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## INSTRUCTIONS FOR SMALL ESTATE AFFIDAVIT

Included with these Instructions are the following:

1. Frequently Asked Questions (FAQs) for Small Estate Affidavit
2. Small Estate Affidavit
3. Order Approving Small Estate Affidavit
4. Asset Distribution Charts – Married
5. Asset Distribution Charts – Not Married

**Read these instructions carefully.**

***THESE INSTRUCTIONS DO NOT GIVE LEGAL ADVICE AND ARE NOT A SUBSTITUTE FOR THE ADVICE OF A LAWYER.***

### WHEN TO USE THE SMALL ESTATE AFFIDAVIT:

The Small Estate Affidavit can be used if ALL these statements are true:

- ☐ The deceased person (Decedent) died **without a Will**. If there is a Will, this Small Estate Affidavit (“the Affidavit”) **cannot** be used.
- ☐ Decedent died at least thirty (30) days ago.
- ☐ At least one of the following survived Decedent (meaning they lived more than 120 hours after Decedent died):
  - A spouse (see “Married” definition in “Helpful Words to Know”)
  - A child or children, or other descendants (grandchildren, great-grandchildren, etc.)
  - A parent or parents
  - A sibling or siblings, or their descendants (nieces, nephews)
- ☐ The total value of Decedent’s assets (excluding homestead and exempt personal property) is not more than \$75,000.00.
  - Exempt personal property is listed in § 42.002 of the Texas Property Code. It only remains exempt if Decedent had a surviving spouse, minor children, unmarried adult children living with Decedent’s family, or incapacitated adult children.
  - Homestead retains its status as a Homestead only if Decedent had a surviving spouse or minor children.
  - For more information see Texas Estates Code § 353.051 and Texas Property Code Chapters 41 and 42.
- ☐ The total value of Decedent’s assets is more than the debts.

- The values of an exempt homestead and exempt personal property are not included in the total value of assets; and
- The amount of a mortgage on an exempt homestead and any debt secured by exempt property are not included in the total value of debts.
- ❑ No application for the appointment of a personal representative is pending with a court nor has one been granted by a court. (If you are not sure, you can research court records online or go to the County Clerk's office in the county where Decedent resided or where Decedent's principal estate was located. Such applications may be titled "Application for Letters of Administration" or "Application for Probate of Will and Issuance of Letters Testamentary.")

These instructions DO NOT explain what to do if:

- One or more of Decedent's children were born after Decedent died.
- One or more of Decedent's heirs survived Decedent but have since died.
- Decedent had no spouse or children but had half-siblings.
- Decedent lost parental rights of a child or gave up a child for adoption.
- Decedent had no surviving spouse, children or their descendants, parents, or siblings or their descendants.

If any of these are true, contact an attorney.

### Helpful Words to Know

Assets	Money and property that belonged to Decedent at the time of death, even if there are still outstanding debts against the property.
Children	Any person born to or adopted by Decedent, including any child of Decedent adopted by another person.
Community Property	Community property includes all real and personal property acquired during the marriage, except for separate property, which is defined below. Community Property is owned one-half by Decedent's estate and one-half by Decedent's surviving spouse. All property of a married decedent is considered to be community property unless you can show that it is separate property. Even if property is only in one spouse's name, it may still be community property. See Texas Family Code § 3.002
Descendant	For purposes of this Affidavit, the descendants of a person are their children, their grandchildren, their great-grandchildren, and so on.

Disinterested Witness	<p>A person who is familiar with Decedent’s family history, marital status at death, children and grandchildren (including those not born of any marriage), and other family members, and who does <u>not</u> inherit property from Decedent.</p> <p>Each disinterested witness who signs the Affidavit is liable under Texas Estates Code § 205.007(c) for any damage or loss to any person that arises from a payment, delivery, transfer, or issuance made in reliance on the Affidavit.</p>
Estate Assets	<p>For purposes of this Affidavit, the term “Estate Assets” does not include any asset that passes <u>directly to a named person or persons who survived Decedent</u> by, for example:</p> <ul style="list-style-type: none"> <li>• an account, vehicle, or deed that has a right of survivorship or transfer on death provision</li> <li>• a payable on death account</li> <li>• a life insurance policy</li> <li>• an annuity or retirement account</li> </ul> <p>If a person named to receive any of these types of property did NOT survive Decedent, and there is no other person named as alternate beneficiary who survived Decedent, then the affected property may need to be included in the list of estate assets in Section 8 of the Small Estate Affidavit form.</p>
Exempt Property	<p>Exempt property includes the homestead, clothing, household goods and furnishings, a car for each family member with a driver’s license, two guns, jewelry, sporting equipment, farming or ranching equipment and tools used in a trade or profession, certain farm animals and their food, and household pets.</p> <p>Exempt personal property is listed in § 42.002 of the Texas Property Code. It only remains exempt if Decedent had a surviving spouse, minor children, unmarried adult children living with Decedent’s family, or incapacitated adult children.</p> <p>Homestead retains its status as a Homestead only if Decedent had a surviving spouse or minor children.</p> <p>For more information see Texas Estates Code §353.051 and Texas Property Code Chapters 41 and 42.</p>
Half-sibling	<p>A sister or brother of Decedent who has only one parent in common with Decedent.</p>

Heir	<p>For purposes of the Affidavit, an heir is a person entitled to a share of Decedent's estate. Depending on who survives Decedent, the heirs may be Decedent's spouse, children, grandchildren, great-grandchildren (and so on), parents, siblings, nieces and nephews, and great-nieces and great-nephews (and so on).</p> <p>A person who died before Decedent or less than 120 hours after Decedent is NOT an heir. <i>See definition of "SURVIVE," and the Asset Distribution Charts.</i></p>
Homestead	<p>For a home to qualify as a homestead under the Affidavit:</p> <ul style="list-style-type: none"> <li>• Decedent must have owned and used the home as Decedent's main residence AND</li> <li>• Decedent must have a surviving spouse or minor child. (The spouse or child did not have to live in the home for it to be a homestead.)</li> </ul>
Legally authorized representative	The natural guardian (parents) or next of kin of any minor heir or the guardian of any other incapacitated heir.
Married	<p>Decedent was married if Decedent and Decedent's spouse had a valid marriage license or declaration of informal marriage from Texas, another state, or another country and were not divorced from each other or their marriage otherwise dissolved at the time of Decedent's death.</p> <p>Decedent was married even if Decedent and Decedent's spouse were separated at the time of Decedent's death.</p> <p>Decedent may also have been married under common law if, at the time the marriage was created, Decedent and Decedent's spouse:</p> <ul style="list-style-type: none"> <li>• were not already married, informally or formally, to anyone else</li> <li>• were at least 18 years of age</li> <li>• agreed to be married</li> <li>• lived in Texas as a married couple after agreeing to be married <b>AND</b></li> <li>• represented to others that they were married</li> </ul> <p>If there is a question about whether Decedent's marriage was valid, consult an attorney.</p>
Notary Public	<p>A notary public ("notary") is a person authorized by law to swear that the people signing the Affidavit are who they say they are. A notary will sign and seal the Affidavit.</p>

Personal Property	Personal property includes, but is not limited to, cash and bank accounts, stocks and bonds, clothing, household furnishings, vehicles, and jewelry.
Real property	Real property includes land and improvements, such as a house or mobile home designated as real property. It also includes oil, gas, and other mineral rights.
Secured and Unsecured Debts	<p>A debt is “secured” when the creditor may take specific property to pay the debt. Examples of secured debts are a mortgage on a house or loan on a car. The mortgage is secured by the house; the car loan is secured by the car. The creditor may foreclose on the house or repossess the car to recover the debts if they are not paid. That is what makes them “secured” debts.</p> <p>Unsecured debts are all other debts for which no collateral or security was provided. Examples of unsecured debts are credit card balances or unpaid utility or medical bills.</p>
Separate Property	Separate property includes personal or real property owned by Decedent before a marriage or received during marriage by gift or inheritance. It also includes certain types of damages awarded during marriage from a personal injury lawsuit. All property of a married decedent is considered to be community property unless you can show that it is separate property. See Texas Family Code § 3.001.
Share	The part of the estate an heir has a right to receive.
Sibling	A sibling is a sister or brother of Decedent who has BOTH parents in common with Decedent.
Survive	For purposes of the Small Estate Affidavit form, to “survive” Decedent a person must live for at least 120 hours after Decedent died. <b><u>A person must survive Decedent in order to be an heir to the estate.</u></b>
Unmarried	<p>If Decedent was single, widowed, or divorced at death, Decedent was unmarried.</p> <p>If at death Decedent did not have a valid marriage license or declaration of informal marriage or did not meet the requirements for a common law marriage, Decedent was unmarried.</p>

## **Instructions for Filling Out the Small Estate Affidavit:**

Some of the sections of the Affidavit will not need information added.

