

# Petition for Determination of Descent



**Use these forms and instructions only if the following factors apply to your situation:**

- You are related to the person who died or you have a legal interest in the person's property
- The person had a will or did not have a will
- The person has been dead for more than three years
- No prior probate or administration proceeding was started in Minnesota
- You want to file court papers to have the property of the person transferred to the heirs or devisees

**If you are not sure that these forms and instructions apply to your situation, see a lawyer for help.**

# **PETITION FOR DETERMINATION OF DESCENT**

## **What to do before you come to court to file anything:**

1. Determine if the person who died has been dead for more than three years.
2. Determine if a probate or administration proceeding was previously started in Minnesota.
3. Decide if you are an appropriate person to sign and submit the Petition. To do this, read the Petition and other forms in this packet, it will help you know what the law requires.
4. Complete the Petition. It is very important that the Petition be completed thoroughly and accurately. You must accurately list all the property of the person who died and all of the heirs and devisees of the person who died.
5. Complete the Notice and Order for Hearing. NOTE: Leave the date and time of the hearing and signature blank. This will be filled in by the Court Administrator when you file the papers with the Probate Court.
6. Complete the Decree of Descent (except for the hearing date and the judge's signature).
7. Make a copy of the completed forms for your own records.

## **File the Court Papers:**

1. Bring the original of the following documents to the Probate Court for filing:
  - Petition for Determination of Descent
  - Original Will (if the person who died had a will)
  - Notice and Order for Hearing
  - Decree of Descent
2. The filing fee must be paid at the time of filing. A credit card or personal check will be accepted with proper identification.
3. If all is in order, the Court Administrator will set a hearing date and give (or send) you a copy of the completed Notice and Order for Hearing with the date and time of the hearing.

**Send Notice of the Hearing:**

1. After the Court Administrator completes and signs the Notice and Order for Hearing, you must make copies of the Notice and Order for Hearing and mail a copy to each of the heirs and devisees you listed on your Petition.
2. These copies must be mailed at least 14 days prior to the hearing date.
3. Complete the Affidavit of Mailing in this packet and file it with the Probate Court. (Remember to have your signature notarized.)

**Arrange for Publication:**

1. Determine if you or the Court Administrator will make arrangements for publication of the Notice and Order for Hearing.
2. Publication must be made once a week for two consecutive weeks in a legal newspaper in the county. The last publication must be at least ten days before the time set for the hearing.
3. The newspaper will supply an Affidavit of Publication which must be filed with the Probate Court prior to the hearing.
4. You are responsible for paying the newspaper for publication costs.

**What Happens Next:**

1. Ask the Court Administrator whether your county requires you to be present at the hearing.
2. If there are no objections and your petition is complete, the judge will sign the Decree of Descent.
3. You will probably need a certified copy of the signed Decree of Descent to get the property transferred. You will need to ask the Court Administrator for a certified copy. There is a charge for each certified copy.

## **Examples of Negative Allegations For Decedents Dying AFTER DECEMBER 31, 1995**

- Example 1** "Where only the spouse survives the application should state 'that the decedent left no surviving issue, natural or adopted, legitimate or illegitimate.'"
- Example 2** "Where only children survive, the application should state 'that the decedent left surviving no spouse; no children, natural or adopted, legitimate or illegitimate, other than herein named; and no issue of any deceased children.'"
- Example 3** "Where the spouse and children survive, the application should state 'that the decedent left surviving no children, natural or adopted, legitimate or illegitimate, other than herein named and no issue of any deceased children.'"
- Example 4** "Where only brothers or sisters of decedent survive, the application should state 'that the decedent left surviving no spouse; issue; parents; brothers or sisters; other than herein named; and no issue of deceased brothers or sisters.'"
- Example 5** "Where only grandparents survive, the application should state 'that the decedent left surviving no spouse; issue; parents; brothers or sisters or issue thereof; and no paternal grandparent other than herein named; and no maternal grandparent other than herein named.'"
- Example 6** "Where the nearest surviving descendants of the paternal grandparents are first cousins; and the nearest surviving descendants of the maternal grandparents are first cousins once removed, the applications should state:  
'that the decedent left surviving no spouse; issue; parents; brothers or sisters or issue thereof; grandparents; aunts or uncles; and no paternal first cousins other than herein named; and no maternal first cousins once removed other than herein named.'"

**In all cases, the application should state either:**

- (a) That all heirs-at-law survived the decedent for 120 hours or more; or
- (b) That all the heirs-at-law survived the decedent for 120 hours or more except the following: (name or names).

**In all cases where a spouse and children survive, the application should state either:**

- (a) That all of the issue of either the decedent or the decedent's surviving spouse are common to both of them; or
- (b) That one or more of the issue of either the decedent or the decedent's surviving spouse are not common to both of them.

