

FILED
1/17/2019 2:25pm
Stephanie M. Sanders, County Clerk
Robertson County, Texas
By: Candice Bonney
In the Probate Court

Administrative Order

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2019-1

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Robertson County, Texas

Administrative Order Requiring the Use of the Court's Approved Form for Small Estate Affidavits


On this day, the Court finds there is need for an administrative order regarding the form to be used when a Small Estate Affidavit is filed in Robertson County Probate Court under Texas Estates Code Chapter 205.

The Court finds that over half of the Small Estate Affidavits filed in Robertson County do not provide all of the information the Code and the Court require. While approval of a Small Estate Affidavit is within the Court's discretion (see Estates Code §205.003), it wastes the resources of both the Court and the applicants for the Court to evaluate incomplete affidavits.

Therefore, the Court has created a Small Affidavit Form that – if completely and correctly filled out – includes all information necessary to enable the Court to determine whether the Court should approve a Small Estate Affidavit. This Small Estate Affidavit form is located in the County Judge or County Clerk's office.

It is therefore **ORDERED** that the Robertson County Probate Court will not approve any Small Estate Affidavit filed after January 31, 2019 unless it uses the approved form located in the County Judge or County Clerk's office.

Signed on Jan 17, 2019.


Charles Ellison, County Judge

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 owed 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.]*

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 each asset 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 of Decedent's interest on date of affidavit <i>For each asset, list the value of Decedent's interest in that asset. An affidavit cannot be approved with an asset of "unknown" value.</i>	Additional information <i>1. If decedent was married, indicate:</i> <ul style="list-style-type: none"> whether each asset was community or separate property, and facts that explain why the asset was community or separate, and total value of each community property asset. <i>2. If decedent was survived by a spouse, minor children, or unmarried adult children who lived with decedent, the list of known estate assets must indicate which assets applicant claims are exempt. See checklist for more information. 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 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 & 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. *(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 & 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 MUST be filled out)	Share of separate real property (this column MUST be filled out, even if you do not list any real property)	Share of decedent's community property (if decedent was married, you must always fill out this column)

(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 every 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 Robertson 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 _____

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]

NO. - _____ - _____

Estate of

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In the _____
(Court Number)

☐ Probate Court
☐ County Court/County Court at Law

of:

(Full Name of Decedent followed by any akas)
Deceased

(Name of County)
County,
Texas

Order Approving Small Estate Affidavit

On this day, the Court considered the averments contained in the Small Estate Affidavit filed on

_____ by the alleged Distributees of the Estate of
(Print date the Small Estate Affidavit was filed)

_____, Deceased, ("the Affidavit"),
(Print full name of Decedent followed by any akas)

and the Court finds the following:

1. This Court has jurisdiction and venue.
2. The Affidavit conforms to the terms of chapter 205 of the Texas Estates Code.
3. Based on the Affidavit, this estate qualifies under the provisions of the Estates Code as a Small Estate.
4. Pursuant to Texas Estates Code § 205.001, 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).

Nothing in this Order:

1. Affects the disposition of property under a will or other testamentary instrument;
2. Transfers title to any property of the Decedent not listed in the Affidavit;
3. Transfers title to real estate, except to realty that was the homestead of both the Decedent and the Distributees on the date of death (as provided in Texas Estates Code § 205.006);
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 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 **ORDERED** by the Court that that the Affidavit in this estate is **APPROVED AS SET OUT ABOVE**.

The Affidavit and this Order will be recorded in the records of the County Clerk, and the Clerk of this Court will issue certified copies of the Affidavit and Order to all persons entitled to them.

Signed _____, 20____.

PRESIDING JUDGE