

**§ 72.40**

**22 CFR Ch. I (4–1–03 Edition)**

country in which the death occurred, or in the country in which the decedent was residing at the time of death, the consular officer should endeavor to obtain sufficient funds from the legal representative, next of kin or other interested person. See § 72.32 concerning funds found in another consular district. Fees are not charged on funds so furnished (§ 72.53). If sufficient funds cannot be assembled from the foregoing sources, the consular officer should sell at auction (see § 72.37), such portion of the personal estate as may be necessary to pay the debts and expenses. Should occasion arise for sale of motor vehicles, airplanes or powered watercraft, title to which and liens upon which in the United States and almost universally are matters of official record, care should be taken to conform with applicable registration requirements. Articles which are most marketable, and at the same time least likely to be desired by the heirs of the decedent, should be sold first. Jewelry, heirlooms and articles which may have sentimental value to relatives, regardless of intrinsic value, should be sold only in case of necessity, and in the order named. Members of the decedent's family should be notified of the necessity for the sale, if practicable, in order that they may purchase these articles if they desire. Proceeds from the sale are regarded as forming part of the personal estate and should be included in the gross amount thereof for the assessment of Foreign Service fees (see § 72.52).

**§ 72.40 Consular officer not to act as administrator of estate.**

The consular officer normally should not accept appointment from any foreign state or from a court in the United States to act as administrator, or to assist (except as provisional conservator) in administering the personal estate of a deceased citizen who has died, or was residing at the time of death, within his consular district. Neither should he accept appointment as guardian or in any other fiduciary capacity in the settlement of the estate without:

(a) Having previously obtained the permission of the Secretary of State to accept such appointment; and

(b) Having assured himself that he has authority so to act under treaty provisions, local law or usage.

If authorization is received as to appointment in any of the capacities indicated above, the consular officer will be required to execute bond, with surety to be approved by the Secretary of State (22 U.S.C. 1178, 1179).

**§ 72.41 Consular officer not to perform legal services or to employ counsel.**

Owing to the legal restriction against engaging in foreign business or professional activity (22 U.S.C. 805), the consular officer shall not act as attorney or agent for the estate. Neither shall he employ counsel at the expense of the United States Government, or the estate, in collecting and disposing of the personal estate of a deceased citizen. If legal assistance is requested of the consular officer, he may furnish the names of several attorneys or inform the inquirer as to sources through which the names of suitable attorneys may be obtained.

**§ 72.42 Consular officer not to assume financial responsibility.**

The consular officer, as provisional conservator of the personal estate of a deceased citizen, is neither authorized nor expected to assume any financial responsibility, not to incur any expense in behalf of the estate, in excess of funds available for that purpose (see § 72.39(a)).

**§ 72.43 Conditions under which estate can be released by consular officer.**

The consular officer is responsible to the United States court having probate jurisdiction over the estate and to the parties in interest for the personal estate in his possession. He must be prepared to deliver the estate to, or otherwise dispose of it according to the wishes of, the legal representative of the decedent upon the presentation of satisfactory evidence of the latter's right to receive the estate, and upon the payment of the prescribed Foreign Service fees (§ 72.52). Determination of what constitutes satisfactory evidence of a claimant's right to the personal estate of a deceased citizen is also the responsibility of the consular officer. The