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT  
PROBATE DIVISION  
SECOND JUDICIAL DISTRICT

Court File No. \_\_\_\_\_

Estate of

**PETITION FOR  
DETERMINATION OF DESCENT**

\_\_\_\_\_,'

**Decedent**

I, \_\_\_\_\_, state:

1. My address is:
2. I am an interested person as defined by Minnesota law because I am:
3. Decedent was born on \_\_\_\_\_, at \_\_\_\_\_.
4. Decedent died on \_\_\_\_\_, at \_\_\_\_\_.
5. Decedent at the time of death resided in \_\_\_\_\_ County, at:
6. Decedent's Social Security Number is \_\_\_\_\_.
7. The names and addresses of Decedent's spouse, children, heirs, devisees and other persons interested in this proceeding so far as known or ascertainable with reasonable diligence by the Petitioner are:

Name and Mailing Address	Relationship and Interest (list all)	Birthdate of Minors
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(Attach separate schedule, if necessary)

8. Negative Allegation Statement (see Minn. Gen. R. Prac. 408(a)):

9. All persons identified as heirs have survived the Decedent by at least 120 hours.

10. (Check appropriate boxes)

Decedent died leaving no surviving spouse.

Decedent died leaving no surviving issue.

All issue of decedent are issue of decedent's surviving spouse, except for:

These are issue of the surviving spouse who are not issue of the Decedent.

Does not apply. Decedent died before January 1, 1987.

11. Venue for this proceeding is in this County of the State of Minnesota because:

The Decedent was domiciled in this County at the time of death and was the owner of property located in the State of Minnesota.

or

Though not domiciled in the State of Minnesota, the Decedent was the owner of property located in this County at the time of death.

12.  I have not received a demand for notice and am not aware of any demand for notice of any probate or appointment proceeding concerning the Decedent that may have been filed in Minnesota or elsewhere.

or

Proper notice has been given to those persons who have filed a demand for notice.

13. I have made a reasonable diligent search for any testamentary document.

(Check appropriate boxes)

Intestate.

I am unaware of any testamentary instrument relating to property having a situs in this state under Minnesota law.

Testate.

Decedent's Will is comprised of the following:

Last will dated \_\_\_\_\_.

Codicil(s) dated \_\_\_\_\_.

Separate writing(s) under Minn. Stat. 524.2-513 dated \_\_\_\_\_.

(check if applicable) The Will refers to a separate writing, but none has been found.

The documents comprising the Will:

accompany this Petition.

are in the Court's possession.

have been probated elsewhere and an authenticated copy of the Will and statement or order probating the same accompany this Petition.

are unavailable, but a Statement of Contents of Lost, Destroyed or Otherwise Unavailable Will accompanies this Petition.

To the best of my knowledge and belief, the Will has been validly executed.

Having conducted a reasonably diligent search, I am unaware of any instrument revoking the Will or of any unrevoked testamentary instrument.

14. More than three years have passed since the Decedent's death and there has been no probate proceeding or administration proceeding commenced in Minnesota.

15. At the time of death, Decedent was the owner of certain property described and valued at date of death as follows ("Property"):

SCHEDULE A: REAL ESTATE

Item Number	Description of Property	County Assessor's Market Value	Fair Market Value
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1	Homestead in the County of _____ Minnesota:	\$	\$
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2	Other Real Estate:	\$	\$
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	Schedule A: Real Estate	TOTAL	\$
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**SCHEDULE B: PERSONAL PROPERTY**

Note:

1. Specify face value of bonds, number of shares of stock with stock certificate number and CUSIP number.
2. List each bond issue, stock, or certificate separately.

Item Number	Description of Property	Unit Value	Fair Market Value
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1

	Schedule B: Case, Stocks, Bonds and Other Securities, and Other Property	TOTAL	\$
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16. The property on hand for distribution is as reflected in this document and should be distributed to the following persons in the following proportions or parts:

Name

Proportion

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17. (Check appropriate box)
- The devisee or the devisee's successors and assigns possess the property devised in accordance with the Will.
- Any heir or successors and assigns possesses such property which passed to such heir under the laws of intestate succession in force at the Decedent's death.
- or
- The property was not possessed or claimed by anyone by virtue of the Decedent's title during the time period for testacy proceedings.
18.  (Check box if this Petition includes Multiple Decedents.) Separate petitions for the determination of descent through multiple decedents of the property described in this Petition are attached and made a part of this Petition.

WHEREFORE, I request the Court fix a time and place for hearing this Petition, and enter an order:

1. Finding that venue is proper;
  2. Finding that the Decedent died more than 3 years ago;
  3. Determining Decedent's domicile at death;
  4. Determining Decedent's state of testacy;
  5.  Determining Decedent's heirs;
- or
- Probating the valid and unrevoked Will of Decedent;
  6. Determining the descent of the property and assigning the Property to the persons entitled to the property;
  7. Consolidating multiple petitions for determination of descent into one proceeding; and
  8. Granting such other relief as may be proper.

Under penalties for perjury, I declare or affirm that I have read this document and I know or believe its representations are true and complete.

