

Small Estate Affidavit Instructions/Guidance

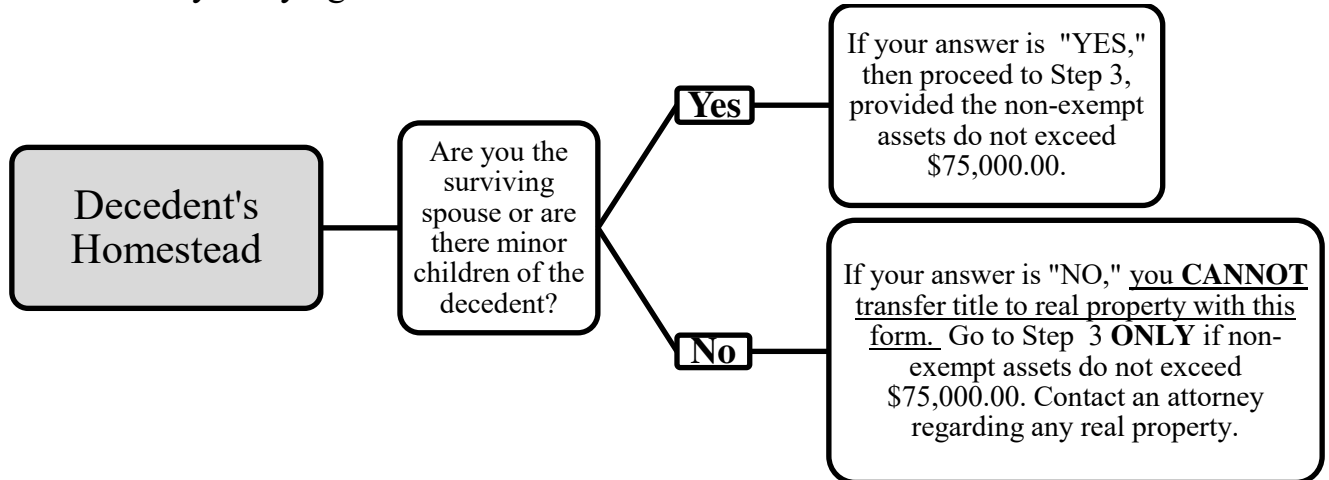
Before beginning this Small Estate Affidavit, please review the following to determine if a Small Estate Affidavit is proper to use.

STEP 1: Did the Decedent die testate (leaving a valid Will)?

If yes, you may not use the Small Estate Affidavit.

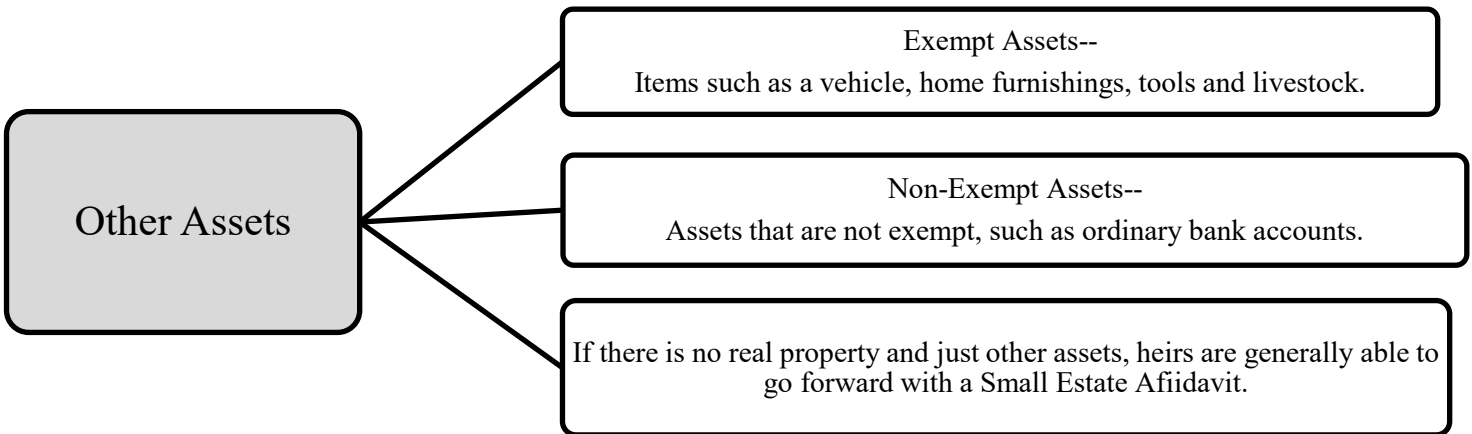
If no, proceed to Step 2.

STEP 2: What are you trying to transfer?



THE SMALL ESTATE AFFIDAVIT (SEA) MAY NOT BE USED TO TRANSFER TITLE TO REAL PROPERTY OTHER THAN THE DECEDENT’S HOMESTEAD AS EXPLAINED ABOVE. CONTACT AN ATTORNEY REGARDING OTHER REAL PROPERTY.