### **Top Part of the Form/Heading:**

- *Case Number* – Leave this blank. The County Clerk’s office will fill in the Case Number when you file this form.
- *Estate of* – Write Decedent’s full name
- *In \_\_\_\_\_ Court* – Check the box next to the court type. If you are not sure, ask the County Clerk.
- *\_\_\_\_\_ County, Texas* – Write in the name of the county where you are filing the Affidavit.

### **Completing the Sections of the Affidavit:**

1. Fill in the blanks with the information needed.
2. The Affidavit cannot be sworn to and signed until at least 30 days have passed since Decedent’s death. You do not need to add any information here, but this must be a true statement when the Affidavit is signed by all the heirs and disinterested witnesses.
3. Write the names of the county and state where Decedent was a resident at the time of Decedent’s death. If Decedent resided outside of Texas, check the box and explain why you are filing in this county.

#### **If Decedent LIVED in Texas:**

File the Affidavit with the County Clerk of the county where Decedent lived. This is the county where Decedent had a home, even if they were living elsewhere at death, like in a nursing home or with a child.

#### **If Decedent DID NOT LIVE in Texas, the county where the Affidavit should be filed is based on where Decedent died:**

- If Decedent died in Texas, file the Affidavit with the County Clerk of:
    - the County where Decedent’s principal estate was located; or
    - the County where Decedent died.
  - If Decedent died outside of Texas, file the Affidavit with the County Clerk of:
    - the County where Decedent’s next of kin live; or
    - if there is no next of kin in Texas, the County where Decedent’s principal estate is located.
4. You cannot file the Affidavit if an application for appointment of a personal representative is pending or has been granted by the court. If you are not sure, you can search the court records online or go to the County Clerk’s office in the county where Decedent resided or where Decedent’s principal estate was located. Such applications may be titled “Application for Letters of Administration” or “Application for Probate of Will and Issuance of Letters Testamentary.”

5. You do not need to add any information here, but this must be a true statement when the Affidavit is signed by all the heirs and disinterested witnesses. In Section 8 of the Affidavit form, you will list ALL of Decedent's assets, and indicate whether an asset is exempt property. Decedent's assets (not including the homestead and other exempt property) must be worth \$75,000 or less to use the Affidavit. You will need to follow Section 8 of these instructions to find the total value of the non-exempt assets. If the total is more than \$75,000, you cannot use the Affidavit.
6. You do not need to add any information here, but this must be a true statement when the Affidavit is signed by all the heirs and disinterested witnesses. In section 9 of the Affidavit form, you will list ALL of Decedent's debts and indicate whether a debt is secured by exempt property. Decedent **MUST** have more non-exempt assets than debts not secured by exempt property to use the Affidavit. You will need to follow Section 9 of these instructions to find the total amount of debts not secured by exempt property. If total non-exempt debts are more than the total non-exempt assets, you cannot use the Affidavit.

7. Medicaid Estate Recovery Program ("MERP"):

Check the applicable box in section 7 of the form.

Claims for Medicaid recovery in Texas are debts of the estate. If Decedent applied for and received Medicaid benefits (or similar needs-based government benefits subject to repayment) on or after March 1, 2005, then the Medicaid Estate Recovery Program ("MERP") may have a claim against the estate. **NOTE: This does not refer to Medicare benefits.**

If such benefits were received, a court may require a certification from the Health and Human Services Commission that administers the Medicaid program in Texas. For more information and to obtain the certification, visit the website of the Texas Health and Human Services Commission: <https://www.hhs.texas.gov> and search for "MERP Certification Form."

Find out if the court requires you to attach certification that Decedent's estate is not subject to a MERP Claim. You may be able to learn this by asking the court staff.

8. Estate Assets

This is the section of the Affidavit form where you will list all of Decedent's assets at the time of death. There are two tables in this section – one for Separate Property Assets (four columns) and one for Community Property Assets (five columns).

If Decedent was NOT married at death, there will be no community property; list all assets in the "Separate Property Assets" table and mark through or write "N/A" across the Community Property Assets table.

A married Decedent can have community property *AND* separate property. If Decedent WAS married at death, generally each asset will be listed in the "Community Property Assets" table OR the "Separate Property Assets" table, but not both.



### ***Separate Property Assets***

Separate Property assets include all personal and real property owned by Decedent before a marriage or received during marriage by gift or inheritance. It also includes certain types of damages awarded during marriage from a personal injury lawsuit. All property of a married Decedent is considered community property unless you can show that it is separate property. See Texas Family Code § 3.001.

### ***Community Property Assets***

Community Property assets of a married Decedent include all real and personal property acquired during the marriage, except for separate property. Community property assets are owned one-half by Decedent's estate and one-half by Decedent's surviving spouse. All property of a married Decedent is considered community property unless you can show that it is separate property. Even if property is only in one spouse's name, it may still be community property. See Texas Family Code § 3.002.

### **Completing the Estate Assets Tables**

#### **Column 1: Description of Assets (Both Separate & Community Property Tables)**

Write a description of each asset in Decedent's estate. Provide enough detail to identify each asset and the percentage owned by Decedent. Example: bank name, account type & last three digits of the account number; description of the car (make & model) plus the vehicle identification number (VIN); life insurance company name, address, policy number; and legal description of real property (may be found on property deed or property tax statement).

Do not list any asset that passes directly to a named person or persons who survived Decedent, for example:

- an account, vehicle, or deed that has a right of survivorship or transfer on death provision
- a payable on death account
- a life insurance policy
- an annuity or retirement account

If a person named to receive any of these types of property did NOT survive Decedent, and there is no other person named as alternate beneficiary who survived Decedent, then that property may need to be included here.

You must include any asset that passes directly to the estate, for example: if the estate is named as a beneficiary, if there are no named beneficiaries, or if none of the named beneficiaries is alive.

If Decedent was married at death and any assets are listed as "Separate Property," explain why the asset is Separate Property, for example "inherited from parent," "owned before marriage," etc. See Texas Family Code § 3.001-3.003.

**Column 2: Acc't #**

Write the last three digits of the account number for the asset, if applicable.

**Column 3: Exempt (yes/no)**

Write "Yes" if the asset is exempt property; write "No" if it is not.

Exempt property includes the homestead, clothing, household goods and furnishings, a car for each family member with a driver's license, two guns, jewelry, sporting equipment, farming or ranching equipment and tools used in a trade or profession, certain farm animals and their food, and household pets. See Texas Property Code Chapters 41 and 42.

**Column 4: Value (100%)**

Write the entire value of the asset on the date of the Affidavit.

The Affidavit cannot be approved with an asset of "unknown" value.

**Column 5: Value (50%)** (Community Property Assets Table ONLY)

Write 50% (half) of the entire value of the asset on the date of the Affidavit. The amount entered in this column is the estate's share of the asset; this is the value that should be included in the total and when calculating the exempt property total.

The Affidavit cannot be approved with an asset of "unknown" value.

**EXAMPLES OF HOW TO COMPLETE THE ESTATE ASSETS TABLES:****SEPARATE PROPERTY ASSETS**

<b>Description of Separate Property Assets <i>For married Decedent, explain why it is Separate Property</i></b>	<b><u>Acc't # (last 3 digits)</u></b>	<b><u>Exempt (yes/no)</u></b>	<b><u>Value (100%)</u></b>
<i>1964 Ford Fairlane, VIN 9999999 (Inherited from father)</i>	<i>N/A</i>	<i>No</i>	<i>\$1,200.00</i>
<i>1984 Fender Stratocaster electric guitar (purchased before marriage)</i>	<i>N/A</i>	<i>No</i>	<i>\$850.00</i>

**TOTAL VALUE: \$ 2,050.00**

In the example above, none of the assets listed are exempt ("No"), so the total *non-exempt* SEPARATE property is \$2,050.00.

## COMMUNITY PROPERTY ASSETS

Description of Community Property Assets	Acc't # (last 3 digits)	Exempt (yes/no)	Full Value (100%)	Estate Value (50%)
<i>Wells Fargo Savings Account</i>	123	No	\$4,000.00	\$2,000.00
<i>2014 Chevy Tahoe, VIN 88888888888888</i>	N/A	Yes	\$12,000.00	\$6,000.00
<i>Personal and household goods, clothing, tools, furnishings</i>	N/A	Yes	\$2,000.00	\$1,000.00
<i>Homestead: 123 County Road 10, Smithville, Texas; Legal: Jones Survey, Unit #5, Block 3, Lot 9, Smith County, Texas</i>	N/A	Yes	\$125,000.00	\$62,500.00

**TOTAL NON-EXEMPT ESTATE VALUE: \$ 2,000.00**

In the example above, there are three exempt assets ("Yes") totaling \$69,500.00 listed in the Community Property Assets table and one non-exempt asset ("No") totaling \$2,000.00, so the total *non-exempt* COMMUNITY property is \$2,000.00.

Add together the total non-exempt Separate Property and the total non-exempt Community Property to reach the total Estate Value of non-exempt assets:

<b>TOTAL NON-EXEMPT SEPARATE PROPERTY:</b>	<b>\$2,050.00</b>
<b>TOTAL NON-EXEMPT COMMUNITY PROPERTY:</b>	<b><u>+ 2,000.00</u></b>
<b>TOTAL NON-EXEMPT ASSETS:</b>	<b>\$4,050.00</b>

If the total estate value of non-exempt assets is more than \$75,000, you will not be able to use the Small Estate Affidavit (see Section 5).

