

Small Estate Affidavit Instructions/Guidance

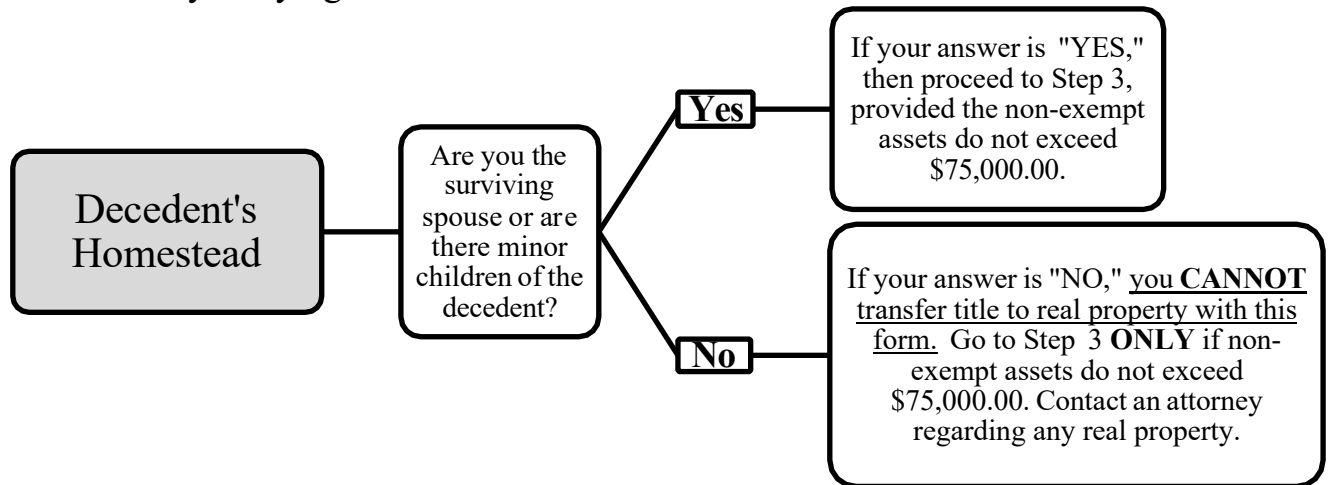
Before beginning this Small Estate Affidavit, please review the following to determine if a Small Estate Affidavit is proper to use.

STEP 1: Did the Decedent die testate (leaving a valid Will)?

If yes, you may not use the Small Estate Affidavit.

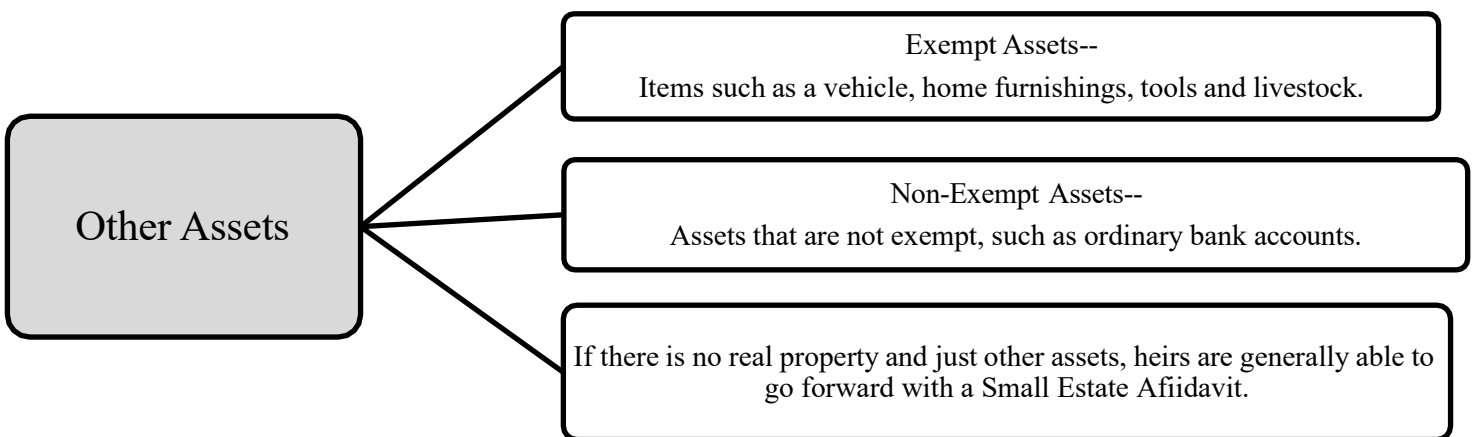
If no, proceed to Step 2.

