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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY**

IN THE MATTER OF THE ESTATE OF
LYLE WALTER SMITH,

Deceased.

NO. 19-4-01239-31

**PETITION FOR ORDER OF
AWARD TO SURVIVING
SPOUSE (RCW 11.54.010)**

The Petitioner, *Patricia K. Smith*, Administrator and sole heir of decedent, by and through her attorney, Dalynne Singleton, petitions this Court for an Award to Surviving Spouse set forth at RCW 11.54.020, RCW 6.13.030(2) and chapter 11.54 of the Revised Code of Washington in general and shows as follows:.

I. FACTS

1.1 Decedent, LYLE WALTER SMITH, was a resident of Snohomish County, Washington, and died on January 12, 2019. This probate was initiated within twelve months of the decedent's death and this petition is being filed within eighteen months of the decedent's death as required by RCW 11.54.010(3).

1.2 Decedent LYLE WALTER SMITH was married to Petitioner in Boise, Idaho, on October 25, 1965 and remained married at the time of his death. All assets the parties owned were community property. Petitioner is the surviving spouse and heir at law of LYLE WALTER SMITH. The Petitioner and Decedent had three children of their marriage as

1 follows: son, Erich Smith, of Everett, WA; son Ian Smith of Snohomish, WA; and
2 daughter Michele Smith of Lake Stevens, WA. Her son, Ian Smith, lives with Patricia K.
3 Smith. All children are adults and have been provided notice of this Petition.
4

5 1.3 Decedent Lyle W. Smith's estate consists of real and personal property that is
6 the community property of the Decedent and the Petitioner. A verified Inventory of the
7 estate is filed herein totaling **\$311,568.89**. The entire probate estate assets on the date of
8 death consisted of the following:
9

- 10 a. Equity in the family home located at 6529 171ST Ave SE, Snohomish,
11 Washington which home has an assessed value of **\$275,000.00** with an
12 attached Chase line of credit in the amount of **\$17,464.54**;¹ and
- 13 b. **\$17,600.00** equity in the community recreational lots in Port Townsend, WA
14 known as Lots 1,2,3,4 Block 12, The Baker Add'n in Port Townsend, WA
15 (these lots have no accessibility except by walking); and
- 16 c. bank accounts with a date of death value of **\$85.89**; and
- 17 d. three automobiles with a total value of **\$13,883.00** (1993 Ford F250 pick-truck,
18 2000 Subaru Legacy Wagon, 2013 Forest River 182G R-Pod (trailer); and
- 19 e. personal belongings with a fair market value of less than **\$5,000.00**.

20 The total estate assets on the date of death had a value of **\$311,568.89 gross less the**
21 **line of credit of \$17,464.54 with a net assets in the estate of \$294,104.35.**
22

23 Decedent's one-half of the community property assets was therefore equal to
24 **\$147,052.17**. In addition, the estate has paid a funeral and burial of \$970.68, and generated
25 attorney fees and costs of **\$5,372.90**, which reduces the estate to a net total value of
26
27

28
29 ¹ A Household Finance Corp. deed recorded for line of credit for Amount: \$33,985.00 dated
8/25/97. Demand for reconveyance to be recorded sent 11/26/19 with proof as paid in full.

1 **\$140,708.59** which is \$15,708.59 more than the amount of the basic award set forth at RCW
2 11.54.020 and RCW 6.13.030(2) which basic discretionary award amount is equal to
3 \$125,000.00.
4

5 1.4 At the time of Lyle W. Smith's death, the community unsecured debts
6 consisted of:

7	1. Synchrony Bank – Card ending in 3746	\$ 244.60
8		
9	2. Synchrony Bank – Card ending in 9315	\$ 2,512.84
10		
11	3. CitiCard – Card ending in 2179	\$ 3,398.82
12		
13	4. Home Depot Card Services – Card ending in 6067	\$ 1,365.03
14		
15	5. Sears Credit Cards – Card ending in 8831	\$ 5,920.21
16		
17	6. Chase Card Services – Card ending in 6124	\$ 5,821.54
18		
19	7. Chase Card Services – Card ending in 9009	\$ 6,932.40
20		
21	8. Capitol One – Card ending in 2185	\$ 2,619.21
22		
23	9. Target Card Services – Card ending in 3324	\$ 5,833.95
24		
25	10. Sears Credit Cards – Card ending in 8077	\$ 3,934.66
26		
27	11. Discover – Card ending in 2801	\$17,801.04
28		
29	12. Chevron Visa – Card ending in 5495	\$ 4,842.17
	13. Bank of America – Card ending in 8826	\$20,552.90
	14. Capitol One – Card ending in 4382	\$ 1,991.20
	15. Synchrony Bank – Card ending in 2369	\$ 2,759.44
	16. Synchrony Bank – card ending in 8267	\$ 5,963.07
	17. Chase – Card ending in 9068	\$ Unknown

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TOTAL UNSECURED DEBTS: \$92,493.08

1.5 All creditors named herein were sent a Notice to Creditors and proof of mailing is filed in the Court file. An Affidavit of Publishing is on file herein.