### 9. Debts

If none, write "none."

If funeral expenses are to be paid or reimbursed from estate assets, include them in this table.

#### **Column 1: Description of Debts**

List each debt on which money is still owed by Decedent's estate on the date of the Affidavit. Provide enough detail to identify each debt.

#### **Column 2: Acc't #**

Write the last three numbers of the account number associated with the debt, if any.

#### **Column 3: Is the debt secured by exempt property? (yes/no)**

Write "Yes" if the debt is secured by exempt property; write "No" if it is not.

A debt is “secured” when the creditor may take specific property to pay the debt; examples include, but are not limited to, a mortgage on a house or loan on a car. The mortgage is secured by the house; the car loan is secured by the car. The creditor may foreclose or repossess those assets to recover the debts if they are not paid – that is what makes them “secured” debts.

Unsecured debts are all other debts for which no collateral or security was provided; examples include, but are not limited to, credit card balances or unpaid utility or medical bills.

Exempt property includes the homestead, clothing, household goods and furnishings, a car for each family member with a driver’s license, two guns, jewelry, sporting equipment, farming or ranching equipment and tools used in a trade or profession, certain farm animals and their food, and household pets. See “Helpful Words to Know” (above) and Texas Property Code §§ 41 and 42.

#### **Column 4: Balance Due**

Write how much is still owed on the debt on the date of the Affidavit.

After completing the table in “Section 9: Debts” and entering the total at the bottom, subtract the value of any debt that is secured by exempt property – the result will be the total amount of debts not secured by exempt property. If the total is more than the total value of non-exempt assets listed in Section 8, you will not be able to use the Small Estate Affidavit (see Section 6).

#### **EXAMPLE OF HOW TO COMPLETE THE DEBTS TABLE:**

<b>DEBTS</b>			
<b>Description of Debts</b>	<b><u>Acc’t # (last 3 digits)</u></b>	<b>Is the debt secured by exempt property? (yes/no)</b>	<b>Balance Due</b>
<i>Capital One Credit Card</i>	<i>431</i>	<i>No</i>	<i>\$300.00</i>
<i>Wells Fargo Bank, auto loan, 2014 Chevy Tahoe, VIN 88888888888888</i>	<i>987</i>	<i>Yes</i>	<i>\$1,200.00</i>
<i>First Capital Mortgage, mortgage balance on 123 County Road 10, Smithville, Texas</i>	<i>654</i>	<i>Yes</i>	<i>\$58,200.00</i>

TOTAL \$ 59,700.00

In the example table above, there are two debts totaling \$59,400.00 that are secured by exempt property (“Yes”), and one debt in the amount of \$300.00 that is NOT secured by exempt property (“No”). THE TOTAL AMOUNT OF DEBTS NOT SECURED BY EXEMPT PROPERTY is \$300.00, as shown above. This amount must be LESS THAN the total value of NON-EXEMPT ASSETS - \$4,050.00 in the example shown in Section 8, “Estate Assets,” above.

**TOTAL DEBTS NOT SECURED BY EXEMPT PROPERTY:                   \$300.00**

NON-EXEMPT ASSETS (\$4,050.00) are greater than DEBTS NOT SECURED BY EXEMPT PROPERTY (\$300.00), so the Small Estate Affidavit may be used based in this example.

**TOTAL NON-EXEMPT ASSETS:   \$4,050.00**

**TOTAL DEBTS NOT SECURED BY EXEMPT PROPERTY:               - \$300.00**

**TOTAL ESTATE VALUE (MUST BE \$75,000.00 OR LESS):       \$3,750.00**

## 10. Family History

This section has 5 parts. You **MUST** completely answer sections A (“Marriage”) and B (“Children”).

If Decedent has a surviving spouse **and/or** children, you do not need to complete Sections C (“Parents”) and D (“Siblings”), and you can skip to Section 11 (“Asset Distribution Table”).

If Decedent has a surviving spouse but no children or other descendants, you **WILL** have to complete Section C (“Parents”) and you may have to complete Section D (“Siblings”).

You will list the names of Decedent’s heirs and indicate whether they are under 18 years old. Provide the name of the other parent of each of Decedent’s children.

If any of Decedent’s heirs died **after** Decedent died, contact an attorney.

### A. Marriage

If Decedent was not married when they died, check the first box and proceed to Section B: Children. If Decedent was married, check the second box and write the name of Decedent’s spouse and the date they were married.

### B. Children

If Decedent **DID NOT** have or adopt any children, mark the first checkbox, and go to Section C (“Parents”).

If Decedent **DID** have or adopt any children, mark the second checkbox. You will need to know the names of all of Decedent’s children, the name of their other parent, whether they are under 18, the date of death of any child who did not survive Decedent, and the names and ages of the children or grandchildren of any deceased child.

In the first boxed section, list **ALL** of Decedent’s children, whether living or deceased, and the name of each child’s other parent. If the child is under 18 on the date of the Affidavit, check the “under 18” box next to their name. If Decedent had children who were given up for adoption or for whom Decedent’s parental rights were terminated, contact an attorney.

In the second boxed section, mark the first checkbox if all Decedent's children were alive when Decedent died. Mark the second checkbox if any of Decedent's children died before Decedent. If so, list the deceased child's name, date of death, and the names of any children of that child (Decedent's grandchildren), whether living or deceased.

*Example:* Decedent had three children (Child A, Child B, and Child C). List their names in the first boxed section. Child A died two years before Decedent and had one child (Grandchild X). In the second boxed section, write Child A's name, the date Child A died, and Grandchild X's name.

If Grandchild X did not survive Decedent, you would need to use a separate sheet of paper to list Grandchild X's children.

If any of Decedent's children, grandchildren, or great-grandchildren survived Decedent, skip Section C: Parents and Section D: Siblings, and go to "Section 11. Asset Distribution".

#### C. Parents

List the names of Decedent's parents. You will need to indicate if one or both of Decedent's parents are living or deceased, and, if deceased, their date(s) of death, if known. Mark the checkbox next to the statement that is true and fill in the blanks.

If both of Decedent's parents survived Decedent, skip Section D (Siblings) and go to Section 11 ("Asset Distribution").

#### D. Siblings

If Decedent DID NOT have any siblings, write "none" across the first boxed section and proceed to Section 11 ("Asset Distribution").

If Decedent DID have siblings, list ALL of Decedent's siblings, whether living or deceased in the first boxed section. If any sibling is under 18 on the date of the Affidavit, check the "under 18" box next to their name. Write the names of the parents of each sibling on the lines provided.

If any of Decedent's siblings did **not** survive Decedent, write the deceased sibling's name, date of death, and the names of their children (Decedent's nephews and/or nieces), if any, in the second boxed section.

#### E. Other:

If Decedent did not have a surviving spouse, child or other descendant, parent, sibling, niece, nephew, or any other descendant of a sibling, you need to contact an attorney. The Small Estate Affidavit may not be appropriate to use in this situation.

### 11. Asset Distribution Table

In this section, you will list each heir's name and current address. You will write how they are related to Decedent (for example: spouse, child, parent, etc.). Use the attached "Asset Distribution Charts" to determine each heir's share of Decedent's estate. See "Helpful Words to Know" for definitions of any words you do not understand.

If Decedent DID have a surviving spouse, indicate in the appropriate boxes the heirs' shares of Separate and Community Property using the chart included as Item #4 in the Instructions package, "**Asset Distribution Chart – Married**" to complete this section of the Affidavit.

If Decedent DID NOT have a surviving spouse, indicate in the appropriate boxes the heirs' shares of Separate Property using the chart included as Item #5 in the Instructions package, "**Asset Distribution Chart – NOT Married**" to complete this section of the Affidavit. DO NOT enter anything in the boxes under column labeled "Share of Married Decedent's Community Property".