STEP 2: What are you trying to transfer?



THE SMALL ESTATE AFFIDAVIT (SEA) MAY NOT BE USED TO TRANSFER TITLE TO REAL PROPERTY OTHER THAN THE DECEDENT'S HOMESTEAD AS EXPLAINED ABOVE. CONTACT AN ATTORNEY REGARDING OTHER REAL PROPERTY.

STEP 3:



OTHER DEFINITIONS AND RECOMMENDATIONS:

- **Form**—To increase the chances that the SEA will include all necessary information, the Court recommends that applicants use the SEA form available on the county clerk's website.
- **Separate Property**—property owned before marriage, property owned after a final divorce decree, or property acquired by gift or inheritance
- **Community Property**—any property acquired during marriage other than by gift or inheritance

Instructions for Small Estate Affidavit Form

Sections A-H

- It is important that the full name of the deceased person, the date of death, the county of death, and the domicile (where he lived) at death be shown in the form.
- The SEA must state whether the person died intestate (without leaving a Will) and that no petition for the appointment of a personal representative is pending nor has been granted.
- No form should be completed or filed until thirty (30) days have elapsed since death.
- The value of the **entire** estate, not including homestead and exempt property, does not exceed \$75,000.

Section I: Assets

- **Section I** must list all the assets of the Decedent with a full description of each and every asset belonging to the Decedent. Assets are any property owned that has monetary value, including:
 - **Bank accounts** – name of the bank, account number, and balance in each account.
 - **Cash** – value and location.
 - **Vehicles** – including the year, make and model, vehicle identification number and value.
 - **Real Estate** – homestead only (it **only** passes to a surviving spouse or minor children)
 - **Stocks** – name of the stock, the number of shares, certificate number, and the value at death.
 - **Safe Deposit Boxes** – if the Decedent had one, complete the form “Application to Open Safe Deposit Box and Examine Papers” provided by the County Clerk. Present the Court with an Inventory of what is in that box with descriptions and values.
 - If you have a check, you should make sure the company will accept a SEA. They will have to reissue the check. You cannot open an estate account with the SEA.
 - Please indicate whether the assets are community or separate property.
 - Applicant must identify any claimed exempt property (as defined by Texas Estates Code Chapter 353.051 and Texas Property Code Chapter 42).
- Indicate the value of each asset as precisely as possible. A SEA **cannot** be approved with any asset of “unknown value.”

**** Homestead:**

- You must provide a legal description of the homestead and a physical address.
- The homestead is for the use and benefit of the surviving spouse and minor children only. (TEC Section 353.051).
- **This is the only real property that can be transferred under a SEA.**

Section J. Liabilities:

- You must list all liabilities. These are debts of the Decedent and his/her estate. These may include credit cards, mortgage, or any bill that is still owed at the time of death.
- The estate of the deceased **MUST** be solvent. In other words, the debts/liabilities cannot exceed the value of the assets.
- If there are **NO** liabilities or debts, please show this in the box. Do not leave this box blank!

Section L. Distributees:

- List the name, address, email, and telephone number of **all** distributees.
- Include the name, address, phone number, capacity and interest of each distributee. See heirship affidavit to determine who the distributee(s) are.

Signatures of Distributees:

- All distributees who are listed in Section L must sign in front of a notary.
- If the distributee is a minor, the form must be signed by a natural parent of the minor; by the court appointed guardian with a copy of letters of guardianship attached; or by the court appointed managing conservator with judgement papers attached.
- Example of signatures for minors. “Sam Smith as natural guardian or parent of John Smith, a minor.” It also requires that they print their names. The signature should be done in front of a notary.

HEIRSHIP AFFIDAVIT

The heirship portions on pages 8 and 9 are to be completed by two disinterested witnesses who knew the family history. It is important that the proper portions of this affidavit be completed. This is how the Court will determine the heirs.

I. Witness Information

These witnesses must not have or be entitled to any share of the Decedent's assets. It must show the following:

- a.) name,
- b.) address,
- c.) county in which they reside,
- d.) what relationship they were to the Decedent, and
- e.) how many years they knew the Decedent.

II. Decedent Information

When and where did the Decedent die? In what county and state?

III. Marital History

This section is to determine whether the Decedent was married or not at the time of death. There are 3 boxes. Please check the appropriate box. If there was more than 1 marriage, please indicate that.