II. AUTHORITY

RCW 11.54, et. seq., governs family awards in probate estates. RCW 11.54.010(1) indicates who may petition for an award: A surviving spouse may petition for an award from the property of his deceased spouse. The award may be made from either the community or the separate property of the Decedent.² The award is now discretionary, and the amount of the “basic” award is now \$125,000.00.³

The \$125,000.00 basic amount may be increased or decreased in the Court’s discretion. The Court may: Increase the award if the claimant’s present and reasonably anticipated future needs during probate administration with respect to basic maintenance and support will not be provided for from other resources, and that the award would not be inconsistent with the Decedent’s intentions.⁴ The Court may: Decrease the award if the claimant is entitled to receive probate or non-probate property resulting from Decedent’s death, in which case the award may not be decreased more than the value of such property.⁵ The Petitioner is asking for an amount of \$140,708.59 because she has limited income to support her basic maintenance needs. She has a fixed income and barely has enough to provide for her food, clothing, utilities and upkeep of the family home.

² RCW 11.54.010(2).
³ RCW 11.54.020 & RCW 6.13.010
⁴ RCW 11.54.040(1).
⁵ RCW 11.54.050(1).

1 Washington has a strong social policy favoring a family award to a decedent's
2 surviving spouse. The current statute, RCW 11.54.010(1), enacted in 1997, arose from
3 the former RCW 11.52, which provided for an "award of homestead" or an "award in lieu
4 of homestead." In *Estate of Dillon*, 532 P.2d 1189, 12 Wn. App. 804, 806 (1975), the
5 Court stated:
6

7 [T]he award in lieu of homestead has long been in existence and the maximum
8 amount of the award has been continually revised upwards. The statute was
9 enacted for the protection and benefit of the surviving spouse and/or minor
10 children. We therefore do not consider it unreasonable to award an elderly widow
11 of modest means and inheritance the maximum amount of [the statutory amount].
12 Statutes like RCW 11.54.040 rest upon sound public policy, are favored by law,
13 and should be liberally construed. The Washington Supreme Court cited *Estate of Dillon*
14 in *Estate of Crawford*, 107 Wn.2d 493, 502 (1986): "Awards in lieu of homestead are
15 *favored by law* and the statutes permitting them should be liberally construed in favor of
16 those who are entitled to benefit from the award." (Emphasis added). The law favors
17 awards in lieu of homestead as a matter of right for the protection of the surviving spouse
18 and as a measure of fairness. *Id.*

19
20 The only known case interpreting the current statute, RCW 11.54.010, is *Estate of*
21 *Garwood*, 38 P.3d 362, 109 Wn. App. 811 (2002), where the Court, at page 814, cited
22 *Estate of Crawford*: The law favors awards in lieu of homestead as a matter of right for
23 the protection of the surviving spouse and as a matter of fairness." Further, at page 817,
24 the court opines "[t]he award in lieu of homestead is a statutory device that can alter the
25 testamentary wishes of the decedent, the intestate succession statutes, and *the rights of*
26 *creditors*. It can also blur the distinctions of community property and probate and
27 nonprobate assets." (Emphasis added.)
28
29

1 All of the conditions precedent to a spousal/family allowance award have been met,
2 and in particular the funeral expenses and expenses of last illness and of administration have
3 either been paid or provided for pursuant to RCW 11.54.030.
4

5 Pursuant to RCW 11.54.070 the requested award for family allowance should be
6 immune from all debts and claims of creditors. Notice to Creditors was properly published
7 and all known creditors were provided with notice in accordance with and in the manner
8 required by the Creditor Claim Statutes contained in RCW chapter 11.40.
9

10 To the best of the knowledge of the undersigned the following Creditor's Claims have
11 been filed:
12

13 1. Synchrony Bank – Chevron and Texaco Credit -Card ending in 3746, in the
14 amount of \$327.02.
15

16 2. Synchrony Bank – Walmart Credit -Card ending in 9315, in the amount of
17 \$2,012.87.
18

19 In accordance with RCW Chapter 11.54 these creditor's claims should abate and be
20 expunged.

21 In addition, the following creditors, also mentioned above, did not file or provide
22 creditor's claims within four months of the date of first publication of a Notice to Creditors.
23

24 In accordance with RCW Chapter 11.54, these creditor's claims are barred:

- | | | |
|----|---|-------------|
| 25 | 1. CitiCard – Card ending in 2179 | \$ 3,398.82 |
| 26 | 2. Home Depot Card Services – Card ending in 6067 | \$ 1,365.03 |
| 27 | 3. Sears Credit Cards – Card ending in 8831 | \$ 5,920.21 |
| 28 | 4. Chase Card Services – Card ending in 6124 | \$ 5,821.54 |
| 29 | | |