*Below are examples provided for instructional purposes only; you will need to use the attached Asset Distribution Charts to find the correct distribution for the Affidavit you are completing. The fractional shares shown in the example charts are based on the example given; shares are determined by the number of heirs who have an interest in that property. See the Asset Distribution Charts for more detailed explanation.*

*(This section intentionally left blank.)*

## **EXAMPLES OF HOW TO COMPLETE THE ASSET DISTRIBUTION TABLE:**

**EXAMPLE 1** (See “Asset Distribution Chart - MARRIED”, Chart I.a.):

- Decedent has surviving spouse
- Decedent has 2 surviving children whose other parent is the surviving spouse

For each Heir, list:

Name & Address	Relationship to Decedent	Share of Married Decedent’s Community Property	Share of Separate <u>Personal</u> Property	Share of Separate <u>Real</u> Property
JANE DOE, 123 County Road 10, Smithville, Texas 77777	Surviving Spouse	100%	1/3	1/3 life estate
MARK DOE, 987 County Road 10, Smithville, Texas 77777	Son	None	1/3	1/2 subject to 1/3 life estate
SUSAN DOE, 345 Park Lane Avenue, Dallas, Texas 70000	Daughter	None	1/3	1/2 subject to 1/3 life estate



**EXAMPLE 2** (See “Asset Distribution Charts – NOT MARRIED”, Chart I.a.):

- Decedent not married at death
- Decedent had 2 children
  - One child died before Decedent leaving 2 surviving children who are both Decedent’s grandchildren

For each Heir, list:

Name & Address	Relationship to Decedent	Share of Married Decedent’s Community Property	Share of Separate <u>Personal</u> Property	Share of Separate <u>Real</u> Property
VIET THANH NGUYEN, 987 County Road 10, Smithville, Texas 77777	Son	N/A	1/2	1/2
LAN DUONG, 1212 Fair Avenue, Dallas, Texas 70000	Granddaughter	N/A	1/4	1/4
LINH DINH, 111 Sunflower Drive, Austin, Texas 75555	Grandson	N/A	1/4	1/4

**EXAMPLE 3** (See “Asset Distribution Charts - MARRIED”, Chart I.b.):

- Decedent has a surviving spouse
- Decedent had 3 children
  - One child is from a previous marriage (other parent is not Decedent’s surviving spouse)
  - One child died before Decedent leaving 2 children who are both Decedent’s grandchildren

For each Heir, list:

Name & Address	Relationship to Decedent	Share of Married Decedent’s Community Property	Share of Separate <u>Personal</u> Property	Share of Separate <u>Real</u> Property
ELVERA SANCHEZ, 123 County Road 10, Smithville, Texas 77777	Surviving Spouse	None	1/3	1/3 life estate
MARK SANCHEZ, 123 County Road 10, Smithville, Texas 77777	Son	1/3	2/9	1/3 subject to 1/3 life estate
JEFF SANCHEZ, 987 County Road 10, Smithville, Texas 77777	Son	1/3	2/9	1/3 subject to 1/3 life estate
TRACEY DAVIS, 1212 Fair Avenue, Dallas, Texas 70000	Granddaughter	1/6	1/9	1/6 subject to 1/3 life estate
WILLIAM SANCHEZ, 111 Sunflower Drive, Austin, Texas 75555	Grandson	1/6	1/9	1/6 subject to 1/3 life estate

**EXAMPLE 4** (See “Asset Distribution Charts - MARRIED”, Chart II.b.):

- Decedent has a surviving spouse
- Decedent has 1 surviving parent
- Decedent has 2 surviving siblings
- Decedent had no children

For each Heir, list:

Name & Address	Relationship to Decedent	Share of Married Decedent’s Community Property	Share of Separate <u>Personal</u> Property	Share of Separate <u>Real</u> Property
MONROE SUNDANCER, 44 Lance Road, Nocona, Texas 76255	Surviving Spouse	All	All	1/2
MARY TEN BEARS, 20135 White Wolf Road, Spanish Fort, Texas 77777	Mother	None	None	1/4
MARCUS TEN BEARS, 987 Brush Arbor, Benjamin, Texas 79505	Brother	None	None	1/8
JULIA TEN BEARS HORSEBACK, 345 Parfleche Circle, Dublin, Texas 76446	Sister	None	None	1/8

**EXAMPLE 5** (See “Asset Distribution Charts – NOT MARRIED”, Chart II.c.):

- Decedent NOT married at death
- Decedent had no children
- Decedent has one surviving parent
- Decedent has 2 siblings
  - One sibling survived Decedent
  - One sibling died before Decedent
    - 2 surviving children of sibling

For each Heir, list:

Name & Address	Relationship to Decedent	Share of Married Decedent's Community Property	Share of Separate <u>Personal</u> Property	Share of Separate <u>Real</u> Property
DEPAK PADNYA, 135 County Road 10, Smithville, Texas 77777	Father	N/A	1/2	1/2
SUNITTA WILLIAMS, 345 Park Lane Avenue, Dallas, Texas 70000	Sister	N/A	1/4	1/4
JAY ANNADJ, 999 Poplar Street, Austin, Texas 75555	Nephew	N/A	1/8	1/8
DINA ANNADJ, 555 Elm Street, Victoria, Texas 77902	Niece	N/A	1/8	1/8

## **Instructions for signing the Small Estate Affidavit form:**

When the Small Estate Affidavit form is completely filled out, all of the heirs and two disinterested witnesses must sign it before a notary public. Original signatures (not photocopied) are required on the form filed with the court, unless the Small Estate Affidavit will be electronically filed through the state authorized e-filing portal. To register as a user, visit <https://efile.txcourts.gov/ofswweb> and click "Register." If e-filing with the court, you should retain the original signed and notarized Small Estate Affidavit and provide it to the court if and when required to do so.

### **Heir Sworn Statement:**

All heirs 18 years of age or older MUST sign the Small Estate Affidavit. By signing the Affidavit, you are swearing or affirming that you know the information in the Affidavit is true. You are also stating that you have legal capacity. This means you are 18 years of age or older and have not been legally declared incapacitated.

If there are any heirs who do not have legal capacity because they are a minor or have a disability that prevents them from understanding the contents and purpose of the Small Estate Affidavit, their legally authorized representative can sign for them. *If the legally authorized representative who is signing for a minor heir is also an heir of Decedent, that person will need to sign two separate execution pages (sworn statement with notarized signature) – one as the legally authorized representative of the minor heir, and another as an heir in their own right.*

**Any heir or witness who signs the Affidavit may be held responsible for any loss or damage caused to someone from the use of the Affidavit.**

DO NOT SIGN UNTIL YOU ARE WITH A NOTARY. Write your name on the line provided and sign in front of a notary public. There may be a fee for the notary's services.

### **Disinterested Witness Statement**

Two disinterested witnesses MUST sign the Affidavit. A disinterested witness cannot receive anything from Decedent's estate. By signing the Affidavit, you are swearing or affirming that you know the information in the Affidavit is true. You are also stating that you have legal capacity. This means you are 18 years of age or older and have not been legally declared incapacitated.

**Any heir or witness who signs the Affidavit may be held responsible for any loss or damage caused to someone from the use of the Affidavit.**

DO NOT SIGN UNTIL YOU ARE WITH A NOTARY. Write your name on the line provided and sign in front of a notary public. There may be a fee for the notary's services.

# FREQUENTLY ASKED QUESTIONS (FAQs) FOR SMALL ESTATE AFFIDAVIT

## Frequently Asked Questions

Some important words are explained below, but if there are other words that you do not know, check the list of words and definitions called “Helpful Words to Know” beginning on page 3 of INSTRUCTIONS FOR SMALL ESTATE AFFIDAVIT.

### **1. *Who is Decedent?***

Decedent is the person who died. When you see “Decedent’s property” or “Decedent’s homestead,” we are talking about the property or homestead that belonged to the person who died.

### **2. *Who is an heir?***

An heir is a person who has a right to get some or all of Decedent’s property after they die. If the Decedent was married when they died, their surviving spouse is an heir. If the Decedent had children, the children, or their descendants such as grandchildren or great-grandchildren (and so on) are heirs. A person’s parents, siblings, nieces and nephews, great-nieces and great-nephews (and so on) may also be heirs. However, a person who dies fewer than 120 hours after the Decedent died is NOT an heir even if the person is the Decedent’s spouse or child.

### **3. *What is a homestead?***

A homestead is a home the Decedent owned and used as the main place they lived. In order for the property to be a homestead for transfer under the Small Estate Affidavit, Decedent must have a surviving spouse or minor child. (The spouse or child did not have to live in the home for it to be a homestead.)

### **4. *What can I do with a Small Estate Affidavit?***

You can use the Small Estate Affidavit to transfer Decedent’s money and property to the heirs if Decedent left no Will and the value of all of the property is less than a certain amount. You can also use the Small Estate Affidavit to transfer title to Decedent’s homestead to the heirs. You CANNOT use the Small Estate Affidavit to transfer title to any real property that is not a homestead, such as rental property or an undeveloped lot.

### **5. *What qualifies as a small estate?***

The value of the estate is \$75,000 or less. You do not have to count certain property called “exempt property” or property that passes directly to a specific, named person (such as life insurance) when you add up the value of all of the property.

The value of the estate assets must also be more than the amount of debts owed by Decedent. You do not have to count debts secured by homestead or exempt property, such as a mortgage or car loan.

For more information about what type of property and debts you do not have to count, look under “Estate assets,” “Exempt property,” and “Secured and Unsecured Debts,” in “Helpful Words to Know” in the Instructions.

## **6. *Who can use a Small Estate Affidavit?***

Any heir or legally authorized representative of an heir can use the Small Estate Affidavit. A “legally authorized representative” is a natural guardian (such as the parents or next of kin) of an heir who is under 18 years old, or the court-appointed guardian of any other incapacitated heir. An incapacitated heir is someone who is unable to manage their affairs due to disability, age, injury, illness, or other reasons.