IV. Family History: All the descendants of the Decedent.

- 1) **Children:** Please list all of the Decedent's children, by birth or adoption (alive or deceased). If any of the children are deceased, list the deceased child's name and include their children in the box.

***It is important to state whether the surviving spouse is the biological or adoptive parent of each of the children listed. Please indicate in the appropriate box.**

- 2) **Parents:** If there are no children or grandchildren, then list the parents (alive or deceased).
- 3) **Siblings – Brothers or Sisters:**

Note:

- a. If there are no parents or only one parent survived the Decedent, list all siblings (alive or deceased).
 - b. If any of the siblings are deceased, then list their children.
- This Small Estate Affidavit needs to be signed by the two disinterested witnesses in front of a notary.
 - The Court usually does not require a hearing on SEA applications, but in some circumstances the Court may require a hearing before a SEA will be approved. If a hearing is needed, the Court will contact you to set the hearing. **Do not set a hearing until the Court has asked you to do so.**
-

NO. _____

Estate of

§
§
§
§
§

In County Court at Law No. 1 or 2

of

Deceased

Brazos County, Texas

Small Estate Affidavit

On the dates indicated below, all of the Distributees of this estate and two disinterested witnesses personally appeared and, on their oath, did swear or affirm to the accuracy of the following facts, pursuant to Chapter 205 of the Texas Estates Code:

- A. Decedent, _____, died on the _____ day of _____, 20_____ in _____ County, Texas. A copy of Decedent's death certificate will be filed in this cause number at the time this Affidavit is filed.
- B. More than 30 days have elapsed since Decedent's death.
- C. Decedent was a resident of and domiciled in _____ County, Texas, at the time of Decedent's death. *[If not Brazos County, the affidavit must include facts supporting venue in Brazos County.]*
- D. Decedent died without a will.
- E. No administration is pending or has been granted in Decedent's estate and none appears necessary.
- F. The value of the entire assets of the estate of Decedent, not including homestead and exempt property, does not exceed \$75,000.00.
- G. The value of the entire assets of the estate of Decedent, not including homestead and exempt property, exceeds the known liabilities.
- H. Medicaid – check the accurate box:
- ☐ The Decedent did not apply for and receive Medicaid benefits on or after March 1, 2005.
- OR**
- ☐ Decedent did apply for and receive Medicaid benefits on or after March 1, 2005, and the Medicaid Estate Recovery Program claim is listed as a liability in section "J" below.
- OR**
- ☐ The Decedent did apply for and receive Medicaid benefits on or after March 1, 2005, but there is no Medicaid claim against the estate. *[If this box is checked, applicant(s) must either (1) file a Medicaid Estate Recovery Program (MERP) certification that decedent's estate is not subject to a MERP claim or (3) include additional information proving that a MERP claim will not be filed.]*

I. **All** assets of the Decedent's estate and their values are listed here.

NOTE: Community property is property acquired during marriage other than by gift or inheritance.

Separate property is property owned before marriage or acquired by gift or inheritance during marriage.

Description of Asset(s) <i>List with enough detail to identify exactly what the asset is. For example, give bank name and last four digits of an account number; give life insurance company name; give description of car plus VIN number; give address & legal description of real property.</i>	Value	Additional information <i>If exempt property, so indicate. If decedent was married, indicate: 1. whether each asset was community or separate property, and 2. facts that explain why the asset was community or separate Use additional pages as necessary.</i>

(Continue list as necessary. If list is continued on another page, please note.)

- J. All liabilities/debts of the Decedent's estate and their values are listed here. The affidavit must list ***all*** of Decedent's debts and other liabilities including all credit card balances, doctor and hospital bills, utility bills, etc. – *everything* owed by Decedent or Decedent's estate and not paid off.

If none, write "none."

If funeral debts or attorney's fees and expenses will be paid from estate assets, list them here.

Description of Liabilities / Debts: <i>List with enough detail to identify the creditor & any account.</i>	Balance Due

(Continue list as necessary. If list is continued on another page, please note.)

If you did not list attorney's fees as a liability above but one or more distributees have paid or will pay attorney's fees for this small estate affidavit, indicate the amount of those fees here: \$_____.

Also indicate who has paid or will pay the fees: _____.

- K. The following facts regarding Decedent's family history show who is entitled to what share of Decedent's estate, to the extent that the assets of Decedent's estate, exclusive of homestead and exempt property, exceed the liabilities of Decedent's estate. ***[Put check marks in the appropriate small boxes, and provide additional information as indicated.]***

Family History #1: Marriage.

