



Tarrant County Probate Courts
100 W. Weatherford
Fort Worth, Texas 76196

Christopher W. Ponder, Judge
Probate Court Number One

Brooke Allen, Judge
Probate Court Number Two

January 2, 2019

SMALL ESTATE AFFIDAVITS AND THEIR USE

Attached are instructions which have been prepared for your use in completing the Small Estate Affidavit.

Small Estate Affidavits allow family members to collect the assets of an estate where there is no will and no need to have a person appointed to handle the business of the estate. To use a Small Estate Affidavit, the assets of the Estate, not counting the homestead and property classified as exempt by the property code, cannot be more than \$75,000.00. Debts of the estate must not exceed the non-exempt assets.

It is AGAINST THE LAW for any Tarrant County employee to give you advice or answer questions on the use of this form. Please do not ask them to break the law.

Instructions are attached for your use, along with telephone number where legal advice is available.

Christopher W. Ponder, Judge
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SMALL ESTATE AFFIDAVIT

- FILING Fee: **\$400.00**

(Includes 1 Certified Copy and Poster Citation)

- Please make checks payable to:

**Mary Louise Nicholson, County Clerk
Tarrant County Courthouse
100 W. Weatherford Street, Room B-90
Fort Worth, Texas 76196-0401**



Tarrant County Probate Courts
100 W. Weatherford
Fort Worth, Texas 76196

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**INSTRUCTIONS FOR USE OF THE SMALL ESTATE AFFIDAVIT
AUTHORIZED BY TEXAS ESTATES CODE CHAPTER 205**

WHO CAN USE THE AFFIDAVIT?

The small estate affidavit can be used only if ALL of the following conditions apply:

1. The deceased person died WITHOUT a will. If there is a will, a small estate affidavit CANNOT be used whether the will has been offered for probate or not.
2. More than thirty (30) days must have passed since the date of death.
3. The only real property owned by the Decedent must be the homestead. Title to other real property is unaffected by the small estate affidavit. A small estate affidavit cannot be used to transfer title to any other real property other than the homestead.
4. The debts of the Decedent (other than a mortgage on the homestead) must not exceed the assets of the Decedent (not counting homestead and exempt property) and there must be no other reason to have a person appointed to handle the business of the Decedent's estate.
5. No estate administration has been opened or if an application to open one has been filed, no order has yet been entered granting letters of administration.
6. The Decedent must have had a permanent place of residence in this county at the time of his or her death.
7. All of the assets of the Decedent (not counting homestead and exempt property) are not more than \$75,000.00, on the date of the affidavit.
8. It cannot be used to exclude any heir.
9. It cannot be used if any of the heirs are under the age of 18 or incapacitated.

HOW TO COMPLETE THE AFFIDAVIT?

1. The affidavit must be completed by persons with actual knowledge of the facts stated and signed by ALL distributees (heirs).
2. Also, two persons who have personal knowledge of the family history facts and who have no financial interest in the Decedent's estate ("disinterested persons") must sign and swear to the affidavit.
3. All persons who sign the affidavit (whether heirs or disinterested persons) must personally appear before a Notary Public and swear to the contents of the affidavit.
4. Assets and liabilities must be identified and described and all values must clearly be set out with all assets designated as separate or community property.
5. All assets must be listed with a physical address of where the asset is located and with the current market value as of the date of the Decedent's death.
6. The heirship of the Decedent must be set out, with the names and addresses of all heirs shown, their relationship to the Decedent and the share each heir will take shown. (A chart explaining heirship division is attached to this sheet.)

7. All marriages, divorces or deaths of spouses and births and deaths of children must be listed.

- a. If any children or descendants of the Decedent are NOT also children and descendants of the surviving spouse, this fact must be shown.
- b. If any other person survived the Decedent other than children, such as parents, grandparents, brothers and sisters, half-brothers and half-sisters, or other people, this fact must be shown.
- c. No one is the heir of a living person, so that, if a child of the Decedent would inherit a share, that child's children would not inherit from the Decedent.

