

RCW 82.45.197 Exemptions—Inheritance—Documents required. (1)

In order to receive an exemption under RCW 82.45.010(3)(a) from the tax in this chapter on real property transferred as a result of a devise by will or inheritance, the following documentation must be provided to the county treasurer:

- (a) If the property is being transferred under the terms of a community property agreement, a copy of the recorded agreement and a certified copy of the death certificate;
- (b) If the property is being transferred under the terms of a trust instrument, a certified copy of the death certificate and a copy of that portion of the trust instrument showing the authority of the grantor;
- (c) If the property is being transferred under the terms of a probated will, a certified copy of the letters testamentary or in the case of intestate administration, a certified copy of the letters of administration showing that the grantor is the court-appointed executor, executrix, or administrator;
- (d) In the case of joint tenants with right of survivorship and remainder interests, a certified copy of the death certificate;
- (e) If the property is being transferred pursuant to a court order, a certified copy of the court order requiring the transfer, and confirming that the grantor is required to do so under the terms of the order;
- (f) If the community property interest of the decedent is being transferred to a surviving spouse or surviving domestic partner absent the documentation set forth in (a) through (e) of this subsection, a certified copy of the death certificate and a signed lack of probate affidavit from the surviving spouse or surviving domestic partner affirming that he or she is the sole and rightful heir to the property;
- (g) If the real property is transferred to one or more heirs by operation of law, or transferred under a will that has not been probated, but absent the documentation set forth in (a) through (e) of this subsection, a certified copy of the death certificate and a signed lack of probate affidavit affirming that the affiant or affiants are the sole and rightful heirs to the property;
- (h) When real property is transferred as described in (g) of this subsection (1) and the decedent-transferor had also inherited the property from his or her spouse or domestic partner but never transferred title to the property into the decedent-transferor's name, the transferee or transferees must provide: (i) A certified copy of the death certificates for the decedent-transferor and the spouse or domestic partner from whom the decedent-transferor inherited the real property; and (ii) a lack of probate affidavit affirming that the affiant or affiants are the rightful heirs to the property; or
 - (i) If the property is being transferred pursuant to a transfer on death deed, a certified copy of the death certificate.
- (2) The documentation provided to the county treasurer under this section must also be recorded with the county auditor.
- (3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.
 - (a) "Heir" has the same meaning as provided in RCW 11.02.005;
 - (b) "Lack of probate affidavit" means a signed and notarized document declaring that the affiant or affiants are the rightful heir or heirs to the property and containing the following information:
 - (i) The names of the affiant or affiants;

(ii) The relationship of the affiant or affiants to the decedent;
(iii) The names of all other heirs of the decedent living at the time of the decedent's death;
(iv) A description of the real property;
(v) Whether the decedent left a will that includes a devise of real property; and
(vi) Any other information the department may require. [2016 c 174 s 2; 2014 c 58 s 25; 2008 c 269 s 1.]

Findings—Intent—2016 c 174: "The legislature finds that state and local real estate excise taxes apply to the sale of real property unless one of several statutory exceptions apply. The legislature further finds that one such exception involves real property transferred as a result of a devise by will or inheritance. The legislature further finds that RCW 82.45.197 requires specific types of documentation to be provided to qualify for this inheritance exemption. The legislature further finds that in some cases, property passes from a decedent to a devisee or an heir with no written documentation or court record that satisfies the requirements of RCW 82.45.197. The legislature further finds that real estate excise tax does not apply to transfers of real property by operation of law, but that the process for documenting such transfers should be clarified. It is the legislature's intent to clarify that state and local real estate excise taxes do not apply when a devisee or an heir files a lack of probate affidavit where no additional documentation exists to substantiate that the devisee or heir is legally entitled to the property as a result of a will or inheritance." [2016 c 174 s 1.]

Tax preference performance statement and expiration—2016 c 174: "RCW 82.32.805 and 82.32.808 do not apply to this act." [2016 c 174 s 3.]

Uniformity of application and construction—Relation to electronic signatures in global and national commerce act—2014 c 58: See RCW 64.80.903 and 64.80.904.