§ 72.8 Regulatory responsibility of consular officer.

(a) A consular officer should act as provisional conservator of the personal estate of a United States citizen or non-citizen national who dies abroad in accordance with, and subject to, the provisions of §§72.9 through 72.27. The consular officer may act as provisional conservator only with respect to the portion of the personal estate located within the consular officer’s district.

(b) A consular officer may act as provisional conservator only to the extent that doing so is:
   (1) Authorized by treaty provisions;
   (2) Not prohibited by the laws or authorities of the country where the personal estate is located; or
   (3) Permitted by established usage in that country.

§ 72.9 Responsibility if legal representative is present.

(a) A consular officer should not act as provisional conservator if the consular officer knows that a legal representative is present in the foreign country.

(b) If the consular officer learns that a legal representative is present after the consular officer has taken possession and/or disposed of the personal estate, the consular officer should follow the procedures specified in §72.22.

§ 72.10 Responsibility if a will intended to operate locally exists.

(a) If a will that is intended to operate in the foreign country is discovered and the legal representative named in the will qualifies promptly and takes charge of the personal estate in the foreign country, the consular officer should assume no responsibility for the estate, and should not take possession, inventory and dispose of the personal property and effects or in any way serve as agent for the legal representative.

(b) If the legal representative does not qualify promptly and if the laws of the country where the personal estate is located permit, however, the consular officer should take appropriate protective measures such as—
   (1) Requesting local authorities to provide protection for the property under local procedures; and/or
   (2) Placing the consular officer’s seal on the personal property of the decedent, such seal to be broken or removed only at the request of the legal representative.

(c) If prolonged delays are encountered by the local or domiciliary legal representative in qualifying and/or making arrangements to take charge of the personal estate, the consular officer should consult the Department concerning whether the will should be offered for probate.

§ 72.11 Responsibility if a will intended to operate in the United States exists.

The consular officer immediately should forward any will that is intended to operate in the United States and that is among the effects taken into possession to the person or persons designated as executor(s). When the executor(s) cannot be located, the consular officer should send the will to the appropriate court in the State of the decedent’s domicile. Until the consular officer knows that a legal representative is present in the foreign country and has qualified or made arrangements to take charge of the personal estate, the consular officer should act as provisional conservator in accordance with §72.8.

§ 72.12 Bank deposits in foreign countries.

(a) A consular officer is not authorized to withdraw or otherwise dispose of bank accounts and other assets deposited in financial institutions left by a deceased United States citizen or non-citizen national in a foreign country. Such deposits or other assets are not considered part of the personal estate of a decedent.

(b) The consular officer should report the existence of bank accounts and other assets deposited in financial institutions of which the officer becomes aware to the legal representative, if any. The consular officer should inform
the legal representative of the procedures required by local law and the financial institution to withdraw such deposits, and should provide a list of local attorneys in the event counsel is necessary to assist in withdrawing the funds.

(c) A consular officer must not under any circumstances withdraw funds left by a deceased United States citizen or non-citizen national in a bank or financial institution in a foreign country without express approval and specific instructions from the Department.

§ 72.14 Nominal possession; property not normally taken into physical possession.

(a) When a consular officer takes articles of a decedent's personal property from a foreign official or other persons for the explicit purpose of immediate release to the legal representative such action is not a taking of physical possession by the officer. Before releasing the property, the consular officer must require the legal representative to provide a release on the form prescribed by the Department discharging the consular officer of any responsibility for the articles transferred.

(b) A consular officer is not normally expected to take physical possession of items of personal property such as:

(1) Items of personal property found in residences and places of storage such as furniture, household effects and furnishings, works of art, and book and wine collections, unless such items are of such nature and quantity that they can readily be taken into physical possession with the rest of the personal effects;

(2) Motor vehicles, airplanes or watercraft;

(3) Toiletries, such as toothpaste or razors;

(4) Perishable items.

(c) The consular officer should in his or her discretion take appropriate steps permitted under the laws of the country where the personal property is located to safeguard property in the personal estate that is not taken into the officer's physical possession including such actions as:

(1) Placing the consular officer's seal on the premises or on the property (whichever is appropriate);

(2) Placing such property in safe storage such as a bonded warehouse, if the personal estate contains sufficient funds to cover the costs of such safekeeping; and/or

(3) If property that normally would be sealed by the consular officer is not immediately accessible, requesting local authorities to seal the premises or the property or otherwise ensure that the property remains intact until consular seals can be placed thereon, the property can be placed in safe storage, or the legal representative can assume responsibility for the property.