☐ On the date of Decedent's death, Decedent was a single person.

OR

☐ On the date of Decedent's death, Decedent was married to _____.

The date they were married: _____.

Family History #2: Children.

- ☐ Decedent had no children by birth or adoption, and Decedent did not take any children into Decedent's home to raise as a child. (Skip to Family History #4 if you check this box.)

OR

- ☐ The following children were born to or adopted by Decedent. List all children, whether or not the child is still alive and whether or not parental rights were later terminated. If parental rights were terminated for any child, give details on separate page(s).

Child's name	Birth date, if known	Name of child's other parent

(Continue list as necessary. If list is continued on another page, please note.)

Family History #3: Children, part 2. Answer if Decedent had any children.

- ☐ All of Decedent's children, by birth or adoption, were alive when Decedent died.

OR

- ☐ The following of Decedent's children, by birth or adoption, died before the Decedent's death **and were survived by children (or grandchildren or great-grandchildren):**

Name of deceased child (followed by the name of the deceased child's other parent in parentheses)	Date child died	Names of all children of the deceased child <i>(if any of these children died before Decedent, use a separate page to give date of death, plus names & birth dates of all grandchildren)</i>

(Continue list as necessary. If list is continued on another page, please note.)

AND/OR

- ☐ The following of Decedent's children, by birth or adoption, died before the Decedent's death **and were not survived by any children, grandchildren, or great-grandchildren:**

Name of deceased child	Date child died

(Continue list as necessary. If list is continued on another page, please note.)

If Decedent was survived by any children, grandchildren, or great-grandchildren, you do not need to answer Family History #4 about Parents or Family History #5 about Sisters and Brothers. You may skip to "L" (following #5).

Family History #4: Parents.

- ☐ The Decedent was survived by both parents, _____ (mother) and _____ (father).

OR

- ☐ Decedent was survived by only one parent, _____.
Decedent's other parent, _____, died on _____.

OR

- ☐ Both of Decedent's parents died before Decedent's death.

Family History #5: Sisters and Brothers.

The following information about Decedent's sisters and brothers is not needed if Decedent was survived by both parents or by children, grandchildren, or great-grandchildren.

- ☐ The following are all of Decedent's brothers and sisters **who were alive on the date Decedent died**, including half-brothers and half-sisters who were born to *either* of Decedent's parents. If none, write "none." If any of the following are now deceased, indicate date of death.

Name of brother or sister	State whether full or half-sibling	Birth date

(Continue list as necessary. If list is continued on another page, please note.)

AND

- ☐ The following of Decedent's brothers and sisters (including half-brothers and half-sisters who were born to *either* of Decedent's parents) **died before Decedent's death**. If none, write "none."

Name of deceased brother or sister (followed by the date of death in parentheses)	Full or half sibling?	Names of all children of the deceased brother or sister (nephews and nieces of Decedent) that were alive on the date Decedent died	Birth dates of nieces & nephews

(Continue list as necessary. If list is continued on another page, please note.)

Family History #6: Other.

Fill out a separate page (or pages) if Decedent was survived by none of the following: spouse, child, grandchild, parent, brother, sister, half-brother, half-sister, niece, or nephew. If Decedent was survived by none of the above, list **all** of the surviving relatives of Decedent on a separate page. Specify Decedent's family history with respect to each of the survivors, giving sufficient detail about names, birth dates, death dates, and relationships to explain how each survivor is related to Decedent.

EVERYONE MUST FILL OUT THE FOLLOWING CHART. Before filling out the chart, see #13 & #15 and pages 4-6 of the Court's Small Estate Affidavit Checklist.

L. Based on the family history given in this Affidavit, the following chart lists all of the Decedent's heirs at law, together with their fractional interests in Decedent's estate:

For each Distributee, list: 1. Name 2. Address 3. Telephone number 4. Email address	Share of separate personal property (always fill out this column)	Share of separate real property (always fill out this column)	Share of decedent's community property (fill out this column if decedent was married)

(Continue list as necessary. If list is continued on another page, please note.)

Affidavits and signatures of all Distributee(s).

As needed, include other signature pages for additional distributees.

Every signature page for a distributee must include the box below:

We, as Distributees of the Decedent and as indicated by our signatures below, do solemnly swear or affirm the following:

- *the foregoing Affidavit was completed by persons who have actual knowledge of the stated facts;*
- *all of the facts stated in the foregoing Affidavit are true and complete; and*
- *each of us has legal capacity.*

We pray that this Affidavit be filed in the records of the Brazos County Clerk; that the same be approved by the Court; and that the Clerk issue certified copies of this Affidavit and the order approving it as evidence of Distributees' right to inherit the property of Decedent as described above.

