

7 FAM 200 APPENDIX D IDENTIFYING NEXT OF KIN OR LEGAL REPRESENTATIVE

*(CT:CON-156; 02-07-2007)
(Office of Origin: CA/OCS/PRI)*

7 FAM 210 APPENDIX D INTRODUCTION

(CT:CON-156; 02-07-2007)

- a. The term next of kin (NOK), frequently used in consular work to reflect the family member to be notified in the event of the death of a U.S. citizen abroad is more commonly understood to refer to state laws regarding descent and distribution for intestate succession – when a person dies without a will. By most legislated definitions, a spouse is not a NOK in the sense that they have no genetic degree of kinship. The Department therefore generally uses the terms surviving spouse, next of kin, or legal representative when instructing consular officers who to notify in the event of the death of a U.S. citizen abroad. However, consular offices should remain cognizant that common usage often treats the surviving spouse as the NOK.
- b. If a person dies leaving a will, advanced directive or similar instrument, he or she may have made specific provisions recognized under the laws of the state of residence regarding disposition of remains and the estate.
- c. The individual may also have designated a legal representative to make arrangements for disposition of remains and the estate in the event of his or her death.
- d. Many deaths of U.S. citizens abroad occur unexpectedly, and unless the person resided in the foreign country, there may be little or no documentation to assist the consular officer in determining who is the legal next of kin (surviving spouse, legal representative).
- e. If local law recognizes a person as NOK (a distant local relative) who would not be recognized as such under U.S. law (where there is a surviving spouse or closer relative in degree of kinship), consular officers should consult Consular Affairs (CA/OCS) for guidance on whether it is appropriate to make appropriate representations to the host government or how the family may pursue the matter through local legal channels.
- f. Assuming there is no NOK, surviving spouse, or legal representative present in the foreign country, we generally look first to the person's

passport application(s) to see if the person designated a person to be contacted in the event of an emergency. More recent passport applications can be viewed by posts abroad using the PIERS system (Passport Issuance Electronic Records System). For older passports, CA/OCS/ACS can request retrieval of the record.

- g. Of course, passports are valid for ten years for adults, so it is possible that even if the decedent did list a person to be notified in the event of an emergency, the contact information may no longer be valid.
- h. If the deceased registered in the IBRS system (Internet Based Registration System), the registration may contain information useful to finding the NOK as might papers found on the deceased.
- i. The Internet provides a variety of resources to assist in locating next of kin. CA/OCS/ACS has access to specific Lexis/Nexis and other web based tools to help in this regard. Telephone directory assistance may also be helpful.
- j. Questions regarding identification of NOK, surviving spouses, legal representatives and related matters should be directed to CA/OCS/PRI (ASKPRI@state.gov).

7 FAM 220 APPENDIX D DEGREES OF KINSHIP – UNIFORM PROBATE CODE

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Article II of the Uniform Probate Code pertains to intestate succession and wills. Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in state law, except as modified by the decedent's will. The Uniform Probate Code has been adopted, at least in part, by 18 states. (See state laws regarding descent and distribution).

7 FAM 230 APPENDIX D DISPUTING FAMILIES

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- a. One of the sensitive aspects of death and estate consular work is trying to assist families whose members have opposing views as to what should be done regarding disposition of remains and personal effects. This subject is discussed at length in 7 FAM 290 concerning estates, which is a much more clear cut subject.
- b. Disposition of remains is not generally addressed in state or foreign law.

As a matter of customary law or custom, the surviving spouse, closest relative or legal representative makes the determination, absent a specific provision in the decedent's will or other legal instrument.

- c. Degrees of Kinship: The degree of kinship is established by the number of generations, and each generation is called a degree. The general descent and distribution provisions for a person who dies without a will are:
 - (1) Spouse;
 - (2) Children;
 - (3) Parents;
 - (4) Siblings;
 - (5) Grandparents;
 - (6) Aunts, Uncles; and
 - (7) Cousins.
- d. There are several scenarios in which the consular officer may find him/herself between family factions:
 - (1) If a person dies intestate, is divorced and is survived by children who are minors, the children's surviving parent could exercise the children's rights regarding decision making on disposition of the decedent's remains and estate;
 - (2) If a person dies unmarried, intestate and is survived by adult children who do not agree about disposition of the remains and estate;
 - (3) If a person dies unmarried, intestate and is survived by parents who do not agree about disposition of the remains and estate; or
 - (4) If a person dies unmarried, intestate and is survived by siblings who do not agree about disposition of the remains and estate.

7 FAM 240 APPENDIX D SIMULTANEOUS DEATH ACT

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Article II of the Uniform Probate Code provides that an individual who fails to survive the decedent by 120 hours is considered to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. This is also the standard set forth in the Uniform Simultaneous Death Act.

(See the National Conference of Commissioners on Uniform State Laws UCCUSL web page.)

7 FAM 250 APPENDIX D CIVIL UNIONS, REGISTERED PARTNERS, RECIPROCAL PARTNERS, DOMESTIC PARTNERS

(CT:CON-156; 02-07-2007)

- a. The rights of unmarried heterosexual or of same sex couples regarding descent and distribution and making person decisions on each others' behalf is an emerging area of the law.
- b. California, Hawaii, Maine, and the District of Columbia already have laws affording domestic partners some legal rights and responsibilities. Laws in Alaska and Arizona do not create rights, but expressly include domestic partners in laws specifying the relatives and friends who may make decisions on an incompetent or dead person's behalf (AS § 47. 24. 016; ARS §§ 36-843 and -3231).
- c. Vermont's Act 91 is a law that permits same-sex couples to enter into civil unions, entitling them to the same state law benefits as married couples. It also contains provisions that permit two unmarried relatives to declare themselves "reciprocal beneficiaries," giving them the equivalent of a spouse's rights to hospital and nursing home visitation, access to medical information, and to make some personal decisions on each other's behalf.
- d. In an October 25, 2006 ruling, the New Jersey state supreme court gave lawmakers 180 days to rewrite marriage laws to either include same-sex couples or create a new system of civil unions for them. The New Jersey legislature enacted a civil union law.
- e. Massachusetts is the only state in the Union that allows same-sex marriage as of the date of this FAM publication.
- f. In other states, individuals may make such provisions by legal instruments such as wills, living wills, and other advance directives.
- g. Foreign countries may question U.S. state law on this subject, particularly regarding advance directives and living wills which are not commonly accepted in many countries.
- h. Questions about this subject should be addressed to CA/OCS/PRI (ASKPRI@state.gov), including what documentation is required to establish domestic partnership.

7 FAM 260 APPENDIX D LEGAL REPRESENTATIVE

(CT:CON-156; 02-07-2007)

If a person dies abroad leaving a will, living will, or advance directive, those instruments may designate the decedent's legal representative, executor or trustee responsible for carrying out last wishes as expressed in those instruments.

7 FAM 270 THROUGH 290 APPENDIX D UNASSIGNED