

## Small Estate Affidavit Checklist – Denton County Probate Court

Texas Estates Code Chapter 205 governs probate by Small Estate Affidavit (SEA), a method of transferring probate property under certain limited circumstances. Approval of an SEA is within the Court's discretion.

Before filing an SEA, carefully review both the requirements in Chapter 205 of the Texas Estates Code as well as the rules for descent and distribution in chapter 201. To prepare an SEA that the Court can approve, you will need to understand *all* of the rules and requirements. An attorney's assistance in drafting an SEA is recommended.

1. **Use the SEA form on the Denton County Probate Court's website.** The Court prefers that applicants use the SEA form that is available on the Court's website, effective November 1, 2014. If applicant's submitted SEA is not substantially in the form available on the Court's website, the SEA will not be approved. If Necessary, include extra pages to provide additional information. The SEA must be completed by persons who have actual knowledge of the stated facts.
2. **Cover sheet.** Since 2010, Texas Rule of Civil Procedure 78a has required that a Civil Case Information Sheet, including contact information, be filed with all original applications. This is to be filed at the same time an SEA is first filed. The Court will not consider an SEA unless the Civil Information Sheet is on file.
3. **The SEA Cannot be filed within 30 days of Decedent's death.**
4. **County where Decedent resided.** An SEA should be filed in the county where Decedent resided if Decedent had a domicile or fixed place of residence in Texas. If that's not Denton County, add facts to support venue in Denton County.
5. **No Will.** By statute, an SEA cannot be used where Decedent left a will. Applicants must swear that the Decedent died without a will.
6. **No Administration.** An SEA cannot be approved if a petition for the appointment of a personal representative is pending or has been granted or if it appears that an administration is needed.
7. **Assets.**
  - **List everything.** The SEA must list *all* of Decedent's known assets – not just some of them. Assets are any property owned that has monetary value, including cash or bank accounts, vehicles, household furnishings, and real property.
  - **Limited estate.** The SEA must show that the total assets of the estate are \$50,000 or less, not including the homestead (see below) and exempt property.
  - **Provide sufficient detail.** Indicate the value of each asset as precisely as possible, describing the property with sufficient detail so that it is clear exactly what property is being transferred by Affidavit. For example, include VIN numbers for cars and include the last four digits of any account numbers.

- **If Decedent was married at the date of death:**
  1. State whether *each* asset was Decedent's community property or Decedent's separate property.
  2. For each asset, give the *facts* that explain why the asset was community or separate property.
- **Exempt property.** If you are claiming that an asset is exempt property, allege the exempt status in the "additional information" column on the SEA form.
- **Real property:** Must include the legal description and street address of the property.

#### 8. Liabilities.

- **List everything.** The SEA must list all of Decedent's debts and other liabilities, including all credit card balances, doctors' bills, utility bills, etc. – *anything* owed by Decedent and not paid off. As one of the liabilities, the SEA must list any attorney's fees paid or to be paid for preparation of the Affidavit.
  - **Provide sufficient detail.** Indicate the amount of each liability as precisely as possible. Describe the debt or other liability with sufficient detail to identify the name of the creditor and any other material information. Also indicate at least the last four digits of any known account numbers.
9. **Solvent.** The total assets (not including the homestead and exempt property) must exceed the total known liabilities, not including liabilities secured by homestead and exempt property. If they do not, by law, the SEA must be denied, (Distributees can pay off enough debts that the assets exceed the remaining liabilities.)
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 that Decedent's estate is not subject to a MERP claim or (3) include additional information proving that a MERP claim will not be filed. For more information, see [http://www.dads.state.tx.us/services/estate\\_recovery/index.html](http://www.dads.state.tx.us/services/estate_recovery/index.html).
11. **Family history.** The SEA must state the *facts* about Decedent's marital and family history in sufficient detail that it is clear who inherits Decedent's property and the shares of those heirs under Texas law. For rules regarding descent and distribution, see Texas Estates Code Chapter 201.
12. **Correct inheritance shares.** On number 12 of the Court's approved SEA form, you must list the name, address, phone number, email address, and fax number (if available) of every Distributee (heir) of Decedent's estate, along with the shares of each Distributee. Non-lawyers often do not understand who inherits under Texas law or what shares each Distributee inherits. Texas Estates Code Chapter 201 may help you fill out the chart in number 12. Note the following:
- **If Decedent was married at the date of death,** the SEA must state the shares of each Distributee in all three types of property: separate personal property, separate real property, and Decedent's share of the community property. (The surviving spouse will retain his or her own share of the community property.) It is not sufficient to say that there was no separate property or no separate real property.
  - **If decedent was single at the date of death,** there is no community property. Put "NA" in the Community Property column.

13. **Signed and sworn to by all Distributes.** Each Heir at law who has legal capacity must sign and swear to the Affidavit before a notary. Use as many signature pages as needed.

- **Is there a minor or otherwise incapacitated Distributee?** If warranted by the facts, the natural guardian or next of kin of any minor Distributee or the guardian of any other incapacitated Distributee may sign and swear to the Affidavit on behalf of the minor or otherwise incapacitated Distributee.

14. **Sworn to by two disinterested witnesses.** Two disinterested witnesses must each sign and swear to the Affidavit before a notary and must include their printed names and addresses in legible form. These witnesses must be able to swear to *all* of the facts included in the SEA, not only the family history facts. Disinterested witnesses are witnesses who have no interest in Decedent's estate and who are not related to Decedent under the laws of descent and distribution of the State of Texas.

