

Information & Instructions: Affidavit of Heirship practice suggestion

PREVIEW

1. Frequently an Estate may have little or no assets, and in order to avoid probate, the practitioner may consider the use of an affidavit of heirship.
2. An Estate must be administered if there are two or more unpaid creditors.
3. If an administration is not required, the affidavit of heirship may be used when the decedent dies intestate and there are no unpaid bills.
4. This procedure may avoid an administration.
5. The affidavit is filed in the county clerk's office where the decedent lived and in each county where he or she owned real property.
6. The affidavit provides notice to all persons that the decedent is dead, when and where the decedent died, who his or her heirs are, and recites the fact that the decedent died intestate.
7. If a question exists regarding the identity of the decedent's heirs, then an action to determine heirship should be filed.
8. If a decedent dies testate and there are no debts and an administration is unnecessary, a better practice would be to file the will as a muniment of title. This procedure provides better protection to the heirs than an affidavit of heirship.
9. Section 52 of the Texas Probate Code sets forth a suit on Affidavit of Heirship form.
10. Section 52 of the Texas Probate Code states the following:

Sec. 52. RECORDED INSTRUMENTS AS PRIMA FACIE EVIDENCE.

(a) A statement of facts concerning the family history, genealogy, marital status, or the identity of the heirs of a decedent shall be received in a proceeding to declare heirship, or in a suit involving title to real or personal property, as prima facie evidence of the facts therein stated, if the statement is contained in either an affidavit or any other instrument legally executed and acknowledged or sworn to before, and certified by, an officer authorized to take acknowledgments or oaths as applicable, or any judgment of a court of record, and if the affidavit or instrument has been of record for five years or more in the deed records of any county in this state in which such real or personal property is located at the time the suit is instituted, or in the deed records of any county of this state in which the decedent had his domicile or fixed place of residence at the time of his death.

If there is any error in the statement of facts in such recorded affidavit or instrument, the true facts may be proved by anyone interested in the proceeding in which said affidavit or instrument is offered in evidence.

LegalFormsForTexas.Com

PLEASE DO NOT COPY

THIS DOCUMENT

THANK YOU

PREVIEW
(b) An affidavit of facts concerning the identity of heirs of a decedent as to an interest in real property that is filed in a proceeding as such described by Subsection (a) of this section may be in the form described by Section 52A of this code.

(c) An affidavit of facts concerning the identity of heirs of a decedent does not affect the rights of an omitted heir or a creditor of the decedent as otherwise provided by law.

This statute shall be cumulative of all other statutes on the same subject, and shall not be construed as abrogating any right to present evidence or to rely on an affidavit of facts conferred by any other statute or rule of law.

PLEASE DO NOT COPY

THIS DOCUMENT

THANK YOU

LegalFormsForTexas.Com

Form: Affidavit of heirship- statutory form

PREVIEW

This form applies only to an affidavit of facts concerning the identity of heirs of a decedent that is executed on or after September 1, 1999.

FORM OF AFFIDAVIT OF FACTS CONCERNING IDENTITY OF HEIRS

Before me, the undersigned authority, on this day personally appeared _____
("Affiant") (insert name of affiant) who, being first duly sworn, upon his/her oath states:

1. My name is _____ (insert name of affiant), and I live at _____ (insert address of affiant's residence).

I am personally familiar with the family and marital history of _____ ("Decedent")
(insert name of decedent), and I have personal knowledge of the facts stated in this affidavit.

2. I knew decedent from _____ (insert date) until _____ (insert date). Decedent died on _____ (insert date of death). Decedent's place of death was _____ (insert place of death). At the time of decedent's death, decedent's residence was _____ (insert address of decedent's residence).

3. Decedent's marital history was as follows: _____ (insert marital history and, if decedent's spouse is deceased, insert date and place of spouse's death).

4. Decedent had the following children: _____ (insert name, birth date, name of other parent, and current address of child or date of death of child and descendants of deceased child, as applicable, for each child).

5. Decedent did not have or adopt any other children and did not take any other children into decedent's home or raise any other children, except: _____ (insert name of child or names of children, or state "none").

