



2021 South Dakota Legislature

House Bill 1086

Introduced by: **Representative Cwach**

1 **An Act to allow succession to real property by an affidavit.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That a NEW SECTION be added:

4 **29A-3-1203. Succession to real property by affidavit--Misdemeanor.**

5 Thirty days after the death of a decedent, any person claiming to be a successor
 6 to the decedent's interest in real property in this state may file, or cause to be filed on
 7 their behalf, an affidavit describing the real property owned by the decedent and the
 8 interest of the decedent in the property. The person shall file a certified or authenticated
 9 copy of the decedent's death certificate and the affidavit with the register of deeds office
 10 in all counties where the real property of the decedent is located. All persons claiming as
 11 successors or by parties legally acting on their behalf shall sign the affidavit.

12 The affidavit, which shall be prima facie evidence of the facts included, must state:

- 13 (1) The value of the decedent's interest in all real property located in this state does
 14 not exceed fifty thousand dollars. The value of the decedent's interest shall be
 15 determined from the value of the property as shown on the assessment rolls for
 16 the year in which the decedent died less real estate taxes and interest thereon if
 17 any is due at the time of death;
- 18 (2) That thirty days have elapsed since the death of the decedent;
- 19 (3) That no application or petition for the appointment of a personal representative is
 20 pending or has been granted in any jurisdiction;
- 21 (4) That the claiming successor is entitled to the real property because of the
 22 homestead allowance under § 29A-2-402, the family allowance under § 29A-2-
 23 403, by intestate succession, or by devise under the will of the decedent;
- 24 (5) That the claiming successor has made an investigation and has been unable to
 25 determine any subsequent will;

1 (6) That no other person has a right to the interest of the decedent in the described
2 property;

3 (7) The claiming successor's relationship to the decedent and the value of the entire
4 estate of the decedent; and

5 (8) That any person claiming as a successor under the affidavit swear or affirm that all
6 statements in the affidavit are true and material and further acknowledge that any
7 false statement may subject the person or persons to criminal penalties.

8 A successor named in an affidavit under this section shall have the same protection
9 as a distributee who has received a deed of distribution from a personal representative as
10 provided in § 29A-3-908. A purchaser of real property from, or a lender to, a person
11 named as a successor in an affidavit under this section shall have the same protection as
12 a person purchasing from or lending to a distributee who has received a deed of
13 distribution from a personal representative as provided in § 29A-3-910.

14 Nothing in this section affects or prevents any proceeding enforcing any mortgage,
15 pledge, or other liens upon the real property described in the affidavit.