assistance, is subject to the cooperation of the local authorities and in general the laws of the country where the U.S. citizen died.
- e. Limited Role of Consular Agents: A consular agent does not have legal authority under United States statutes with respect to the death of a U.S. citizen abroad. Actions taken by a consular agent must be under the close and direct supervision of a consular officer, who retains sole responsibility under United States law.

7 FAM 213 DEFINITIONS

(CT:CON-153; 01-11-2007)

For purposes of the Department's role in responding to the death of U.S. citizens abroad and services involving the settlement of their estates, the following terms and definitions apply.

7 FAM 213.1 Death Cases Abroad

(CT:CON-153; 01-11-2007)

Autopsy: An inspection and dissection of the remains to determine the cause of death.

Certificate of death: A document issued by local authorities to verify a person's death.

Cremation certificate: A certificate issued by a crematorium to verify a person's cremation. It normally contains the name of the deceased, date of death, and date of cremation.

Disposition of remains: The method of disposition of the deceased which will include one of the following: local interment, preparation of the remains and air shipment to a designated area in the United States, cremation and local disposition of the ashes, or cremation

and air shipment of the ashes to a designated area in the United States.

Disposition of remains report: The triennial report submitted to the Department setting forth the local requirements and costs for interment, cremation, embalming, preparation and shipment of the remains, exhumation and bereavement/mourning customs.

Legal representative: For the purposes of reports of death and disposition of remains, the person authorized to act in all matters relating to the death and disposition of the remains of a U.S. citizen who has died abroad.

Mortuary Certificate: A certificate prepared by a U.S. consular officer in conjunction with the local funeral director, attending physician or coroner attesting that a deceased individual did not die of a communicable disease and attesting to the contents of a coffin or urn.

Next of kin (NOK): A person's closest relative, such as spouse, children, or parents.

Postmortem: See Autopsy.

Report of Death: Form DS-2060, Report of the Death of an American Citizen Abroad, used to report the death of a U.S. citizen abroad.

Waybill: A document prepared by the carrier of a shipment of goods or freight (including shipment of remains), containing the details of the shipment, route, and charges.

7 FAM 213.2 Definitions for the Purpose of Settlement of Estates Abroad

(CT:CON-290; 04-01-2009)

Administration: As it relates to an estate, the management and settlement of the estate of an intestate, or of a testator who has no executor, performed by a duly qualified person generally under the supervision of a court. It usually involves collecting the decedent's assets, paying the debts, and distributing the remainder of the estate.

Administrator or Administratrix: A person appointed by a court to administer the estate of a decedent. Such person, if named in the decedent's will, is designated as "executor" or "executrix".

Affinity: A relationship that one spouse has to blood relatives of the other spouse because of marriage.

Ancillary administration: Administration of an estate in a jurisdiction where the decedent had property but was not domiciled. It may be performed in any foreign jurisdiction where assets are located and is usually for the purpose of collecting such assets and paying debts there.

Beneficiary: A person having the benefits of property of which a trustee, or executor, has legal possession or, broadly speaking, a person who is entitled to proceeds of an estate.

Bequest: The legal term meaning personal property left by a will.

Codicil: An addition, supplement, or modification to a will. A codicil does not dispose of the entire estate, and does not normally revoke in toto a prior will.

Collateral consanguinity: The relationship that exists between persons who have common ancestors, but who do not descend/ascend one from the other (for example, an uncle and nephew).

Consanguinity: The relationship of persons descended from a common ancestor.

Devise. An old legal term that is generally used to refer to real estate left to someone under the terms of a will, or to the act of leaving such real estate. In some states “devise” now applies to any kind of property left by a will, making it identical to the term bequest.

Devisee: A person to whom property is devised or given by a will.

Distributee: A person entitled to share in the distribution of an estate pursuant to a statute of distribution, rather than pursuant to a will.

Executor or Executrix: A male or female named in the will of the decedent to administer the decedent’s estate.

Fiduciary: A person holding a position similar to that of a trustee with a duty to act in good faith for the benefit of another person. A fiduciary relationship may exist between client and attorney, or executor and distributee. A breach of fiduciary responsibility may make the fiduciary liable to the beneficiaries for any damage cause by such breach.

Heir: A person who inherits property by will or under a statute of descent and distribution.

Intestate: Without having made a will; also, the term “an intestate” means a decedent who leaves no will.

Legacy: A disposition of real or personal property by will.

Legal representative: In its broadest sense means someone who stands in place of, and has legal authority to represent the interests of, another. For the purpose of the handling of estates by consular officers the term “legal representative” as generally defined in 22 CFR 72.1 (revised) is:

- (1) An executor designated by will intended to operate in the country where the death occurred or in the country where the deceased was residing at the time of death to take possession and dispose of the decedent’s personal estate;

- (2) An administrator appointed by a court of law in intestate proceedings in the country where the death occurred or in the country where the deceased was residing at the time of death to take possession and dispose of the decedent's personal estate;
- (3) The next of kin, if authorized in the country where the death occurred or in the country where the deceased was residing at the time of death to take possession and dispose of the decedent's personal estate; or
- (4) An authorized agent of the individuals described in paragraphs (1), (2) and (3).

Legatee: A person to whom a legacy is given.

Letters of administration: An official document, issued by a court, which authorizes a person to administer the estate of a decedent: who dies intestate or makes a will without naming any executors; when the executor named in the will is incompetent or refuses to act; or when the executor in the will is deceased.

