

New Washington Real Estate Excise Tax Inheritance Exemption

By Washington State Estate Planning and Real Estate Lawyer [Per E Oscarsson](#)

The state of Washington imposes a real estate excise tax on transfers of real estate, but exemptions from the tax are available for certain types of transfers. One exemption has been for distributions from the estate of a deceased person to a will beneficiary when the estate involves probate of a last will and testament or to an heir when there is an “intestate” estate (where no will is involved). To receive the exemption, documentation in the form of a certified copy of Letters Testamentary or Letters of Administration had to be presented to the county when the deed was recorded to transfer ownership of the real estate. Letters Testamentary are issued by the court when there is a probate of a will. Letters of Administration are issued by the court when administration of an intestate estate is involved. Until recently, this has been the only way to get the exemption. However, real estate could also be distributed from an estate through a process involving use of what is known as a “lack of probate” affidavit. As the title of the affidavit implies, this process does not involve a court. As a result, when a “lack of probate” affidavit is used, Letters Testamentary or Letters of Administration are not issued and the inheritance exemption has not been available for this kind of distribution.

Washington law was recently amended to provide that, if real estate is transferred to one or more heirs by operation of law or by a will that is not probated, and without the documentation otherwise prescribed by law, the exemption can be received by providing a certified copy of the death certificate of the deceased owner of the real estate and a “lack of probate” affidavit signed by the person or persons affirming that they are the sole and rightful heirs to the property. Who is an heir for this purpose must be determined based on the facts at the time of death of the owner of the real estate to be distributed. As a result, even if there is no court proceeding to administer the deceased owner’s estate, it has become possible for the heirs to the property to receive it without paying the real estate excise tax. This tax could be a significant amount since it could be up to 1.78% of the fair market value of the property being distributed from the estate depending upon the property’s location.

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