## **7. *What do I need to fill out a Small Estate Affidavit?***

- ☐ All heirs must sign the Affidavit. You CANNOT leave out any heir. The natural guardian must sign for any heir who is under 18 years old, and a court-appointed guardian must sign for an incapacitated adult.
- ☐ Two disinterested witnesses must also sign the Affidavit. A “disinterested witness” is a person who is familiar with Decedent’s family history, marital status at death, children and grandchildren, and other family members, and who will not inherit property from Decedent. Decedent’s close friend is an example of someone who could be a disinterested witness. Decedent’s sibling or cousin might also be an example of a disinterested witness, as long as that person would not inherit any property. The disinterested witnesses must swear that the information in the Affidavit is true.
- ☐ Notary Public. Each heir and disinterested witness must go to a notary public and swear that the information in the Affidavit is true, subject to penalties of perjury. A notary public may charge a fee for this service. Your bank may have a notary. You can also find a list of notaries by going to the Texas Secretary of State’s website (<https://sos.state.tx.us>) and clicking on “Notary, Apostilles & Authentications” in the top ribbon.
- ☐ Information about Decedent’s assets. You will need to list **ALL** of Decedent’s assets, with the last three digits of account numbers (if known) and how much the asset is worth. Additionally, if the Decedent was married at death you must state if an asset is separate or community property. See “Community Property” and “Separate Property” in “Helpful Words to Know” and Section 8 (“Estate Assets”) in the Instructions for more information on separate and community property.

- ☐ Information about Decedent's debts. You will need to list **ALL** of Decedent's debts, with the last three digits of account numbers (if known) and the amount of outstanding debt. See "Secured and Unsecured Debts" in "Helpful Words to Know" and Section 9 ("Debts") in the Instructions for more information on debts.
- ☐ Information about Decedent's heirs. You will need to list the names and addresses of **ALL** of Decedent's heirs. If you do not know the names and addresses of all of Decedent's heirs, you will NOT be able to use the Small Estate Affidavit.

**8. *What does it mean if I sign the Small Estate Affidavit?***

If you sign the Affidavit, it means that you have:

- personal knowledge of Decedent's family, including Decedent's marriages,
- personal knowledge of Decedent's assets, AND
- personal knowledge of Decedent's debts

AND you understand and acknowledge that:

- **By signing the Affidavit, you may be liable under Texas Estate Code § 205.007(c) for any damage or loss to any person arising from a payment, delivery, transfer, or issuance made in reliance on the Affidavit.**

**9. *Where do I file the Small Estate Affidavit?***

If Decedent LIVED in Texas:

File the Affidavit with the County Clerk of the county where Decedent lived. This is the county where Decedent had a home, even if they were living elsewhere at death, like in a nursing home or with a child.

If Decedent DID NOT LIVE in Texas, the county where the Affidavit should be filed is based on where Decedent died:

- If Decedent died in Texas, file the Affidavit with the County Clerk of:
  - the County where Decedent's principal estate was located; or
  - the County where Decedent died.
- If Decedent died outside of Texas, file the Affidavit with the County Clerk of:
  - the County where Decedent's next of kin live; or
  - if there is no next of kin in Texas, the County where Decedent's principal estate is located.

**10. *How much does it cost to file a Small Estate Affidavit?***

Look on the County Clerk's website in the county where you will file the Affidavit or call the County Clerk's office for filing fee information.



**11. *What if I cannot afford the filing fee?***

If you cannot afford the filing fee, you can ask the court to waive (eliminate) your filing fees and court costs by filling out and filing a Statement of Inability to Afford Payment of Court Costs. You can get a Statement of Inability to Afford Payment of Court Costs form by asking the County Clerk for a copy of the form. The clerk is required to provide you the form at no cost. You can also find the form at <https://www.txcourts.gov>. See Texas Rule of Civil Procedure 145.

**12. *How do I use the Small Estate Affidavit after it has been approved by the court?***

Once approved by the court, you can use a certified copy of the Small Estate Affidavit and the Order Approving Small Estate Affidavit to collect and transfer the money and property of Decedent's estate.

- After the judge signs the Order Approving Small Estate Affidavit, purchase certified copies of the Affidavit and the Order from the County Clerk's office. You may need more than one certified copy to collect all the money and property.
- Take a certified copy to each person, business, or other organization holding Decedent's assets to:
  - Collect Decedent's money or other property from people, businesses, or organizations who have it;
  - Access Decedent's bank accounts;
  - Transfer title to the homestead by recording the Affidavit and Order in the County Clerk's office of the county where the homestead is located.

**13. *What if Decedent had children who were given up for adoption or for whom Decedent's parental rights were terminated?***

Contact an attorney.

**14. *What if Decedent had half-siblings?***

Contact an attorney.

**15. *What if Decedent has a child who was born after Decedent died?***

Contact an attorney.

CASE NUMBER \_\_\_\_\_

ESTATE OF

§

IN

☐ PROBATE COURT

☐ COUNTY COURT

☐ COUNTY COURT AT LAW NO. \_\_\_\_\_

§

DECEASED

§

\_\_\_\_\_ COUNTY, TEXAS

**SMALL ESTATE AFFIDAVIT**  
**PURSUANT TO TEXAS ESTATES CODE CHAPTER 205**

The information in this Affidavit is true according to the heirs and witnesses who swore to or affirmed its truth.

1. The person who died ("Decedent"), \_\_\_\_\_, died on \_\_\_\_\_  
*First, Middle, and Last Name*

\_\_\_\_\_ in \_\_\_\_\_, \_\_\_\_\_ County, \_\_\_\_\_.  
*MM/DD/YYYY* *City* *County* *State*

Decedent did not leave a Will. The last three digits of Decedent's driver's license number are \_\_\_\_\_ and the last three digits of Decedent's Social Security number are \_\_\_\_\_.

If you do not know this information, explain why: \_\_\_\_\_

*Be prepared to provide a copy of the death certificate.*

2. Decedent died at least thirty (30) days ago.
3. Decedent was a resident of \_\_\_\_\_ County, \_\_\_\_\_, at the time of death.  
*County* *State*

*Check if applicable:*

☐ Decedent was not a resident of this county at the time of death, and I am filing in this county because: \_\_\_\_\_.

4. No other probate proceeding has been filed.
5. On the date of this Affidavit, the total value of Decedent's estate assets is not more than \$75,000. This value does not include the value of the homestead or other exempt property. *For a home to qualify as a homestead under this Affidavit, Decedent must have owned the house (even if still paying for it) and used it as his/her main residence, AND Decedent must have a surviving spouse or minor child. (The spouse or child did not have to live in the house for it to be a homestead.) See instructions for a definition of exempt property.*
6. On the date of this Affidavit, the total value of Decedent's estate assets (not including the homestead and other exempt property) is more than the total of Decedent's known debts (not including debts secured by the homestead or other exempt property).

7. Medicaid Estate Recovery Program (*See Instructions*):

Check one:

- ☐ Decedent did not apply for, nor receive, Medicaid benefits (or similar needs-based government benefits subject to repayment) on or after March 1, 2005.
- ☐ Decedent received Medicaid benefits (or similar needs-based government benefits subject to repayment) on or after March 1, 2005, but a MERP certification which states that Decedent's estate owes no money to the State of Texas as a result of the payment of those benefits has been attached if required by this court.
- ☐ Decedent did apply for and receive Medicaid benefits (or similar needs-based government benefits subject to repayment) on or after March 1, 2005, and the Medicaid Estate Recovery Program claim is listed as a debt in section 9.

8. Estate Assets Tables:

All assets of Decedent's estate, including homestead and other exempt property, are listed in these tables.

**SEPARATE PROPERTY ASSETS**

Description of Separate Property Assets Explain Why it is Separate Property	Acc't # (last 3 digits)	Exempt (yes/no)	Value (100%)

TOTAL \$ \_\_\_\_\_

**COMMUNITY PROPERTY ASSETS**

Description of Community Property Assets	Acc't # (last 3 digits)	Exempt (yes/no)	Value (100%)	Estate Value (50%)

TOTAL \$ \_\_\_\_\_

9. Debts:

All remaining debts of Decedent's estate are listed here. The Balance Due is the amount owed on the date of this Affidavit.

**DEBTS**

Description of Debts	Acc't # (last 3 digits)	Is the debt secured by exempt property? (yes/no)	Balance Due

TOTAL \$ \_\_\_\_\_

10. Family history: *Put check marks in the small boxes by the statements that apply and provide the information as indicated.*

A. Marriage:

☐ Decedent was NOT married when Decedent died.

**OR**

☐ Decedent was married to and survived by \_\_\_\_\_. They were married on \_\_\_\_\_ (date). *Someone survived Decedent if they lived more than 120 hours after Decedent died.*

B. Children:

- ☐ Decedent did NOT have or adopt any children, whether now living or deceased.  
*If you check this box, go to C. "Parents".*
- ☐ All children born to or adopted by Decedent, whether now living or deceased, are listed below.

