

EXPLAINER

How To Prove Your Spouse Is Dead

Will the courts declare Steve Fossett a goner?

By Harlan J. Protass

Posted Thursday, Nov. 29, 2007, at 5:36 PM ET

On Monday, the wife of millionaire-adventurer Steve Fossett asked a Cook County, Ill., court to [declare him legally dead](#) so that the assets in his estate can be distributed. Fossett vanished in early September after taking off on a solo flight from a ranch in Nevada. Despite scouring huge expanses of rugged mountainous terrain, searchers found no trace of him or his aircraft. How do you prove that someone is dead without a body?

Wait seven years and file an application with a court. Proof of actual death is generally required before family members of the deceased can get death benefits, such as life insurance proceeds, payments under employee benefits plans, or the like. But it's not always possible to produce evidence in the form of, say, a corpse or essential body part. Courts have therefore developed the concept of "presumption of death" as a substitute for tangible proof of death. According to the Illinois Supreme Court, individuals are presumed dead when: 1) they have disappeared or have been continually absent from home for seven years without explanation; 2) those persons with whom they would likely communicate have not heard anything from or about them; and 3) a diligent search has been made at their last known place of residence without obtaining information that they are alive. These particulars need not be proved beyond a reasonable doubt, as would be required in a criminal case. Rather, an individual's presumed death need only be established by a "[preponderance of the evidence](#)"—that it's more likely than not that the person is dead. The presumption of death, however, can be disproved if evidence surfaces showing that the person is actually alive.

That Fossett has been missing for only months rather than years shouldn't impede his wife's application, though, because she's not trying to have him declared dead in the broadest legal sense. Instead, she's filing under an Illinois [statute](#) that uses more relaxed standards for the presumption of death (and no seven-year requirement). If she's successful, her husband will be declared dead only for purposes of the distribution of his assets according to his will. To make her case under this law, Mrs. Fossett described the circumstances of her husband's disappearance and the laborious efforts undertaken to find him; she explained that none of his "wealth was transferred out or withdrawn in any manner that would suggest a planned disappearance," and she detailed that he "has not accessed any of his assets since his disappearance."

Even if she sought a broad declaration of her husband's death, she might succeed. Only a few months have passed since he was last seen, but there is ample precedent for declaring people legally dead before the passage of years in exceptional circumstances. For example, shortly after the Sept. 11 attacks on the World Trade Center, the City of New York [issued death certificates](#) to family members of those who perished in the tragedy but whose remains were never found. Similarly, victims of the *Titanic* disaster who went down with the ship were [declared legally dead](#) within weeks of its sinking.

Got a question about today's news? [Ask the Explainer](#).

Explainer thanks reader J.J. Smiley for asking the question.

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Article URL: <http://www.slate.com/id/2178796/>

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