

## SMALL ESTATE AFFIDAVIT CHECKLIST

Texas Estates Code Chapter 205 deals with Small Estate Affidavits (SEA). SEA can only be filed in limited circumstances. Before filing a SEA, carefully review this checklist. See also the requirements for filing a SEA in Chapter 205 of the Texas Estates Code and the rules for descent and distribution in Chapter 201. To prepare a SEA that the Court can approve you, need to understand ALL of the rules and requirements. The complexity of the Code poses many pitfalls for persons attempting to comply with the requirements. An Attorney's assistance in drafting a SEA may prevent the denial of an Affidavit that might have been approved had the affidavit been prepared properly.

**This checklist explains the basics but does not cover everything included in Chapter 201 and 205 of the Texas Estates Code.**

1. No. Will. A SEA cannot be used if Decedent left a Will. If Decedent has a Will, you will need to use a different probate procedure.
2. No Administration. A SEA cannot be approved if a petition for the appointment of a personal representative is pending, has been granted, or if an administration is needed.
3. Value of Estate. The value of the entire estate, excluding homestead and exempt property, does not exceed \$75,000.00
4. Cannot be filed within 30 days of a Decedent's death.
5. Transfer of Title. A SEA may not be used to transfer title to real property other than the Decedent's homestead.
6. Proof of Death. Robertson County Courts require Proof of Death to be filed with all probate applications, including SEAs.
7. County of Residence. A SEA should be filed in the County where the Decedent resided.
8. Assets. You must list all assets of the Decedent. Include a full description of each and every asset. List everything. Indicate the value of each asset as precisely as possible.
  - a. Bank accounts – name of bank, account number (last four digits), balance in each account
  - b. Cash
  - c. Vehicles – year, make model, VIN, and value
  - d. Real Estate – homestead, include legal description and physical address
  - e. Stocks – name of stock, number of shares, certificate number, value
  - f. Safe Deposit Boxes
  - g. Indicate if assets are community or separate property
  - h. Exempt property – as defined by Texas Estate Code Chapter 353.051 and Texas Property Code Chapter 42

9. Liabilities. List all liabilities or debts. The estate of the decedent must be solvent; the debts/liabilities must not exceed the value of the assets. Do not leave this section blank.
10. Medicaid. The SEA must indicate whether the Decedent applied for and received Medicaid benefits on or after March 1, 2005. If so, applicant must either (1) list as a liability the amount owned to Medicaid or (2) file a Medicaid Estate Recovery Program (MERP) certification or (3) include additional information providing that a MERP claim will not be filed.

**11. LIST ALL HEIRS**

- a. List the name, address, phone number, capacity, and interest of each distributee.
- b. All distributees who are listed must sign a front of a notary
- c. Minor/Incapacitated distributee – the natural guardian or next of kin of any minor/incapacitated distributee may sign and swear to the affidavit on behalf of the minor/incapacitated distributee.
- d. Distributee who survived Decedent, but who is now deceased – you cannot use a SEA if no personal representative has been appointed to a now – deceased distributee.
- e. Missing distributee – if you cannot find a distributee, you cannot use the SEA probate procedure.
- f. Sworn by two disinterested witnesses – two disinterested witnesses must each sign and swear to the affidavit before a notary.
- g. Possible hearing. The court does not usually require a hearing to approve a SEA. If a hearing is needed, the Court will contact you for a setting.

NO. \_\_\_\_\_

Estate of \_\_\_\_\_, § In Probate Court  
 \_\_\_\_\_, § of  
 Deceased § Robertson 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 Robertson County, the affidavit must include facts supporting venue in Robertson 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 total value of Decedent’s estate assets on the date of this affidavit, not including homestead and exempt property, is \$75,000.00 or less.
- G. The total value of Decedent’s estate assets, not including homestead and exempt property, exceeds the total value of 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 (2) include additional information proving that a MERP claim will not be filed.]*



J. All liabilities/debts of the Decedent's estate and their values must be listed here, as of the date the affidavit is signed. The affidavit must list *all* of Decedent's existing 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 &amp; 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.]*

<p><b>Family History #1: Marriage.</b></p> <p><input type="checkbox"/> On the date of Decedent's death, Decedent was a single person.</p> <p><b>OR</b></p> <p><input type="checkbox"/> On the date of Decedent's death, Decedent was married to _____.</p> <p>The date they were married: _____.</p>
--

**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. *(If any child died after the Decedent, contact Judge Ellison's Clerk before getting signatures on this form.)*

**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 &amp; 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 deceased brother or sister (nephews and nieces of Decedent) that were alive on the date Decedent died. <i>If any died before Decedent died, contact the Court.</i>	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 6-8 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 (this column <b>MUST</b> be filled out)	Share of separate real property (this column <b>MUST</b> be filled out, even if you do not list any real property)	Share of decedent's community property (if decedent was married, you <b>must</b> always fill out this column)

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





**Affidavits and signatures of two disinterested witnesses**

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

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 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 \_\_\_\_\_ §

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 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 \_\_\_\_\_

**Prepared in the Law Office of:**  
[Attorney signature block]