These are all of Decedent's children (*Use additional pages as necessary*):

<u>Name of Child</u>	<u>Check if under 18</u>	<u>Name of Child's Other Parent</u>
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____

- ☐ All of Decedent's children survived Decedent. *Someone "survived" Decedent if they lived more than 120 hours after Decedent died.*

**OR**

- ☐ These are Decedent's children who DID NOT survive Decedent.

<u>Deceased Child's Name</u> <i>Write deceased child's name</i>	<u>Date child died</u> <i>MM/DD/YYYY</i>	<u>If this child had children, name them.</u> <u>If not, write None or N/A.:</u> <i>If any of these grandchildren also died before Decedent, use a separate page to give date of death and names of all of that person's children.</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

If ANY of Decedent's children, grandchildren, or great-grandchildren survived Decedent, skip to "Section 11. Asset Distribution."

C. Parents:

Decedent's parents are \_\_\_\_\_ and \_\_\_\_\_.  
*Parent 1 Name*
*Parent 2 Name*

Check ONE:

- ☐ Both of Decedent's parents survived Decedent.
- ☐ One of Decedent's parents DID NOT survive Decedent. This parent,  
 \_\_\_\_\_, died on \_\_\_\_\_, if known.  
*Name*
*Date*
- ☐ Neither of Decedent's parents survived Decedent.
- \_\_\_\_\_, died on \_\_\_\_\_, if known.  
*Parent 1 Name*
*Date*
- \_\_\_\_\_, died on \_\_\_\_\_, if known.  
*Parent 2 Name*
*Date*

If both of Decedent's parents survived Decedent, skip to "11. Asset Distribution Table".

D. Siblings (Use additional pages as necessary):

These are all of Decedent's siblings (including half-siblings). If there are half-siblings, contact an attorney. **If none, write "none."**

<u>Sibling Name</u>	<u>Check if Under 18</u>	<u>Sibling's Parents' Names</u>
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____

- ☐ All of Decedent's siblings (including half-siblings) survived Decedent. *Someone "survived" Decedent if they lived more than 120 hours after Decedent died.*

**OR**

- ☐ These are Decedent's siblings (including half-siblings) who DID NOT survive Decedent.

<u>Deceased Sibling's Name</u> <i>Write deceased sibling's name</i>	<u>Date of Death</u> <i>MM/DD/YYYY</i>	Names of surviving children of Deceased Sibling <u>If none, write None or N/A:</u> <i>If any of these nephews/nieces also died before Decedent, use a separate page to give date of death and names of all of that person's children.</i>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
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<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

**E. Other**

If no one listed in sections A-D above survived Decedent but there are other relatives that did survive Decedent, you should contact an attorney.

**11. Asset Distribution Table:**

Based on the family history given in this Affidavit, the following table lists all of Decedent's heirs at law, together with their fractional interests in Decedent's estate.

*List each person getting a share of Decedent's estate. List each person's share of each type of property in the estate. If Decedent was not married, do not enter anything in the column labeled "Share of Married Decedent's Community Property".*

**THE FOLLOWING TABLE MUST BE FILLED OUT: DO NOT fill out this table without reading and following the Asset Distribution Charts included with the Instructions for Small Estate Affidavit.**

*For each Heir, list the following:*

Texas Supreme Court Small Estate Affidavit  
[Approved on \_\_\_\_]



Name & Address	Relationship to Decedent	Share of Married Decedent's Community Property	Share of Separate <u>Personal</u> Property	Share of Separate <u>Real</u> Property

**Signatures and Sworn Statements of Every Person Who Gets a Share of Decedent's Estate:**

*Include other signature pages for each person as needed.*

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

I am: *(Check one)*

- ☐ an heir of the Decedent, or
- ☐ the legally authorized representative of \_\_\_\_\_, who is an heir of the Decedent, authorized by §205.002(a)(1)(C), Texas Estates Code to sign this Affidavit.

I swear or affirm that:

- a. I have personal knowledge of the facts stated in this Affidavit, and these facts are true and complete;
- b. I have legal capacity;
- c. **By signing this Affidavit, I understand that I am liable under Texas Estate Code § 205.007(c) for any damage or loss to any person arising from a payment, delivery, transfer, or issuance made in reliance on the Affidavit. See FAQ #8 for what this means.**

\_\_\_\_\_  
Printed Name of Heir or Legally Authorized Representative

\_\_\_\_\_  
Signature of Heir or Legally Authorized Representative

SWORN TO AND SUBSCRIBED before me by \_\_\_\_\_, an heir or legally authorized representative on \_\_\_\_\_ (Date).

(Seal)

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
Identification Number: \_\_\_\_\_

**Signatures and Sworn Statements of Every Person Who Gets a Share of Decedent's Estate:**

*Include other signature pages for each person as needed.*

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

I am:

- ☐ an heir of the Decedent, or
- ☐ the legally authorized representative of \_\_\_\_\_, who is an heir of the Decedent, authorized by §205.002(a)(1)(C), Texas Estates Code to sign this Affidavit.

I swear or affirm that:

- a. I have personal knowledge of the facts stated in this Affidavit, and these facts are true and complete;
- b. I have legal capacity;
- c. **By signing this Affidavit, I understand that I am liable under Texas Estate Code § 205.007(c) for any damage or loss to any person arising from a payment, delivery, transfer, or issuance made in reliance on the Affidavit. See FAQ #8 for what this means.**

\_\_\_\_\_  
Printed Name of Heir or Legally Authorized Representative

\_\_\_\_\_  
Signature of Heir or Legally Authorized Representative

SWORN TO AND SUBSCRIBED before me by \_\_\_\_\_, an heir or legally authorized representative on \_\_\_\_\_ (Date).

(Seal)

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
Identification Number: \_\_\_\_\_

**Signatures and Sworn Statements of Every Person Who Gets a Share of Decedent's Estate:**

*Include other signature pages for each person as needed.*

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

I am:

- ☐ an heir of the Decedent, or
- ☐ the legally authorized representative of \_\_\_\_\_, who is an heir of the Decedent, authorized by §205.002(a)(1)(C), Texas Estates Code to sign this Affidavit.

I swear or affirm that:

- a. I have personal knowledge of the facts stated in this Affidavit, and these facts are true and complete;
- b. I have legal capacity;
- c. **By signing this Affidavit, I understand that I am liable under Texas Estate Code § 205.007(c) for any damage or loss to any person arising from a payment, delivery, transfer, or issuance made in reliance on the Affidavit. See FAQ #8 for what this means.**

\_\_\_\_\_  
Printed Name of Heir or Legally Authorized Representative

\_\_\_\_\_  
Signature of Heir or Legally Authorized Representative

SWORN TO AND SUBSCRIBED before me by \_\_\_\_\_, an heir or legally authorized representative on \_\_\_\_\_ (Date).

(Seal)

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
Identification Number: \_\_\_\_\_

**Signatures and Sworn Statements of TWO DISINTERESTED WITNESSES:**

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

I, as a Disinterested Witness to this Affidavit, as indicated by my signature below, do solemnly swear or affirm:

- a. I have legal capacity;
- b. I am not getting anything from the Decedent's estate;
- c. I have personal knowledge of the facts stated in this Affidavit, and these facts are true and complete; and
- d. **I understand that I am liable under Texas Estate Code § 205.007(c) for any damage or loss to any person arising from a payment, delivery, transfer, or issuance made in reliance on this Affidavit.**  
*See FAQ #8 for what this means.*

\_\_\_\_\_  
Printed Name of Disinterested Witness

\_\_\_\_\_  
Signature of Disinterested Witness

SWORN TO AND SUBSCRIBED before me by \_\_\_\_\_, a disinterested witness,  
on \_\_\_\_\_ (Date).

(Seal)

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
Identification Number: \_\_\_\_\_

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

I, as a Disinterested Witness to this Affidavit, as indicated by my signature below, do solemnly swear or affirm:

- a. I have legal capacity;
- b. I am not getting anything from the Decedent's estate;
- c. I have personal knowledge of the facts stated in this Affidavit, and these facts are true and complete; and
- d. **I understand that I am liable under Texas Estate Code § 205.007(c) for any damage or loss to any person arising from a payment, delivery, transfer, or issuance made in reliance on this Affidavit.**  
*See FAQ #8 for what this means.*

\_\_\_\_\_  
Printed Name of Disinterested Witness

\_\_\_\_\_  
Signature of Disinterested Witness

SWORN TO AND SUBSCRIBED before me by \_\_\_\_\_, a disinterested witness,  
on \_\_\_\_\_ (Date).

(Seal)

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
Identification Number: \_\_\_\_\_

CASE NUMBER \_\_\_\_\_

ESTATE OF

§

IN

☐ PROBATE COURT

☐ COUNTY COURT

☐ COUNTY COURT AT LAW NO. \_\_\_\_\_

§

DECEASED

§

\_\_\_\_\_ 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; and
3. The Affidavit should be approved.

It is therefore ORDERED that the foregoing Affidavit is APPROVED.

