



Probate In Common Form

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DETERMINATION OF DEATH OF AN ABSENTEE

Time Frame

Minn. Stat. § 576.141- 142

Question: How long does a person have to be missing or “absent” to be considered dead?

Answer: A person may be considered dead four years after the date the absentee went missing.

There is a presumption under the statute that a person, who is missing, is dead, if:

1. Absence is for “continuous period of four years”, and
2. During those four years there has been:
 - a “diligent search”
 - no one has seen or heard from the absentee
 - no acceptable explanation for the absence

There may be an exception to the four years, IF, there was a specific event that could have caused the decedent’s death. It will be up to

Specific Peril

the court to determine if the event was of a serious enough nature such that there is no doubt the person would not have survived.

Date of death

For purposes of determining property rights in the decedent’s estate, the date of death would be four years after the date the absence began.

Joe is last seen on July 15, 2009. Four years pass and it is now August 1, 2013. The client wants to petition for a determination that Joe is dead.

Question: What is the date of death the petitioner should ask for in the petition?

Answer: Following Minn. Stat. §576.141, the date of death should be four years after the date the absence began, or in this case **July 15, 2013.**

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The Petition

The statute says that a “person in interest” may petition the Court for a hearing to determine the absentee’s death.

Who is a “person in interest”?

According to Minn. Stat. §576.011, Subd.3, a “person of interest” means:

- The absentee
- Any heir(s) of the absentee
- Any person who would have an interest in the absentee’s estate had the absentee died intestate between the commencement of the absence and the date set for any proceeding under section 576.142
- Any person who would have an interest under the absent-

tee’s will or any purported will

- Any insurer or surety of the absentee
- An owner of any revisionary, remainder, joint or contractual interest which might be affected by the death of the absentee
- Any creditor of the absentee
- Any other person the court finds is properly in interest.



What should be include in the contents of petition?

- Name of petitioner
- Petitioner’s address

- Petitioner’s relationship to absentee
- Specific grounds for the hearing

Upon receipt of the petition the Court **shall** notify all proper persons in interest of the Date, Time and Place of hearing.

NOTICE

Notice **shall** be given as follows:

- By publication once a week for **three (3)** successive weeks in a newspaper “designated” by the Court;
- and
- By mail to all persons with an interest using ordinary first class mail.

Following a hearing the Court

NOTICE INFORMAL PROBATE– In the Fourth District (Hennepin)

The Notice of Informal Probate is now prepared and sent to the publisher by the attorney and/or applicant. The Registrar does **not review** the notice for accuracy or completeness. The Registrar **does not** sign the notice.

Type the Registrar’s names as follows: **Julie Peterson** **Alonna J. Warns**

Type the District Court Administrator’s name as follows: **Mark S. Thompson**

A copy of the Notice of Informal Probate **must** be sent as a separate document to the Registrar for entry into the court file before letters will issue.

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shall enter an order that does the following:

- “Establishes as a matter of law the death of the absentee”;
- Establishes a legal date of death; and,
- Orders the distribution of the absentee’s property based on Minn. Stats. Chapters 524 and 525

Burden of Proof

The petitioner bears the burden of proving the absentee is dead.

Minn. Stat. § 576.143

If the petitioner is asking for a determination based on “exposure to a specific peril” the burden of proof shall be “by a fair preponderance of the evidence”.

If the petitioner is asking for a determination based on the lapse of four years and nothing out of the ordinary happened, the burden of proof shall be “by clear and convincing evidence.”

Marriage

If the absentee has been missing for an extended period of

time, any spouse would be duly concerned about the impact of this absence on their marriage. Unless there is a petition for termination of the marriage prior to the Probate Court’s order determining the absentee is dead, the marriage remains a viable entity.

The petitioner would want to include in the Petition for Determination of Death a request for an order of the Court dissolving the marriage. This finding is on the order which establishes as a matter of law that the absentee is dead.

Life Insurance

What can a surviving spouse or child dependent on the absentee for money or support do during the four year wait for a determination of death?

If the purported absentee has life insurance, and the spouse or child(ren) named as beneficiaries were dependent on the missing person for support they may petition the Court for approval of advance payments on the life insurance policy.

Minn. Stat. §576.121 says the beneficiary of the life insurance policy “shall be entitled to advance payments as the court determines under section 576.122” if the payments are needed to provide support and maintain the beneficiary due to

the absence of the insured.

Another way to characterize this would be to say that the beneficiary is experiencing a financial loss due to the insured’s absence that cannot otherwise be made up.

Who is an eligible beneficiary to make the request?

- Absentee’s spouse
- Absentee’s child
- Other person dependent on absentee for support

If the “estate” is the named beneficiary of the policy, then the term “beneficiary” includes an heir at law of the insured absentee.