EFFECT OF THE ORDER?

The order approving the small estate affidavit does not order any property transferred, but only finds that the affidavit:

1. complies with the provisions of the Texas Estates Code,
2. has been filed in the proper court,
3. the estate qualifies as a "small estate" under the Estates Code,
4. the affidavit should be approved, and
5. directs the Probate Clerk to record the affidavit and issue copies to all persons entitled to them.

**IT IS ILLEGAL FOR ANY COUNTY EMPLOYEE TO GIVE YOU
ANY ADVICE ON THE USE OF THIS FORM.**

If you have legal questions, you might call:

- Tarrant County Bar Association Lawyer Referral Service - 817.336.4101
- Tarrant County Bar Association "Legal Line" (2nd & 4th Thursday 6-8pm) – 817.335.1239
- West Texas Legal Services ("Legal Aid") – 817.336.3943

NO. _____

ESTATE OF

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IN PROBATE COURT

NUMBER _____ OF

DECEASED

TARRANT COUNTY, TEXAS

SMALL ESTATE AFFIDAVIT

On the day or days below written, personally appeared the distributees of this Estate and two disinterested witnesses, who, on their oaths, did swear or affirm to the following facts pursuant to Chapter 205, Texas Estates Code:

1. Decedent _____ died on _____ in _____ County, _____ without leaving a valid Last Will and Testament;
2. A redacted copy of Decedent's death certificate will be filed in this cause number at the time this Affidavit is filed;
3. Decedent was a resident of and domiciled in _____ County, Texas at the time of Decedent's death;
4. No administration is pending or has been granted in Decedent's estate and none appears necessary;
5. More than thirty (30) days have elapsed since the death of Decedent;
6. The value of the entire assets of the estate of Decedent as of the date of this affidavit, exclusive of homestead and exempt property, does not exceed \$75,000.00;
7. The value of the entire assets of the estate of Decedent as of the date of this affidavit, exclusive of homestead and exempt property, exceed the known liabilities;
8. Medicaid:

*Claims for Medicaid recovery in Texas are debts of the estate. If the Decedent **did not** apply for and receive Medicaid benefits on or after March 1, 2005, check the box below:*

- ☐ The Decedent did not apply for and receive Medicaid benefits on or after March 1, 2005.

*If the decedent **did** apply for and receive Medicaid benefits on or after March 1, 2005, then the Medicaid Estate Recovery Program ("MERP") may have a claim against the estate. A **certification** must be obtained from the Health and Human Services Commission (formerly the Texas Department of Aging and Disability Services) and attached to the affidavit. The required form is available at: http://www.dads.state.tx.us/services/estate_recovery/TXMERPCertificationForm.pdf.*

Based on the certification, the following statement applies:

- ☐ The Texas Department of Health and Human Services has certified that no claim is pending and the state does not intend to file a claim.
- ☐ The Texas Department of Aging and Disability Services has withdrawn or waived any claim against the Decedent's estate.
- ☐ The Texas Department of Aging and Disability Services has a Medicaid Estate Recovery Program (MERP) claim which is listed as a liability in paragraph 10 below.

9. All of the assets of Decedent's estate and their value are as follows: *(use additional pages as necessary)*

Description of Assets

Provide sufficient detail to identify property; including, name & last four digits of the account number; and address & legal description of real property.

Value

Market value as of the date of this affidavit.

Additional Information

Provide facts to explain why asset is Community or Separate Property. Exempt assets must be identified if Decedent was survived by spouse, minor children, or unmarried adult children who lived with Decedent.

SEPARATE PROPERTY:

Texas Family Code § 3.001. SEPARATE PROPERTY. A spouse's separate property consists of: (1) the property owned or claimed by the spouse before marriage; (2) the property acquired by the spouse during marriage by gift, devise, or descent; and (3) the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage.