Letters testamentary: An official document issued by a court authorizing the executor named in the will to administer the estate.

Lineal consanguinity: The relationship between persons of whom one is descended or ascended in a direct line from the other, as between a particular person and the person's father, grandmother, or great-grandfather.

Living Will, Advance Directive, Durable Power of Attorney: Legal instruments that enable a person to indicate their wishes regarding medical treatment and disposition of remains in the event of a catastrophic condition. (See 7 FAM 358).

Mortis causa: By reason or in contemplation of death.

Next of kin (NOK): This term may mean either the persons most nearly related to the decedent by blood or marriage or the persons related to the decedent by blood or marriage who are entitled to participate in the distribution of an estate under a statute of distribution.

Nisi: A Latin term meaning "unless" and is often affixed to words such as "rule," "order," and "decree." It is used to indicate that a judgment will stand as valid and operative unless action is taken to avoid it, or to procure its revocation.

Personal estate: Sometimes used synonymously with "personal property," means any tangible property of the decedent that does not fall into the category of real estate. It includes furniture, household furnishings, motor vehicles, clothing, luggage, and other effects of a tangible, movable nature. It also includes convertible assets, non-negotiable instruments, and the like.

For purposes of the Department’s regulations, however, a personal estate does not include bank deposits.

Per Capita: The method of dividing an intestate estate by which an equal share is given to each of a number of persons, all of whom stand in equal degree to the decedent. Distributees of the same generation share equally in the proceeds for that generation.

Per stirpes: The method of dividing an estate by which a group of distributees takes the share which a deceased distributee would have been entitled to take (e.g., three children take one-third share each of their deceased mother’s share of their grandfather’s estate).

Probate: The procedure by which a will is proven to be valid or invalid, before a competent judicial authority, such as a probate court. The term is more broadly used to include all matters and proceedings pertaining to the administration of an estate.

Self-proving will: A will that eliminates some of the formalities of proof by execution in compliance with the applicable statute. A will may be made self-proving by an affidavit of attesting witnesses in the form prescribed by statute. (See 7 FAM 843).

Statute of descent and distribution: A law prescribing the manner in which an estate is to be distributed among the heirs or relatives of an intestate person. The statute for a particular state in the United States may be found under the section “Descent and Distribution” for each state law summary contained in the United States Law Digest published by Martindale Hubbell (Martindale Hubbell Law Digest - United States Law Digest, multiple volumes). (See the Martindale Hubbell International Law Digest). These are accessible on-line through LexisNexis.

Succession: The devolution of title to property under the law of descent and distribution, by will or inheritance (as opposed to by sale).

Testate: Leaving a valid will.

Testator: A male decedent who dies testate.

Testatrix: A female decedent who dies testate.

Will: A written instrument by which a person makes a disposition of his or her property, to take effect after death.

7 FAM 214 TREATIES AND OTHER INTERNATIONAL AGREEMENTS ON DEATHS AND ESTATES NOT IN FORCE FOR THE UNITED STATES

(CT:CON-153; 01-11-2007)

- a. Convention Providing a Uniform Law on the Form of an International Will of October 26, 1973: As 7 FAM 843 explains briefly, U.S. consular officers cannot execute the certificate under the Uniform International Wills Act because the United States has not, to date, become a party to the Convention Providing a Uniform Law on the Form of an International Will of October 26, 1973.
- (1) The President transmitted the Convention to the Senate on July 2, 1986;
 - (2) The Senate gave advice and consent to ratification on August 2, 1991;
 - (3) The President signed the instrument of ratification on December 2, 1991;
 - (4) The United States has not deposited its instrument of ratification pending enactment of implementing legislation, the International Wills Act, required before the United States can take further action to ratify the Convention. That draft legislation has not been introduced. CA/OCS/PRI (ASKPRI@state.gov) continues to receive inquiries about this convention from private citizens, private practitioners and other interested parties;
 - (5) When the treaty enters into force for the United States, consular officers abroad will be required to execute an "International Will Certificate." This is an acknowledgement that the document was executed by the testator and the witnesses in the manner prescribed by the International Wills Act. The pre-printed certificate also sets forth the requirements of the Act. This is essentially a notarial function; and
 - (6) When the Convention comes into force, CA will have specific responsibilities under this Convention regarding maintenance of a registry of international wills executed before U.S. diplomatic and consular officers abroad, which we believe will be assigned to CA/OCS/PRI (ASKPRI@state.gov). CA Assistant Secretary approved the concept of CA/OCS assuming these responsibilities on July 27, 1984.
- b. Hague Conventions on Trusts, Estates, and Protection of Incapacitated Adults: The United States is not a party to these treaties, but participated in their negotiation. At present, CA/OCS/PRI (ASKPRI@state.gov), L/CA and L/PIL are reviewing the conventions to determine their benefits to the United States and whether we should take next steps towards U.S. accession.

See:(NOT IN FORCE FOR THE UNITED STATES AT THIS TIME)

- Hague Convention on the Conflicts of Law Relating to the Form of Testamentary Dispositions (1961)
- Hague Convention Concerning International Administration of Estates of Deceased Persons
- Hague Convention on the Law Applicable to Succession to the Estates of Deceased Persons (1989)
- Hague Convention on the Law Applicable to Trusts and Their Recognition (1985)

7 FAM 215 THROUGH 219 UNASSIGNED