We understand that Estates Code §205.007(c) provides that "[e]ach person who execute[s] [this] affidavit is liable for any damage or loss to any person that arises from a payment, delivery, transfer, or issuance made in reliance on the affidavit."

STATE OF _____ §
COUNTY OF _____ §

I am a Distributee in the Estate of _____, Deceased. I swear or affirm that I have personal knowledge of the facts stated in the foregoing Affidavit and that the facts contained in the Affidavit are true and complete to the best of my knowledge.

Distributee's printed name

Distributee's signature

SWORN TO AND SUBSCRIBED before me by _____ [name of Distributee], a
Distributee, on this the _____ day of _____, 20____.

(SEAL)

Notary Public, State of _____

STATE OF _____ §
COUNTY OF _____ §

I am a Distributee in the Estate of _____, Deceased. I swear or affirm that I have personal knowledge of the facts stated in the foregoing Affidavit and that the facts contained in the Affidavit are true and complete to the best of my knowledge.

Distributee's printed name

Distributee's signature

SWORN TO AND SUBSCRIBED before me by _____ [name of Distributee], a
Distributee, on this the _____ day of _____, 20____.

(SEAL)

Notary Public, State of _____

STATE OF _____ §
COUNTY OF _____ §

HEIRSHIP AFFIDAVIT for FIRST DISINTERESTED WITNESS

To be filled out and signed by two disinterested witnesses.

NOTE: A disinterested witness is someone who does not inherit from the decedent.

Before me, the undersigned authority, on this day personally appeared _____
(Disinterested Witness)

who being first by me duly sworn on oath state:

I. Witness Information

I, _____, reside at _____
(Disinterested Witness) (Address)
_____, _____ County, _____.
(City) (County) (State)

I am personally acquainted with the family history and facts of heirship of _____,
(Name of Deceased)

deceased, hereinafter called "Decedent" who was my _____. I knew Decedent for _____ years.
(Relationship to Decedent)

I have no interest in the Estate of _____, Deceased, and am not related to Decedent under the laws of descent and distribution of the State of Texas. I swear or affirm that I have read the Small Estate Affidavit for the Estate of _____ the facts contained in this Affidavit regarding family history, assets, and liabilities are true and complete to the best of my knowledge.

I understand that Estates Code §205.007(c) provides that "[e]ach person who execute[s] [this] affidavit is liable for any damage or loss to any person that arises from a payment, delivery, transfer, or issuance made in reliance on the affidavit."

Disinterested Witness's printed name

Disinterested Witness's signature

SWORN TO AND SUBSCRIBED before me by _____ [name of witness], a disinterested witness, on this the _____ day of _____, 20____.

(SEAL)

Notary Public, State of _____

STATE OF _____ §
COUNTY OF _____ §

HEIRSHIP AFFIDAVIT for SECOND DISINTERESTED WITNESS

To be filled out and signed by two disinterested witnesses.

NOTE: A disinterested witness is someone who does not inherit from the decedent.

Before me, the undersigned authority, on this day personally appeared _____
(Disinterested Witness)

who being first by me duly sworn on oath state:

II. Witness Information

I, _____, reside at _____
(Disinterested Witness) (Address)
_____, _____ County, _____.
(City) (County) (State)

I am personally acquainted with the family history and facts of heirship of _____,
(Name of Deceased)

deceased, hereinafter called "Decedent" who was my _____. I knew Decedent for _____ years.
(Relationship to Decedent)

I have no interest in the Estate of _____, Deceased, and am not related
to Decedent under the laws of descent and distribution of the State of Texas. I swear or affirm that I
have read the Small Estate Affidavit for the Estate of _____ the
facts contained in this Affidavit regarding family history, assets, and liabilities are true and complete to
the best of my knowledge.

I understand that Estates Code §205.007(c) provides that "[e]ach person who execute[s] [this] affidavit is liable for any damage or loss to any person that arises from a payment, delivery, transfer, or issuance made in reliance on the affidavit."

Disinterested Witness's printed name

Disinterested Witness's signature

SWORN TO AND SUBSCRIBED before me by _____ [name of witness], a
disinterested witness, on this the _____ day of _____, 20____.

(SEAL)

Notary Public, State of _____