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

TOTAL _____

COMMUNITY PROPERTY:

Texas Family Code § 3.002. COMMUNITY PROPERTY. Community property consists of the property, other than separate property, acquired by either spouse during marriage.

Texas Family Code § 3.003. PRESUMPTION OF COMMUNITY PROPERTY. (a) Property possessed by either spouse during or on dissolution of marriage is presumed to be community property. (b) The degree of proof necessary to establish that property is separate property is clear and convincing evidence.

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

TOTAL _____

10. All liabilities/debts of the Decedent's estate and their values are as follows:

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 Debts

Balance Due

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

TOTAL _____

If attorney's fees were not listed above as a liability, but one or more distributees have paid or will pay attorney's fees for preparation and/or advice regarding this Small Estate Affidavit, indicate the amount of those fees here: \$ _____

Indicate who has paid or will pay the fees: _____

11. The following facts regarding Decedent's family history show those who are entitled to the Decedent's assets and their respective shares; to the extent that, exclusive of homestead and exempt property, the Decedent's assets exceed the liabilities of Decedent's estate (*complete all that apply*).

A. Marriage:

On the date of Decedent's death, Decedent was:

☐ a single person, (*or*)

☐ married to _____ ("Surviving Spouse") on _____ (date).

B. Children:

☐ Decedent had no children by birth or adoption who survived the Decedent and Decedent did not take any children into Decedent's home, to raise as a child, who survived the Decedent. (*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).

Name of Child

Date of Birth

Name of Child's Other Parent

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

☐ All of the Decedent's children were alive when the Decedent died. (*or*)

☐ The following of Decedent's children died before the Decedent, and were survived by the following children (or grandchildren, etc.):

<u>Name of Deceased Child</u>	<u>Date of Death</u>	<u>Name of Children of Deceased Child</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- ☐ The following of Decedent's children died before the Decedent and were not survived by children (or grandchildren, etc.):

<u>Name of Deceased Child</u>	<u>Date of Death</u>
_____	_____
_____	_____

If Decedent was survived by any children or their descendants, you do not need to answer "C. Parents" or "D. Siblings" below and may skip to "E. Chart of Distributees."

C. Parents:

- ☐ Decedent was survived by both parents: _____ and _____, *or*
- ☐ Decedent was survived by one parent: _____, and Decedent's other parent, _____, died on _____.
- ☐ Both of Decedent's parents pre-deceased the Decedent.

D. Siblings:

- ☐ Decedent was survived by the following brothers and sisters who were alive on the date of Decedent's death:

<u>Name of Sibling</u>	<u>Date of Birth</u>	<u>Full or Half Sibling</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- ☐ The following siblings pre-deceased the Decedent:

<u>Name of Sibling</u>	<u>Full or Half Sibling</u>	<u>Children of Deceased Sibling & Birthday</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- ☐ Decedent was survived by neither of his/her parents, brothers or sisters, nor nephews or nieces; but was survived by the individuals listed on the attached sheet showing the names and relationship to the Decedent, including date of birth and death, and Decedent's family history with respect to such survivors.

E. Chart of Distributees: Based on the family history given in this Affidavit, the following chart lists the name, address, telephone number, and e-mail address of each of the Decedent's heirs, together with their fractional interests in Decedent's estate:

[illegible]

DISTRIBUTEES:

We, the Distributees of this estate, as indicated by our signatures below:

1. understand that this Affidavit and any court order approving the same do not serve to transfer title to any real estate owned by Decedent or affect the title to same, except that title to a homestead that is the only real property in a decedent's estate and which passes to a person in whose hands it is already homestead;
2. understand that Texas Estate Code Section 205.007(c) provides that *each person who executes 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*; and
3. do solemnly swear or affirm that each of us have legal capacity and that the foregoing Affidavit was completed by persons who had actual knowledge of the facts stated herein and that this Affidavit is true, complete and correct, to the best of our knowledge.

STATE OF _____ §
COUNTY OF _____ §

I am a Distributee of 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 _____, a
Distributee, on _____.