A person making a payment, delivery, transfer, or issuance under the foregoing Affidavit is released to the same extent as if made to a personal representative of Decedent.

SIGNED \_\_\_\_\_

\_\_\_\_\_  
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## **Asset Distribution Charts (Who gets what?)**

### **If Decedent Was MARRIED at Time of Death and there is No Will**

#### **When and why do you use these charts?**

The purpose of these charts is to help you complete the “Asset Distribution Table” section of the Small Estate Affidavit form. In the form, you will need to write in the share that each surviving heir will inherit. These charts will help you figure out what share each person gets.

The charts below apply only if:

- Decedent was married when they died;
- Surviving spouse lived more than 120 hours after Decedent’s death;
- Decedent did not leave a Will; and
- Decedent died on or after September 1, 1993.

These charts do not apply if Decedent died before September 1, 1993 – in that situation, you should contact an attorney.

For each heir, you need to determine these things:

- what fraction of the community property assets they get,
- what fraction of the separate real property they get, and
- what fraction of the separate personal property they get.

#### **What is the difference between community and separate property?**

A married Decedent will likely have “community property” and may have “separate property.” You need to know if property was “community” or “separate” when filling out the Small Estate Affidavit.

**Community property** is all real and personal property acquired during the marriage, except for separate property. Community Property is owned one-half by Decedent’s estate and one-half by Decedent’s surviving spouse. All property of a married Decedent is considered to be community property unless you can show that it is separate property. Even if property is only in one spouse’s name, it may still be community property. See [Texas Family Code § 3.002](#).

**Separate property** is personal or real property owned before a marriage or received during marriage by gift or inheritance. It also includes some damages awarded during marriage from a personal injury lawsuit. Any asset listed as Separate Property in the Small Estate Affidavit form must include an explanation of why it is considered Separate Property. All property of a married Decedent is considered to be community property unless you can show that it is separate property. See [Texas Family Code § 3.001](#).

### **What is the difference between personal and real property?**

Any separate property will also need to be listed as “personal property” or “real property.” This difference does not matter for community property.

**Personal property** includes, but is not limited to, cash and bank accounts, clothing, household furnishings, vehicles, and jewelry.

**Real property** is land and improvements, such as a house or mobile home designated as real property, and also includes oil, gas, and other mineral rights.

### **What is the difference between a life estate and a homestead right?**

A **life estate** gives the surviving spouse certain rights and obligations during their lifetime. The life estate ends when the surviving spouse dies. You must list the life estate in the asset distribution table.

A **homestead** right is a right to exclusive use and occupancy of the property during a lifetime. The surviving spouse may have homestead rights. Decedent’s minor children may also have homestead rights. **An attorney can explain what those rights are.** For purpose of the asset distribution table, you do not list the homestead right. However, knowing if there are homestead rights is important to understand who can live in the property.

### **What if a person who would be an heir dies before Decedent?**

It depends.

If a person who would have been an heir dies before Decedent, usually their children get that deceased parent’s share equally. If the person had no children or other descendants, you do not include them in figuring out the number of shares.

However, if **all** of the people who are related to Decedent in the same way (for example, all of the children or all of the siblings of Decedent) die before Decedent, usually those people’s children will all share that portion of Decedent’s estate equally.

If one or more of the children of the predeceased heir also died before Decedent, consult an attorney.

### **Who gets what?**

This is an explanation of the charts below, and the number of each item listed below will be shown in the related chart.

#### **I. IF DECEDENT WAS MARRIED WITH CHILDREN:**

a. If all of the children are the children of the surviving spouse (CHART I.a.):

1. **Community property:** all of it goes to the surviving spouse.
2. **Separate personal property:**

- a. The surviving spouse gets a 1/3 interest in Decedent’s separate personal property.
- b. The children share the remaining 2/3 interest in Decedent’s separate personal property.



3. **Separate real property:**

- a. The surviving spouse gets a 1/3 life estate interest and may have homestead rights to the property during their lifetime.
- b. The children inherit in equal parts all of the property, but it is subject to the surviving spouse's 1/3 life estate and homestead rights, if any.

b. If any of the children are not the children of the surviving spouse (CHART I.b.):

1. **Community property:**

- a. The surviving spouse keeps their own 1/2 share of the community property.
- b. The children share equally in Decedent's 1/2 interest subject to the surviving spouse's homestead rights, if any.

2. **Separate personal property:**

- a. The surviving spouse gets a 1/3 interest in Decedent's separate personal property.
- b. The children share the remaining 2/3 interest in Decedent's separate personal property.

3. **Separate real property**

- a. The surviving spouse gets a 1/3 life estate interest and may have homestead rights to the property during their lifetime.
- b. The children inherit in equal parts all of the property, but it is subject to the surviving spouse's 1/3 life estate and homestead rights, if any.

II. **IF THE DECEDENT WAS MARRIED AND DID NOT HAVE CHILDREN:**

a. If Decedent was survived by both parents (CHART II.a.):

- 1. **Community property:** all of it goes to the surviving spouse.
- 2. **Separate personal property:** all of it goes to the surviving spouse.
- 3. **Separate real property:**
  - a. The surviving spouse gets 1/2 of the separate real property and may have homestead rights to all of the property during their lifetime.
  - b. The parents each get 1/4 of the separate real property subject to the surviving spouse's homestead rights, if any.

b. If Decedent had one surviving parent and had surviving siblings (or their descendants) (CHART II.b.):

- 1. **Community property:** all of it goes to the surviving spouse.
- 2. **Separate personal property:** all of it goes to the surviving spouse.
- 3. **Separate real property:**
  - a. The surviving spouse gets 1/2 of the separate real property and may have homestead rights to the property during their lifetime.
  - b. The parent gets 1/4 of the separate real property, but it is subject to the surviving spouse's homestead rights, if any.

- c. The siblings share in equal parts the other 1/4 of the separate real property, but it is subject to the surviving spouse's homestead rights, if any.
- c. If Decedent had one surviving parent and no surviving siblings (or their descendants) (CHART II.c.):
  - 1. **Community property:** all of it goes to the surviving spouse.
  - 2. **Separate personal property:** all of it goes to the surviving spouse.
  - 3. **Separate real property:**
    - a. The surviving spouse gets 1/2 of the separate real property and may have homestead rights to the property during their lifetime.
    - b. The surviving parent gets 1/2 of the separate real property, but it is subject to the surviving spouse's homestead rights, if any.
- d. If Decedent had no surviving parents but did have surviving siblings (or their descendants who take their deceased parent's share) (CHART II.d.):
  - 1. **Community property:** all of it goes to the surviving spouse.
  - 2. **Separate personal property:** all of it goes to the surviving spouse.
  - 3. **Separate real property:**
    - a. The surviving spouse gets 1/2 of the separate real property and may have homestead rights to the property during their lifetime.
    - b. The siblings (or their descendants) get the other 1/2 of the separate real property subject to the surviving spouse's homestead rights to the property during their lifetime, if any.
- e. If Decedent had no surviving parents and no surviving siblings (or their descendants) (CHART II.e.):
  - 1. **Community property:** all of it goes to the surviving spouse.
  - 2. **Separate personal property:** all of it goes to the surviving spouse.
  - 3. **Separate real property:** all of it goes to the surviving spouse.

CHART I.a. – Married Person with children, all from current marriage		
COMMUNITY PROPERTY	SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.003(b)(2)	Texas Estates Code §201.002(b)	Texas Estates Code §201.002(b)(3)
<p><b>All to Surviving Spouse</b></p> <p>I.a.1.</p>	<p><b>2/3 to Children and/or their Descendants</b></p> <p><b>1/3 to Surviving Spouse</b></p> <p>I.a.2.</p>	<p><b>100% to Children and/or their Descendants</b></p> <p><b>Subject to Life Estate Interest</b></p> <p><b>Surviving Spouse retains 1/3 Life Estate Interest</b></p> <p>I.a.3.</p>

CHART I.b. – Married Person with children from outside current marriage		
COMMUNITY PROPERTY	SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.003(c)	Texas Estates Code §201.002(b)	Texas Estates Code §201.002(b)(3)
<p><b>Surviving Spouse keeps their own 1/2</b></p> <p><b>Decedent's 1/2 to Children and/or Descendants</b></p> <p>I.b.1.</p>	<p><b>2/3 to Children and/or their Descendants</b></p> <p><b>1/3 to Surviving Spouse</b></p> <p>I.b.2.</p>	<p><b>100% to Children and/or their Descendants</b></p> <p><b>Subject to Life Estate Interest</b></p> <p><b>Surviving Spouse retains 1/3 Life Estate Interest</b></p> <p>I.b.3.</p>