STEP 3:



OTHER DEFINITIONS AND RECOMMENDATIONS:

- **Form**—To increase the chances that the SEA will include all necessary information, the Court recommends that applicants use the SEA form available on the county clerk’s website.
- **Separate Property**—property owned before marriage, property owned after a final divorce decree, or property acquired by gift or inheritance
- **Community Property**—any property acquired during marriage other than by gift or inheritance

Instructions for Small Estate Affidavit Form

Sections 1-5

- It is important that the full name of the deceased person, the date of death, the county of death, and the domicile (where he lived) at death be shown in the form.
- The SEA must state whether the person died intestate (without leaving a Will) and that no petition for the appointment of a personal representative is pending nor has been granted.
- No form should be completed or filed until thirty (30) days have elapsed since death.
- The value of the **entire** estate, not including homestead and exempt property, does not exceed \$75,000.

Section 6: Assets

- **Section six** must list all the assets of the Decedent with a full description of each and every asset belonging to the Decedent. Assets are any property owned that has monetary value, including:
 - Bank accounts – name of the bank, account number, and balance in each account.
 - Cash – value and location.
 - Vehicles – including the year, make and model, vehicle identification number and value.
 - Real Estate – homestead only (it **only** passes to a surviving spouse or minor children)
 - Stocks – name of the stock, the number of shares, certificate number, and the value at death.
 - Safe Deposit Boxes – if the Decedent had one, complete the form “Application to Open Safe Deposit Box and Examine Papers” provided by the County Clerk. Present the Court with an Inventory of what is in that box with descriptions and values.
 - If you have a check, you should make sure the company will accept a SEA. They will have to reissue the check. You cannot open an estate account with the SEA.
 - Please indicate whether the assets are community or separate property.
 - Applicant must identify any claimed exempt property (as defined by Texas Estates Code Chapter 353.051 and Texas Property Code Chapter 42).
- Indicate the value of each asset as precisely as possible. A SEA **cannot** be approved with any asset of “unknown value.”

Section 7. Homestead:

- You must provide a legal description of the homestead and a physical address.
- The homestead is for the use and benefit of the surviving spouse and minor children only. (TEC Section 353.051).
- This is the only real property that can be transferred under a SEA.

Section 8. Liabilities:

- You must list all liabilities. These are debts of the Decedent and his/her estate. These may include credit cards, mortgage, or any bill that is still owed at the time of death.
- The estate of the deceased **MUST** be solvent. In other words, the debts/liabilities cannot exceed the value of the assets.
- If there are **NO** liabilities or debts, please show this in the box. Do not leave this box blank!

Section 9. Distributees:

- List the name, address and telephone number of **all** distributees.
- Include the name, address, phone number, capacity and interest of each distributee. See heirship affidavit to determine who the distributee(s) are.

Section 10. Signatures of Distributees:

- All distributees who are listed in Section 9 must sign in front of a notary.
- If the distributee is a minor, the form must be signed by a natural parent of the minor; by the court appointed guardian with a copy of letters of guardianship attached; or by the court appointed managing conservator with judgement papers attached.
- Example of signatures for minors. “Sam Smith as natural guardian or parent of John Smith, a minor.” It also requires that they print their names. The signature should be done in front of a notary.

HEIRSHIP AFFIDAVIT

The heirship portions of Section I-IV are to be completed by two disinterested witnesses who knew the family history.

It is important that the proper portions of this affidavit be completed. This is how the Court will determine the heirs.

I. Witness Information

These witnesses must not have or be entitled to any share of the Decedent's assets. It must show the following:

- a.) name,
- b.) address,
- c.) county in which they reside,
- d.) what relationship they were to the Decedent, and
- e.) how many years they knew the Decedent.

II. Decedent Information

When and where did the Decedent die? In what county and state?

III. Marital History

This section is to determine whether the Decedent was married or not at the time of death. There are 3 boxes. Please check the appropriate box. If there was more than 1 marriage, please indicate that.

IV. Family History: All the descendants of the Decedent.

- 1) **Children:** Please list all of the Decedent's children, by birth or adoption (alive or deceased). If any of the children are deceased, list the deceased child's name and include their children in the box.

***It is important to state whether the surviving spouse is the biological or adoptive parent of each of the children listed. Please indicate in the appropriate box.**

- 2) **Parents:** If there are no children or grandchildren, then list the parents (alive or deceased).

- 3) **Siblings – Brothers or Sisters:**

- a. If there are no parents or only one parent survived the Decedent, list all siblings (alive or deceased).
- b. If any of the siblings are deceased, then list their children.

Note:

- This Small Estate Affidavit needs to be signed by the two disinterested witnesses in front of a notary.
- The Court usually does not require a hearing on SEA applications, but in some circumstances the Court may require a hearing before a SEA will be approved. If a hearing is needed, the Court will contact you to set the hearing. **Do not set a hearing until the Court has asked you to do so.**