(Seal) Notary Public, State of _____
Identification Number: _____

STATE OF _____ §
COUNTY OF _____ §

I am a Distributee of 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 _____, a
Distributee, on _____.

(Seal) Notary Public, State of _____
Identification Number: _____

STATE OF _____ §
COUNTY OF _____ §

I am a Distributee of 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 _____, a
Distributee, on _____.

(Seal) Notary Public, State of _____
Identification Number: _____

STATE OF _____ §
COUNTY OF _____ §

I am a Distributee of 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 _____, a
Distributee, on _____.

(Seal) Notary Public, State of _____
Identification Number: _____

STATE OF _____ §
COUNTY OF _____ §

I am a Distributee of 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 _____, a
Distributee, on _____.

(Seal) Notary Public, State of _____
Identification Number: _____

DISINTERESTED WITNESSES:

STATE OF _____ §
COUNTY OF _____ §

I swear or affirm that: I have no interest in the estate of the Decedent herein; I am not related to the Decedent under the laws of descent and distribution of the State of Texas; I have personal knowledge of the facts stated in the foregoing Affidavit; and that the facts contained in the Affidavit regarding family history, assets, and liabilities are true and complete to the best of my knowledge.

I understand that Texas Estates Code Section 205.007(c) provides that each person who executes 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 _____, a disinterested witness, on _____.

(Seal) Notary Public, State of _____
Identification Number: _____

STATE OF _____ §
COUNTY OF _____ §

I swear or affirm that: I have no interest in the estate of the Decedent herein; I am not related to the Decedent under the laws of descent and distribution of the State of Texas; I have personal knowledge of the facts stated in the foregoing Affidavit; and that the facts contained in the Affidavit regarding family history, assets, and liabilities are true and complete to the best of my knowledge.

I understand that Texas Estates Code Section 205.007(c) provides that each person who executes 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 _____, a disinterested witness, on _____.

(Seal) Notary Public, State of _____
Identification Number: _____

NO. _____

ESTATE OF

DECEASED

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IN PROBATE COURT

NUMBER _____ OF

TARRANT COUNTY, TEXAS

ORDER APPROVING SMALL ESTATE AFFIDAVIT

On this day, the Court considered the above Small Estate Affidavit and the Court finds that:

1. this court has jurisdiction and venue;
2. the Affidavit conforms to the terms and provisions of Texas Estates Code Chapter 205;
3. based on the Affidavit, this Estate qualifies under the provisions of the Texas Estates Code as a Small Estate, pursuant to Texas Estates Code Section 205.001;
4. the Distributees named in the Affidavit are entitled to receive the property of the Decedent set forth in the Affidavit only to the extent that the assets of the Estate (exclusive of homestead and exempt property) exceed the known liabilities of the Estate (exclusive of liabilities secured by homestead or exempt property); and
5. the Affidavit should be approved.

Nothing in this Order:

1. affects the disposition of property under a will or other testamentary instrument;
2. transfers title to real estate, except as provided in Section 205.006 of the Texas Estates Code;
3. transfers title to any property of the Decedent not listed in the Affidavit;
4. deprives any creditor, whether disclosed or not, of any rights in any real or personal property transferred;
5. deprives any heir, whether disclosed or not, of any ownership interest in any real or personal property transferred;
6. establishes the separate or community nature of any property described in the Affidavit;
7. constitutes a judicial determination of the legal heirs of the Decedent; or
8. limits the personal liability of the Distributees and Disinterested Witnesses to any person (including but not limited to undisclosed heirs and any person having a prior right to property of the Estate) for any damage or loss arising from any payment, delivery, transfer or issuance made in reliance on the Affidavit.

It is therefore ORDERED, ADJUDGED and DECREED that the foregoing Affidavit be and the same is hereby APPROVED, and shall forthwith be recorded in the records of the County Clerk, and the Clerk of this Court shall issue certified copies thereof to all persons entitled thereto.

SIGNED _____

JUDGE PRESIDING