15. **Possible hearing.** The Denton County Probate Court may require a hearing before an SEA will be approved. If a hearing is needed, the Court will contact you to set a hearing.

PR- \_\_\_\_\_ - \_\_\_\_\_

Estate of \_\_\_\_\_, § In The Probate Court  
§  
§ of  
§  
Deceased § Denton County, Texas

### Small Estate Affidavit

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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:

1. Decedent, \_\_\_\_\_, died on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ in \_\_\_\_\_ County, Texas.
2. More than 30 days have elapsed since Decedent’s death.
3. Decedent was a resident of and domiciled in \_\_\_\_\_ County, Texas, at the following address: \_\_\_\_\_ at the time of Decedent’s death.
4. Decedent died without a will.
5. No administration is pending or has been granted in Decedent’s estate and none appears necessary.
6. The value of the entire assets of the estate of Decedent, not including homestead and exempt property, does not exceed \$50,000.00.
7. The value of the entire assets of the estate of Decedent, not including homestead and exempt property, exceeds the known liabilities.
8. 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 “10” 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 file a Medicaid Estate Recovery Program (MERP) certification that decedent’s estate is not subject to a MERP claim.]*

9. All assets of the Decedent's estate and their values are listed here.

<b>Asset</b> <i>List with enough detail to identify the asset, including the last three digits of any account number(s).</i>	<b>Value</b>	<b>Additional information</b> <i>If decedent was married, indicate:</i> <ul style="list-style-type: none"> <li>• <i>whether each asset was community or separate property, and</i></li> <li>• <i>facts that explain why the asset was community or separate</i></li> </ul> <i>If exempt property, so indicate.</i> <i>Use additional pages as necessary.</i>

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

10. All liabilities of the Decedent's estate (including attorney fees and funeral debts) and their values are listed here. If none, write "none."

<b>Creditor</b> <i>List with enough detail to identify the creditor &amp; any account.</i>	<b>Amount of Liability</b>

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

11. The following facts regarding Decedent's family history show the Distributees' entitlement to Decedent's estate to the extent that the assets, 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, part 1.**

- 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).

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, natural born or adopted, were alive when Decedent died.

**OR**

- The following of Decedent's children, natural born or adopted, died before the Decedent's death **and were survived by children (or grandchildren or great-grandchildren):**

Name of deceased child (followed by name of deceased child's other parent in parentheses)	Date child died	Names of all children of the deceased child <i>(if any of these children died before Decedent, use a separate page to give date of death, plus names &amp; birth dates of all grandchildren)</i>

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

**AND/OR**

- The following of Decedent's children, natural born or adopted, 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 "12" (following Family History#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 **surviving** brothers and sisters, including half-brothers and half-sisters who were born to *either* of Decedent's parents. If none, write "none."

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	Full or half sibling?	Names of each surviving child of the deceased brother or sister (nephews and nieces of Decedent)	Birth dates of surviving nieces & nephews

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

**Family History #6: Other.**

Fill out a separate page 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.** (See #12 of the SEA checklist.)

12. 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 interest in Decedent's estate:

For each Distributee, list: 1. Name 2. Address 3. Telephone number 4. Email address 5. Fax number, if available	Share of separate personal property (always fill out this column)	Share of separate real property (always fill out this column)	Share of decedent's community property (fill out this column if decedent was married)

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



**Affidavits and signatures of two disinterested witnesses**

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

I have no interest in the Estate of \_\_\_\_\_, Deceased, and am not related to Decedent under the laws of descent and distribution of the State of Texas. I swear or affirm that the facts contained in this Affidavit regarding family history, assets, and liabilities are true and complete to the best of my knowledge.

**I understand that Estates Code §205.007(c) provides that "each person who executes 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 \_\_\_\_\_  
Address: \_\_\_\_\_

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 "each person who executes 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 \_\_\_\_\_  
Address: \_\_\_\_\_

Disinterested Witness's signature \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me by \_\_\_\_\_ [name of witness],  
disinterested witness, on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

Notary Public, State of \_\_\_\_\_

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

**PR-**

**ESTATE OF**

\*

**IN THE PROBATE COURT**

\*

**OF.**

**DECEASED**

\*

**DENTON COUNTY, TEXAS**

## **ORDER APPROVING SMALL ESTATE AFFIDAVIT**

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2015, the Court considered the Affidavit of the Distributees of this Estate and the Court finds that the above foregoing Affidavit complies with the terms and provisions of the Texas Estates Code Chapter 205, that this Court has jurisdiction and venue, that this Estate qualifies under the provisions of the Texas Estates Code as a Small Estate, and that the Affidavit should be approved.

**IT IS ORDERED AND DECREED** that this Order shall constitute sufficient legal authority to all persons having custody of any property or acting as registrar or transfer agent of any evidence of interest, property, or right belonging to this Estate, or to any persons purchasing from or otherwise dealing with this estate, for payment or transfer, without liability, to the persons described in this Affidavit as are entitled to receive the particular asset without administration. The person or persons entitled to property as described in this Affidavit shall be entitled to deal with and treat the properties to which they are entitled in the same manner as if the record of title thereof was vested in their names.

**IT IS ORDERED and DECREED** by the Court that the foregoing Affidavit be and the same is hereby **APPROVED**, and shall forthwith be recorded in the Small Estates Records of Denton County, Texas, that the Clerk of the Court shall issue certified copies thereof to all persons entitled thereto.

Signed this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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**JUDGE PRESIDING**