Minn. Stat. §576.122

The Hearing

A petition for an advance on life insurance needs the following:

- Beneficiary’s name
- Beneficiary’s address
- Beneficiary’s relationship to the absentee
- Grounds to justify advance payment

Once the petition is filed, the **court shall** notify the insurer

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who issued the policy, by certified mail, of:

- Date of Hearing
- Time of hearing
- Place of hearing



The petitioner has to prove his/her petition by a “fair preponderance” of evidence. Look for the following in the petition:

- Absentee is missing
- Reason why absentee is believed to be dead
- Beneficiary status as:
 - Spouse
 - Child
 - Other person dependent for support and maintenance
- Petitioner/beneficiary lacks a sufficient source of income for support and maintenance “at an adequate level”

The statute provides a broad range of discretion in defining what constitutes an “adequate level” of support and maintenance. Tax returns, a monthly budget, proof of income previ-

ously provided by absentee, etc. may bolster any request for distribution.

If the Court finds that advance payments are appropriate, the order shall direct the insurer to make periodic advance payments, citing the following factors:

- Needs of the beneficiary
- Likelihood the absentee is dead
- Amount payable under the policy
- Any security the beneficiary might pledge in the event the absentee returns
- Any other factors deemed relevant by the Court

An insurer who makes payments based on the court order is released from liability “to any party for the amounts paid.” pursuant to Minn. Stat. §576.122 Subd. 4.

Minn. Stat. §576.123 Subd.2

If later, the absentee is determined to have died, any advance payments would be subtracted from the total amount payable under the policy.

[Return of Absentee](#)

Question: What happens if the

absentee is found to be alive after such payments have been made?



Answer: Any advance payments of policy benefits **shall** be reimbursed by the absentee and the beneficiary. If monies are not repaid to the insurer, the amount to be reimbursed will be deducted from the value of the policy so that the insurer will receive full reimbursement.

IMPORTANT NOTICE!

The cold and flu season is now upon us. If you aren’t feeling well, please cancel your appointment and reschedule it when you are feeling better. The Probate Registrars and all those with appointments after you thank you!

FINAL ACCOUNT AUDIT REMINDERS

Formal Unsupervised Estates are treated as formal supervised estates, in Hennepin County, if a Petition for Settlement and Distribution is filed. The following items are problem areas: (The red scrolls are alerts as you prepare to file your documents for review)

- Does captioned name of the document match the decedent's name on the Letters?
- Is the court file number correct?
- Previously Informal—
Has Notice been published in a legal newspaper?
- Check for Demands for Notice and Claims in related files. Go to: www.mncourts.state.mn.us
- Final Account beginning figure the same as the Inventory ending balance?
- Verify totals of Debits and Credits Columns (there should be no negative totals)
- Hearing Officers names spelled correctly? (Marilyn Kaman /Richard Wolfson/ Bruce Kruger)
- Proposed Decree and proposed Order Allowing Account submitted (two separate orders)?
- No outright distributions to minors?
- Insolvent estate—copy of Final Account mailed to all interested parties?
- Insolvent estate—
Vouchers filed for all items in credits column?
- Discharge handled on an ex parte basis after Decree issues.
- Schedule a hearing? Call 612-348-3241 or 348-3249 (both have voicemail)
- Does the Court have your current e-mail address?
- Final Distribution Receipts dated **after** date on Decree?
- Receipt signed by Power of Attorney—is copy of POA attached to receipt?
- Real estate sold? File a copy of Real Estate Closing Statement.
- Claim filed with the Court—amount paid is less than claim—need a Satisfaction.

FOURTH JUDICIAL DISTRICT COURT
HENNEPIN COUNTY



Fourth Judicial District Court
Probate/Mental Health Division
Hennepin County Government Center
300 South 6th Street, C400
Minneapolis, Minnesota 55487-0340

Phone: (612) 348-3244

Fax: (612) 348-2130

<http://www.mncourts.gov/district/4/>

TO:

Let Technology Work for You



LET TECHNOLOGY WORK FOR YOU

Word processing, form templates... it is so easy to create multiple documents with the push of a button! Please consider carefully what documents you are preparing to file with the Registrar and the necessity of doing so. This is particularly important in the Informal Probate process, which is an administrative process. Keep in mind, no documents are required by statute to be filed in an Informal Probate once the Letters have issued.

Also, please make copies of documents that you are filing before submitting them. If a Registrar must make copies for your file, they must charge you for those copies.

Like all businesses in today's world, the Court has come to rely on the technology it utilizes to create efficiencies. You can help! Information about your case(s) can be found on our public access website at: www.mncourts.gov/publicaccess. Please utilize this on-line access to answer your own questions before calling the Court.

Communicate with us by e-mail whenever possible. The Registrars are conscientious about checking e-mail and responding in a timely manner. Thank you in advance for your cooperation!