

§ 72.29

22 CFR Ch. I (4-1-05 Edition)

reasonable steps to safeguard the articles of the personal estate which he does not take into possession until disposition can be effected by the legal representative. The personal effects which the consular officer would normally take into possession in any event include the following:

(a) Convertible assets, consisting of currency, redeemable transportation tickets, evidences of debts due and payable in the country of the officer's assignment, and any other instruments negotiable by the consular officer;

(b) Perishable property (including most foodstuffs), having commercial value;

(c) Luggage;

(d) Wearing apparel;

(e) Miscellaneous personal effects;

(f) Jewelry, heirlooms and articles of sentimental value;

(g) Non-negotiable instruments, defined as any document or instrument not saleable or transferrable by the consular officer, but which requires either the signature of the decedent or action by, or endorsement of, his legal representative; and includes transportation tickets not redeemed or redeemable by the consular officer, traveler's checks, promissory notes, evidences of debts not due and payable in the country of the officer's assignment, stocks, bonds or other similar instruments, bank books, books showing deposits in building and loan associations, etc. No fee is charged on non-negotiable instruments taken into possession by the consular officer; see § 72.53.

(h) Personal documents and papers.

§ 72.29 Nominal possessions; property not normally taken into possession.

(a) The taking of articles of personal property into nominal possession from local officials or other persons, for the explicit purpose of on-the-spot release to the "legal representative" as defined in § 72.18 against the latter's memorandum receipt discharging the consular officer without further accounting of any responsibility for articles so transferred by him, shall not be construed as the taking of custody by the officer. No fee shall be charged for the consular officer's service in effecting transfer of the articles in the manner described, provided that he is not re-

quired to prepare a consular inventory, appraise the articles, or list the contents of containers, and provided further that the effects are not taken in safekeeping upon official accountability.

(b) The consular officer is not normally expected to take physical possession, as provisional conservator, of livestock or of articles of personal property which may be found in residences and places of storage such as furniture, household effects and furnishings, bulky works of art, etc., unless the items are of such nature and quantity as to be readily included with the personal effects (§ 72.28), or unless such action, when physically possible, is necessary for the preservation or protection of the property, especially where the articles are of considerable intrinsic value; nor is the consular officer normally expected to take into physical possession motor vehicles, airplanes, or powered watercraft. Personal property not taken into possession should, however, be safeguarded by affixing the consular seal on the premises or on the property (whichever is appropriate), provided the laws of the country permit; or by taking reasonable steps to ensure that such items are placed in safekeeping (at the expense of the estate) until action can be taken by the legal representative. In order to protect the interests of the estate, the consular officer should prepare a list, in quintuplicate, of the articles not taken into physical custody, with indication of safeguarding measures taken, for submission with the inventory of effects which must be prepared for all items in his possession (see § 72.53). If the property which normally would be sealed by the consular officer is not immediately accessible, he should consider requesting the local authorities to seal the premises, or the property, or otherwise ensure that the property remains intact until consular seals can be placed thereon or the property placed in safe storage, or until the legal representative assumes responsibility therefor.

§ 72.30 Bank deposits in foreign countries.

The existence of bank deposits when known should be reported to the legal

Department of State

§ 72.33

representative, or other authorized person, who should be informed of the general procedure required by local law to withdraw such deposits and whether legal counsel is advisable for that purpose. There is no express provision of law authorizing the consular officer to withdraw or otherwise dispose of bank deposits in foreign countries left by deceased United States citizens. Such deposits, therefore, are considered for the purpose of the regulations in this part as forming no part of the personal estate of a decedent, and no Foreign Service fees are chargeable thereon (§ 72.53(c)). In the event that the consular officer is requested by the legal representative of the estate to withdraw bank balances on his behalf in order to defray local expenses in connection with the death and the settlement of the personal estate of the decedent, he may comply with such request if facilities are provided by the depository for this purpose. Funds withdrawn should be limited to the amount necessary to defray the expenses prescribed herein, and fees should be collected on the amount withdrawn, in accordance with § 72.52.

§ 72.31 Action when immediate possession is impracticable.

The law imposes no affirmative obligation upon the consular officer to travel long distances for the purpose of taking on-the-spot possession of a personal estate. If occasion to visit the locality where the death occurred coincides with the need to take action, the consular officer should avail himself of the occasion to assume custody of the effects. Normally, however, the consular officer's initial responsibility in such cases does not extend beyond reasonable efforts to obtain possession of the estate. He should communicate with the persons, officials, or organizations having custody of the effects, requesting that the effects be delivered to him, at the expense of the estate, for lawful disposition. If the local authorities should decline to surrender possession to the consular officer in a case where he feels that his right to take possession is clear, he may refer the matter to the mission. The consular officer's personal responsibility for any given item among the personal effects

commences only when that item reaches his hand.

§ 72.32 Action when property is in other consular districts.

If any portion of the personal estate is known to be in another consular district, mention of this should be made under "Remarks" in the Form FS-192; and a copy of this form should be sent to the consular officer concerned (see § 72.4(f)) who should assume responsibility independently for taking possession and disposing of these effects in the manner prescribed herein. If the cash resources of the personal estate found in one consular district are insufficient to pay the decedent's debts in that district or in the country of the consular officer's assignment (see § 72.39), the funds found among the personal effects in the other consular district may be utilized to pay the decedent's debts in both districts or countries. In such cases, the consular officer who effects the transfer of the funds should enter the disbursement in his final statement of account (see § 72.51), including the funds transferred in the gross amount of the estate in his possession, for the assessment of fees as indicated in §§ 72.52 to 72.55. The funds transferred should also appear in the final statement of account of the consular officer receiving them as "receipts" and "disbursements", stating the source. However, no fee should be charged on the amount involved (see § 72.53(b)).

§ 72.33 Official notification to legal representative.

The preparation and forwarding of Form FS-192 complies with the law (22 U.S.C. 1176) as regards notification of death to the legal representative as well as to the Secretary of State. Failing by direct means to locate a legal representative, the consular officer may, if required in connection with the settlement of the estate, have recourse to giving public notice of the death in "one of the gazettes" (*i.e.*, any suitable periodical) in the consular district.