6. (Include if decedent was not survived by descendants.) Decedent's mother was: _____ (insert name, birth date, and current address or date of death of mother, as applicable).

7. (Include if decedent was not survived by descendants.) Decedent's father was: _____ (insert name, birth date, and current address or date of death of father, as applicable).

8. (Include if decedent was not survived by descendants or by both mother and father.) Decedent had the following siblings: _____ (insert name, birth date, and current address or date of death of each sibling and parents of each sibling and descendants of each deceased sibling, as applicable, or state "none").

9. (Optional.) The following persons have knowledge regarding the decedent, the identity of decedent's children, if any, parents, and siblings, if any: _____ (insert name of persons with knowledge, or state "none").

LegalFormsForTexas.Com

10. Decedent died without leaving a written will. (Modify statement if decedent left a written will.)

11. There has been no administration of decedent's estate. (Modify statement if there has been administration of decedent's estate.)

12. Decedent left no debts that are unpaid, except: _____ (insert list of debts, or state "none").

13. There are no unpaid estate or inheritance taxes, except: _____ (insert list of unpaid taxes, or state "none").

14. To the best of my knowledge, decedent owned an interest in the following real property: _____ (insert list of real property in which decedent owned an interest, or state "none").

15. (Optional.) The following were the heirs of decedent: _____ (insert names of heirs).

16. (Insert additional information as appropriate, such as size of the decedent's estate.)

Signed this ____ day of _____, _____.

(signature of affiant)
THIS DOCUMENT
State of _____
County of _____

Subscribed and sworn to before me on _____ by
_____ [insert name of affiant].

[Signature of notarial officer]

[Seal, if any, of notary]
THANK YOU

[Printed name]

My commission expires: _____

LegalFormsForTexas.Com

PREVIEW

PLEASE DO NOT COPY

THIS DOCUMENT

THANK YOU

LegalFormsForTexas.Com

Form: Statement of disinterested witnesses for a non-willed small estate and heirship affidavit

PREVIEW

STATEMENT OF DISINTERESTED WITNESSES

BEFORE ME, the undersigned appeared, [names of two witness] who stated upon their oaths the following:

1. I have no financial interest in [name of decedent]'s Estate.
2. I am not related to the decedent under the Texas Probate Code laws of descent and distribution of the State of Texas.
3. I have not been promised, nor shall I receive any moneys or assets of the decedent's Estate as a result of making this Affidavit.
4. I have reviewed and read the foregoing Affidavit and the facts contained in the Affidavit are true and correct.
5. That the value of the decedent's Estate at the date of his or her death, exclusive of homestead and exempt property, does not exceed fifty thousand dollars (\$50,000.00). The non exempt assets exceed the liabilities except those liabilities which are secured by the homestead and exempt property.
6. That the names, addresses, and telephone numbers of all distributees, heirs, devisees or assignees of Decedent's property or money and their right to receive the property or money is as follows:

Names, Addresses, and Phone Numbers of Distributees

Capacity in which claim is made: Ex. Son

Portion of Estate to which entitled: Ex. 1/2

7. Other facts showing venue, if necessary

LegalFormsForTexas.Com

WITNESS 1

PREVIEW
Signed on _____,

[Name]

State of Texas
County of _____

Subscribed and sworn to before me on _____ by

PLEASE DO NOT COPY

Signature of officer

Notary's typed or printed name

My commission expires:

[or Notary's Stamp]
THIS DOCUMENT
WITNESS 2

Signed on _____,

[Name]

State of Texas
County of _____

Subscribed and sworn to before me on _____ by

THANK YOU

_____.

Signature of officer

Notary's typed or printed name

LegalFormsForTexas.Com

PREVIEW

My commission expires: _____

[or Notary's Stamp]

I, _____ [name of notary], the notary public whose signature appears above,
certify that I am not an attorney in this case.

[Name of notary]

PLEASE DO NOT COPY

THIS DOCUMENT

THANK YOU

LegalFormsForTexas.Com