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
Date

Attorney for Petitioner  
Name:  
Firm:  
Street:  
City, State, ZIP:  
Attorney License No.:  
Telephone:                      FAX:

NOTE: This form is to be used if there has not been a prior probate proceeding. If there has been a prior probate proceeding use Petition for Determination of Descent of Incorrectly Described Property or Petition for Determination of Descent of Omitted Property.

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
PROBATE DIVISION  
SECOND JUDICIAL DISTRICT

Court File No. \_\_\_\_\_

Estate of

\_\_\_\_\_

**NOTICE AND ORDER FOR HEARING ON  
PETITION FOR DESCENT OF PROPERTY**

**Decedent**

A Petition for Determination of Descent has been filed with this Court. The Petition represents that the Decedent died more than three years ago, leaving property in Minnesota and requests the probate of Decedent's last will, if any, and the descent of such property be determined and assigned by this Court to the persons entitled to the property.

Any objections to the Petition must be filed with the Court prior to or raised at the hearing. If proper, and no objections are filed or raised, the Petition may be granted.

IT IS ORDERED and Notice is further given, that the Petition will be heard on \_\_\_\_\_, at \_\_\_\_\_ by this Court at Room 70, 15 West Kellogg Boulevard, St. Paul, Minnesota.

- (1) Notice shall be given to all interested persons (Minn. Stat. 524.1-401) and persons who have filed a demand for notice pursuant to Minn. Stat. 524.3-204.
- (2) Notice shall be given by publishing this Notice and Order as provided by law and by:  
 Mailing a copy of this Notice and Order at least 14 days prior to the hearing date.  
 Delivering a copy of this Notice and Order to \_\_\_\_\_ personally at least 14 days prior to the hearing date.

(COURT SEAL)

\_\_\_\_\_  
District Court Judge, Probate Division

Court Administrator

By \_\_\_\_\_  
Deputy Court Administrator Date

Attorney for Petitioner  
Name:  
Firm:  
Street:  
City, State, ZIP:  
Attorney License No.:  
Telephone: FAX:

NOTE TO PUBLISHER: Do not publish text that is unchecked and the text of this note.



STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT  
PROBATE DIVISION  
SECOND JUDICIAL DISTRICT

Court File No. \_\_\_\_\_

Estate of

\_\_\_\_\_

**DECREE OF DESCENT**

**Decedent**

The Petition for Determination of Descent in the Estate, signed by \_\_\_\_\_, came before this Court on \_\_\_\_\_ . The Court, having heard and considered the Petition, determines the following:

1. The Court has jurisdiction and venue in this County is proper.
2. The Petition is complete.
3. Any notice required by Minnesota law has been given.
4. The Petitioner has declared or affirmed that the representations contained in the Petition are true and complete to the best of the Petitioner's knowledge or belief.
5. The Petitioner is an interested person as defined by Minnesota law.
6. The Decedent died on \_\_\_\_\_, at (city, state) \_\_\_\_\_. More than three years have elapsed since the death of the Decedent and the time limit for appointment proceedings has expired.
7. There has been no probate proceeding or administration proceeding commenced in Minnesota.
8. There is no unrevoked testamentary instrument which relates to property in Minnesota, and which has not been filed for probate in this Court.
9. (Check appropriate boxes)  
 Testate.  
Decedent's Will is comprised of the following:  
 Last will dated \_\_\_\_\_.  
 Codicil(s) dated \_\_\_\_\_.  
 Separate writing(s) under Minn. Stat. 524.2-513 dated \_\_\_\_\_.  
 The Will was formally probated by the Order of this Court dated \_\_\_\_\_.  
or  
 The Will is formally probated by this Order.

The Court construes the Will as follows:

Intestate.

A previous Order of this Court dated \_\_\_\_\_, determined Decedent died intestate.

or

This Court determines by this Order that the Decedent died intestate.

The following named persons are all the heirs of the Decedent and their relationship to Decedent is as follows:

10. The property of the Decedent consists of the following:

(A) Personal property described as follows:

(B) Real property described as follows (Legal Description)(Identify if homestead):

1. Homestead in the County of \_\_\_\_\_, Minnesota:

2. Other Real Estate in the County of \_\_\_\_\_, Minnesota:

11. (Check appropriate boxes)

- The devisee or devisee's successors and assigns possesses the property devised in accordance with the Will.
- Any heir or successor and assign possesses the property which passes to such heir under the laws of intestate succession in force at the Decedent's death.
- Such property was not possessed or claimed by anyone by virtue of the Decedent's title during the time period for testacy proceedings.

12. The inheritance taxes on the described property have been paid or waived.

IT IS ORDERED AND DECREED:

1. The Petition is granted.

2. (Testate)

- If not previously probated, Decedent's Will is formally probated. Decedent's Will is construed as stated above.

or

(Intestate)

- The heirs of the Decedent are determined to be as stated above.

3. The property left by the Decedent is as stated above.

4. Title to the personal and real property described in this Decree of Descent, subject to any prior disposition, is assigned to and vested in the following named persons in the following proportions or parts:

Name

Proportion

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(COURT SEAL)

\_\_\_\_\_  
Judge

\_\_\_\_\_  
Date