

SUBSTITUTE NO. 1 TO ORDINANCE NO. 24-054

AN ORDINANCE TO AMEND CHAPTER 5 OF THE CITY CODE TO REQUIRE FUNERAL SERVICE PROVIDERS TO PROVIDE A PROBATE INFORMATION SHEET TO PERSONAL REPRESENTATIVES OF A DECEDENT

**Rev. 1
#0487**

Sponsor:

**Council
Member
White**

WHEREAS, property ownership is instrumental in building generational wealth. An individual's capacity to retain property in their lifetime and following their decease affects the transfer of wealth to their descendants. The prevalence of the lack of estate planning places countless properties at risk of having "tangled titles" that disrupts descendants' abilities to take full possession of their inheritance. A nationally representative survey by Consumer Reports found that 67% of Americans did not have a will. Among minorities, the statistics are more pronounced. Sixty-seven percent (67%) of English-speaking Asians, 77% of African Americans, and 82% of Hispanics lack this key element of the estate planning process; and

WHEREAS, in Delaware, an estate must be probated if the decedent owned more than \$30,000 in personal property in his/her name alone or owned real property in his/her name alone, either solely held or as a tenant in common, regardless of whether the decedent had a will. A properly administered probate process facilitates a smooth distribution of the estate assets, allows for heir(s) to take legal ownership of the decedent's property, and effectively settles an estate by reducing the potential for future legal disputes; and

WHEREAS, until a property has been probated, the heir(s) do not have a clear legal title, which abridges their ability to sell the property, access the property's equity to pay for maintenance and repairs, and intervene in pending administrative matters concerning the estate, and therefore are more susceptible to forced sales and property loss, which in turn contributes to neighborhood deterioration; and

WHEREAS, many City of Wilmington residents are unaware of the need or benefits to probate estates, which has contributed to a large number of title disputes within the City. The full scale of the issue is unknown, but a report submitted to Fannie Mae approximates that there are 2,484 inherited properties in Delaware, of which 2,365 are considered at risk of becoming heirs' property, where multiple descendants inherit an estate without a formal transfer of title; and

WHEREAS, funeral service providers are in close contact with the decedent's next of kin or individuals with the authority to make legally binding decisions on the decedent's behalf. Under Title 16, § 3123 of the Delaware Code, funeral directors are responsible for filing with the Office of Vital Statistics a certificate of death, a requisite document for execution of a will and/or initiation of the probate process. Many funeral homes currently offer educational resources on pre-decease estate planning; however, there is no existing procedure for ensuring that surviving heirs are informed about the actions required to establish a formal, legal claim to their inheritance; and

WHEREAS, ensuring that the heir(s) of individuals buried locally are aware of the legal requisites for taking ownership of estate property within the City of Wilmington and/or offering it for purchase contributes positively to the stabilization and revitalization of local neighborhoods and is in alignment with the Wilmington City Council 2022-2025 Strategic Plan.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Chapter 5 ("Businesses") of the City Code is hereby amended by creating certain reserved sections under Article III, after existing sections thereof, by adding the underlined language that reads as follows:

Secs. 5-140 – 5-159. – Reserved.

SECTION 2. A new article, Article IV, is hereby added to Chapter 5 (“Businesses”) of the City Code by adding the following underlined language that reads as follows:

Article IV. – Funeral Service Providers.

Sec. 5-160. – Definitions.

For the purpose of this article, the following definitions shall apply:

(a) Funeral Services. Funereal, burial, crematory, or other services in connection with the final disposition of a dead body.

(b) Funeral Service Provider. Any entity providing funeral services that assumes custody of the dead body and is required to file a certificate of death with the Office of Vital Statistics under Title 16, § 3123 of the Delaware Code, including but not limited to, a funeral home, funeral parlor, mortuary, or crematorium.

(c) Personal Representative of the Decedent. A close relation or companion of the decedent with whom the funeral services are arranged and who is responsible for the distribution of the decedent’s estate.

(d) Probate Information Sheet. An informational sheet or packet providing guidance on the process to probate estates and to legally transfer the estate assets.

Sec. 5-161. – Probate Information Sheet.

The Department of Real Estate and Housing shall make the probate information sheet available and easily accessible, by posting it on the City of Wilmington official website and other reasonable means, within one (1) month of the effective date of this bill.

Sec. 5-162. – Funeral Service Provider Disclosure Requirements.

(a) Disclosure. A funeral service provider shall provide the probate information sheet to the personal representative of the decedent not later than the date of the final disposition of the deceased.

(b) Proof of Delivery. Requirements in subsection (a) of this section may be satisfied by:

(i) hand delivery;

(ii) arranging for mail delivery at the last known address of the personal representative of the decedent; or

(iii) providing an electronic version of such document via electronic communication to the personal representative of the decedent.

(c) Penalties and Enforcement.

(1) Any funeral service provider in violation of this section is subject to a civil penalty not to exceed \$150 for each offense.

(2) This section shall be enforced by the Department of Licenses and Inspections. The Department of Licenses and Inspections may promulgate rules and regulation related to enforcement of this section.

SECTION 3. This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading.....October 17, 2024
Second Reading...October 17, 2024
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2024.

Mayor

SYNOPSIS: This Ordinance adds a new article under Chapter 5 of the City Code and requires funeral service providers to provide an informational sheet or packet regarding how to probate estates to the decedent’s family or other representatives with whom funeral services are arranged. Many City residents are unaware of the need to probate estates or the benefits associated therewith, which contributes to title disputes for properties within the City. This Ordinance, by providing City residents access, through funeral service providers, to probate information, would facilitate smoother transfers of estate assets and reduce potential title disputes.

FISCAL IMPACT STATEMENT: This Ordinance has no anticipated fiscal impact.