1	5. Chase Card Services – Card ending in 9009	\$ 6,932.40
2	6. Capitol One – Card ending in 2185	\$ 2,619.21
3		
4	7. Target Card Services – Card ending in 3324	\$ 5,833.95
5	8. Sears Credit Cards – Card ending in 8077	\$ 3,934.66
6	9. Discover – Card ending in 2801	\$17,801.04
7		
8	10. Chevron Visa – Card ending in 5495	\$ 4,842.17
9	11. Bank of America – Card ending in 8826	\$20,552.90
10	12. Capitol One – Card ending in 4382	\$ 1,991.20
11	13. Synchrony Bank – Card ending in 2369	\$ 2,759.44
12		
13	14. Synchrony Bank – card ending in 8267	\$ 5,963.07
14	15. Chase – Card ending in 9068	\$ Unknown

15 Any claims by the above-listed creditors are barred.

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17 As to the line of credit on the home in Snohomish, Chase did not respond to
18 inquiries regarding whether a lien was filed against the real property. A title report has
19 been requested to show any liens against the Snohomish home and will supplement this
20
21 Petition if received:

22 Chase Line of Credit \$17,464.54

23
24 It has long been held in Washington that a spouse cannot guarantee a loan on
25 community property without the wife’s consent. In *Nichols Hill Bank v. McCool, Jr.*, 104
26 Wn.2d 78, 701 P.2d 1114 (1985), the Washington Supreme Court interpreted RCW
27 26.16.030(2) where a husband guaranteed a loan to a son without his wife’s consent. The
28
29 loan was discharged in bankruptcy for the son and the bank sought judgment against the

1 husband's separate property and the husband's one-half interest in the community
2 property. The trial court dismissed the claim against the husband's community
3 property. The Supreme Court held that:
4

5 RCW 26.16.030(2) specifically requires the consent of both spouses before a gift
6 of community property can be effectuated. If we found that a creditor could reach
7 the donor spouse's one-half interest in community property, the total amount of
8 that property would be diminished. We would, in effect, be defying the statutory
mandate by allowing the community estate to be gratuitously reduced without the
consent of both spouses.

9 *Id.* at 88. The Supreme Court affirmed the trial court judgment dismissing the claim
10 against the husband's community property solely because the wife had not given consent.

11 A second case is factually similar to this matter. In *Bosone v Bosone*, 53 Wn. App.
12 614, 768 P.2d 1022 (1989), a husband and wife entered into a community property
13 agreement that converted all of their separate assets into community property.
14 Unbeknownst to the wife, the husband deeded their residence to his children from a former
15 marriage. After the husband's death, his children from the former marriage listed the
16 residence for sale and the surviving spouse brought a quiet title action. The Washington
17 Court of Appeals affirmed the trial court's grant of summary judgment to the wife and
18 declared the deed void and invalid under both RCW 26.16.030(2) (requiring consent of
19 both spouses for gift of community property) and RCW 26.16.030(3) (requiring both
20 spouses to join in and acknowledge a conveyance of community real property.)
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25 Therefore, even if the decedent had granted Chase a line of credit with a lien
26 against the Snohomish community property home, it should be found VOID as a claim
27 against the title to the real estate.
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VI

The basic award and additional basic award totals \$140,708.59 for which this petition is filed will exhaust the probate estate of LYLE WALTER SMITH.

VII

Venue for this petition is properly laid in Snohomish County. The Superior Court of Snohomish County has jurisdiction of all of the parties hereto and the subject matter of this petition.

Wherefore petitioner requests that the Court award the following relief:

1. That the court award to petitioner the Basic Spousal Family Allowance of \$125,000.00 plus \$15,708.59 for a total award to Petitioner of **\$140,708.59** and offset against that award the entire amount of all claims for debt, whether or not proper Creditor Claims were filed against this estate. This offset should include the \$17,464.54 asserted by Chase line of credit, whether or not a lien is asserted, as VOID against the community property;
2. That the court further enter an order fully discharging all debts and all known non-secured creditors of LYLE WALTER SMITH and PATRICIA K. SMITH, or either of them, and declaring all such debts extinguished;
3. That upon the filing of a Declaration of Completion providing for distribution of the net probate estate to Petitioner, the court orders the estate closed, approves the actions of the administrator and discharges the administrator from any further duties in connection with this estate;

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4. That in the event any challenge is made to the proposed award by, or on behalf of, any creditor, or any other entity, the estate of LYLE WALTER SMITH and Petitioner, PATRICIA K. SMITH, have and recover its reasonable attorney fees and actual costs incurred herein; and
5. That the court provide such other and further relief as shall seem reasonable and equitable under the circumstances.

RESPECTFULLY SUBMITTED this _____ day of November, 2019.

Dalynne Singleton, WSBA #34096
Attorney for Petitioner Patricia K. Smith