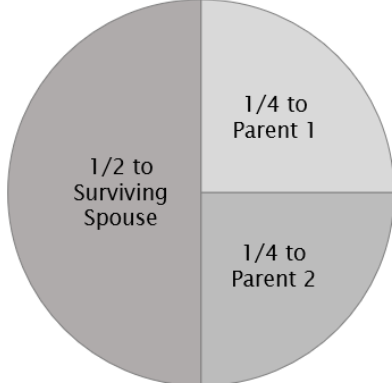


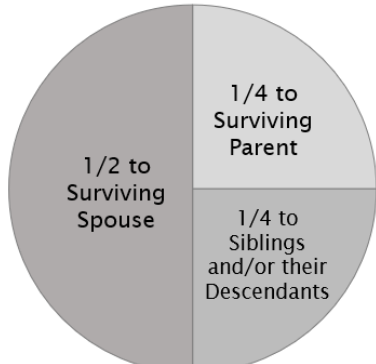


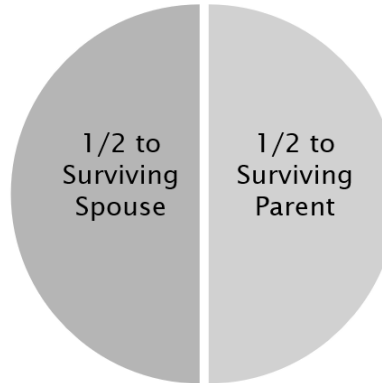
CHART II.a. – Married Person with no children – survived by both parents		
COMMUNITY PROPERTY	SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.003(b)(1)	Texas Estates Code §201.002(c)	Texas Estates Code §201.002(c)
<div> <div>  <p>All to Surviving Spouse</p> </div> <div>II.a.1.</div> </div>	<div> <div>  <p>All to Surviving Spouse</p> </div> <div>II.a.2</div> </div>	<div> <div>  <p>1/2 to Surviving Spouse 1/4 to Parent 1 1/4 to Parent 2</p> </div> <div>II.a.3</div> </div>

CHART II.b. – Married Person with no children – survived by one parent and siblings or their descendants		
COMMUNITY PROPERTY	SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.003(b)(1)	Texas Estates Code §201.002(c)	Texas Estates Code §201.002(c)
<div> <div>  <p>All to Surviving Spouse</p> </div> <div>II.b.1</div> </div>	<div> <div>  <p>All to Surviving Spouse</p> </div> <div>II.b.2</div> </div>	<div> <div>  <p>1/2 to Surviving Spouse 1/4 to Surviving Parent 1/4 to Siblings and/or their Descendants</p> </div> <div>II.b.3</div> </div>

<b>CHART II.c. – Married Person with no children – survived by one parent, and no surviving siblings or their descendants</b>		
<b>COMMUNITY PROPERTY</b>	<b>SEPARATE PERSONAL PROPERTY</b>	<b>SEPARATE REAL PROPERTY</b>
Texas Estates Code §201.003(b)(1)	Texas Estates Code §201.002(c)	Texas Estates Code §201.002(c)
<div>II.c.1</div>  <p>All to Surviving Spouse</p>	<div>II.c.2</div>  <p>All to Surviving Spouse</p>	<div>II.c.3</div>  <p>1/2 to Surviving Spouse</p> <p>1/2 to Surviving Parent</p>







<b>CHART II.d. – Married Person with no children – no surviving parents, but there are surviving siblings and/or their descendants</b>		
<b>COMMUNITY PROPERTY</b>	<b>SEPARATE PERSONAL PROPERTY</b>	<b>SEPARATE REAL PROPERTY</b>
Texas Estates Code §201.003(b)(1)	Texas Estates Code §201.002(c)	Texas Estates Code §201.002(c)
<div>II.d.1</div>  <p>All to Surviving Spouse</p>	<div>II.d.2</div>  <p>All to Surviving Spouse</p>	<div>II.d.3</div>  <p>1/2 to Surviving Spouse</p> <p>1/2 to Surviving Siblings and/or their Descendants</p>

CHART II.e. – Married Person with no children – no surviving parents, siblings, or siblings’ descendants		
COMMUNITY PROPERTY	SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.003(b)(1)	Texas Estates Code §201.002(c)	Texas Estates Code §201.002(d)
<div>II.e.1</div> 	<div>II.e.2</div> 	<div>II.e.3</div> 

## **Asset Distribution Charts (Who gets what?)**

**If Decedent Was NOT MARRIED at Time of Death and there is No Will**

### **When and why do you use these charts?**

The purpose of these charts is to help you complete the “Asset Distribution Table” section of the Small Estate Affidavit form. In the form, you will need to write in the share that each surviving heir will inherit. These charts will help you figure out what share each person gets.

The charts below apply only if:

- Decedent was unmarried when they died;
- At least one child, grandchild, parent, sibling, or sibling’s descendant(s) lived more than 120 hours after Decedent’s death; and
- Decedent did not leave a Will.

For each heir, you need to determine what fraction of the property they get. When a person is not married, all of their property is separate property at their death. Real and personal property are treated the same for the heirs of unmarried persons.

### **What if a person who would be an heir dies before Decedent?**

It depends.

If a person who would have been an heir dies before Decedent, usually their children get that deceased parent’s share equally. If the person had no children or other descendants, you do not include them in figuring out the number of shares.

However, if **all** of the people who are related to Decedent in the same way (for example, all of the children or all of the siblings of Decedent) die before Decedent, usually those people’s children will all share that portion of Decedent’s estate equally.

If one or more of the children of the predeceased heir also died before Decedent, consult an attorney.

### **Who gets what?**



This is an explanation of the charts below, and the number of each item listed below will be shown in the related chart.

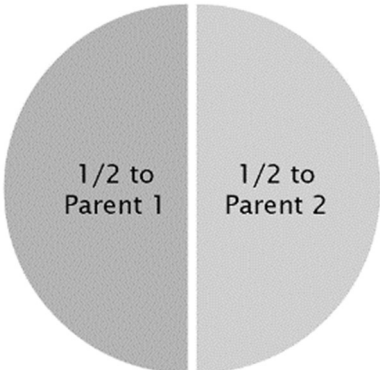
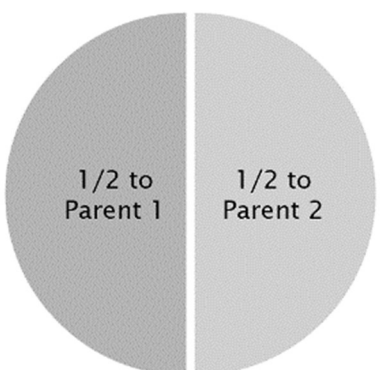
#### **I. IF DECEDENT WAS UNMARRIED WITH CHILDREN:**

- a. All of the children share the property in equal shares.

#### **II. IF DECEDENT WAS UNMARRIED WITH NO CHILDREN:**

- a. If both parents survive, each will inherit 1/2 of the estate.
- b. If one parent survives and there are no siblings, the surviving parent inherits the entire estate.
- c. If one parent survives and there are siblings, the surviving parent inherits 1/2 of the estate and the siblings would share in the other 1/2 of the estate.
- d. If there are no surviving parents, the siblings will share in the entire estate in equal parts.

<b>CHART I.a. – Unmarried Person with Children</b>	
<b>SEPARATE PERSONAL PROPERTY</b>	<b>SEPARATE REAL PROPERTY</b>
Texas Estates Code §201.001(b)	Texas Estates Code §201.001(b)
 <p>All to Children and/or their Descendants</p>	 <p>All to Children and/or their Descendants</p>
I.a.	I.a.

<b>CHART II.a. – Unmarried Person with No Children – Both Parents Survived</b>	
<b>SEPARATE PERSONAL PROPERTY</b>	<b>SEPARATE REAL PROPERTY</b>
Texas Estates Code §201.001(c)	Texas Estates Code §201.001(c)
 <p>1/2 to Parent 1      1/2 to Parent 2</p>	 <p>1/2 to Parent 1      1/2 to Parent 2</p>
II.a.	II.a.



<b>CHART II.b. – Unmarried Person with No Children – One Parent Survived; No Siblings or Siblings' Descendants Survived</b>	
<b>SEPARATE PERSONAL PROPERTY</b>	<b>SEPARATE REAL PROPERTY</b>
Texas Estates Code §201.001(d)(2)	Texas Estates Code §201.001(d)(2)
 <p>All to Surviving Parent</p>	 <p>All to Surviving Parent</p>
II.b.	II.b.







CHART II.c. – Unmarried Person with No Children – One Parent Survived; Siblings and/or Siblings’ Descendants Survived	
SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.001(d)(1)	Texas Estates Code §201.001(d)(1)
<div>  <p>1/2 to Surviving Parent</p> <p>1/2 to Siblings and/or their Descendants</p> </div> <p>II.c.</p>	<div>  <p>1/2 to Surviving Parent</p> <p>1/2 to Siblings and/or their Descendants</p> </div> <p>II.c.</p>

CHART II.d. – Unmarried Person with No Children – No Parent Survived; Siblings and/or Siblings’ Descendants Survived	
SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.001(e)	Texas Estates Code §201.001(e)
<div>  <p>All to Siblings and/or their Descendants</p> </div> <p>II.d.</p>	<div>  <p>All to Siblings and/or their Descendants</p> </div> <p>II.d.</p>