

INSTRUCTIONS FOR USE OF THE SMALL ESTATE AFFIDAVIT AUTHORIZED BY CHAPTER 137, TEXAS PROBATE CODE

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 a homestead.
- 4 The debts of the Decedent (other than a mortgage on the homestead) must not exceed the assets of the Decedent (not counting the 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 county the homestead and exempt property) are not more than \$50,000.00.
- 8 It cannot be used to exclude any heir.

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 the 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 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)
- 6 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 provisions of the Texas Probate Code
- 2 has been filed in the proper court
- 3 the estate qualifies as a "small estate" under the Probate 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 the form.

If you have legal questions, you might call:

- 1 Tarrant County Bar Association Lawyer Referral Service 817-336-4101
- 2 Tarrant County Bar Association "Legal Line" Number (2nd and 4th Thursday 6:00-8:00 P.M. 817-335-1239
- 3 West Texas Legal Services ("Legal Aid") 817-336-3943

No. _____

Estate of

§ In County Court

§

_____ ,

§ of

§

Deceased

§ Hood 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, swear to the following facts pursuant to §137, Texas Probate Code:

1. Decedent _____ died on _____ in _____, _____ County, _____ without leaving a valid Last Will and Testament;

2. Decedent was a resident of and domiciled in _____ County, Texas at the time of Decedent's death;

3. No administration is pending or has been granted in Decedent's estate and none appears necessary;

4. More than thirty (30) days have elapsed since the death of Decedent;

5. The value of the entire assets of the estate of Decedent as of the date of death, exclusive of homestead and exempt property, does not exceed \$50,000.00; and

6. The assets of Decedent's estate and their value are as follows:

Asset Description Value

SEPARATE PROPERTY:

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

TOTAL _____

(C) _____ all surviving children and descendants of the Decedent are also surviving children and descendants of the surviving spouse. (or)

_____ the following surviving children and descendants of the Decedent are NOT also surviving children and descendants of the surviving spouse:

_____	_____
_____	_____
_____	_____
_____	_____

(and)

(D) The following children of Decedent died before the Decedent and left children surviving them, all of whom are listed as follows:

1. _____ 2. _____

_____	_____
_____	_____
_____	_____

3. _____ 4. _____

_____	_____
_____	_____
_____	_____

(and)

(E) _____ Decedent was not survived by a spouse or children or grandchildren, but was survived as follows:

_____ by both parents: _____ &
_____ ; (or)

_____ by one parent: _____ ; the parent not surviving being _____, Decedent's Father
Mother, who died on _____ ; (or)

_____ by neither parent;

(and/or)

_____ by the following brothers and sisters (including half-brothers and half-sisters born to either of Decedent's parents (specify);

(Full brothers & sisters)

_____	_____
_____	_____
_____	_____

(Half-brothers & Half-sisters)

_____	_____
_____	_____
_____	_____

(and/or)

_____ Decedent was survived by the following nephews and nieces who were the children of a deceased brother or sister, all of whom are listed as follows:

1. _____ 2. _____

_____	_____
_____	_____
_____	_____

3. _____ 4. _____

_____	_____
_____	_____
_____	_____

(and/or)

_____ Decedent was survived by neither of his parents nor brothers nor sisters, nor nephews nor nieces, but was survived by the individuals listed on the attached sheet showing the names and relationship to the Decedent and Decedent's family history with respect to such survivors.

10. The distributees of this estate understand that this affidavit and any court order approving the same does 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 may be transferred by this affidavit.

DISTRIBUTEES:

We, as distributees of the Decedent, as indicated by our signatures immediately below, do solemnly swear 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.

1. _____ 2. _____

3. _____ 4. _____

5. _____ 6. _____

7. _____ 8. _____

SUBSCRIBED AND SWORN TO BEFORE ME by 1. _____,
a Distributee, on _____.

Notary

SUBSCRIBED AND SWORN TO BEFORE ME by 2. _____,
a Distributee, on _____.

Notary

SUBSCRIBED AND SWORN TO BEFORE ME by 3. _____,
a Distributee, on _____.

Notary

SUBSCRIBED AND SWORN TO BEFORE ME by 4. _____,
a Distributee, on _____.

Notary

SUBSCRIBED AND SWORN TO BEFORE ME by 5. _____,
a Distributee, on _____.

Notary

SUBSCRIBED AND SWORN TO BEFORE ME by 6. _____,
a Distributee, on _____.

Notary

SUBSCRIBED AND SWORN TO BEFORE ME by 7. _____,
a Distributee, on _____.

Notary

SUBSCRIBED AND SWORN TO BEFORE ME by 8. _____,
a Distributee, on _____.

Notary

DISINTERESTED WITNESSES:

We, as witnesses to this affidavit, as indicated by our signatures immediately below, do solemnly swear that each of us has legal capacity and that each of us has personal knowledge of the family history facts of the Decedent and that the foregoing affidavit is true, complete and correct to the best of our knowledge and that we have no interest in the estate or assets of the Decedent.

1. _____ 2. _____

SUBSCRIBED AND SWORN TO BEFORE ME by 1. _____,
a Disinterested Witness, on _____.

Notary

SUBSCRIBED AND SWORN TO BEFORE ME by 2. _____,
a Disinterested Witness, on _____.

Notary

ORDER

On this day the Court considered the above Small Estate Affidavit and the Court finds that the Affidavit complies with the terms and provisions of the Texas Probate Code, that this Court has jurisdiction and venue, that this Estate qualifies under the provisions of the Probate Code as a Small Estate, and that the Affidavit should be approved.

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 Small Estate Records of this County, and the Clerk of this Court shall issue certified copies thereof to all persons entitled thereto.

SIGNED _____

JUDGE PRESIDING