

INSTRUCTIONS FOR USE OF THE SMALL ESTATE
AFFIDAVIT AUTHORIZED BY CHAPTER 205,
TEXAS ESTATE CODE

Who can use the affidavit? The small estate affidavit can be used only if ALL of the following conditions apply:

- 1 The deceased person died WITHOUT A WILL. If there is a will, a small estate affidavit CANNOT be used whether the will has been offered for probate or not
- 2 More than thirty (30) days must have passed since the date of death.
- 3 The only real property owned by the Decedent must be the homestead. Title to other real property is unaffected by the small estate affidavit A small estate affidavit cannot be used to transfer title to any other real property other than a homestead.
- 4 The debts of the Decedent (other than a mortgage on the homestead) must not exceed the assets of the Decedent (not counting the homestead and exempt property) and there must be no other reason to have a person appointed to handle the business of the Decedent's estate.
- 5 No estate administration has been opened or, if an application to open one has been filed, no order has yet been entered granting letters of administration.
- 6 The Decedent must have had a permanent place of residence in this county at the time of his or her death.
- 7 All of the assets of the Decedent (not county the homestead and exempt property) are not more than \$75,000.
- 8 It cannot be used to exclude any heir.

How to complete the affidavit:

- 1 The affidavit must be completed by persons with actual knowledge of the facts stated and signed by all distributes (heirs).
- 2 Also, two persons who have personal knowledge of the family history facts and who have no financial interest in the Decedent's estate (disinterested persons) must sign and swear to the affidavit
- 3 All persons who sign the affidavit (whether heirs or the disinterested persons) must personally appear before a Notary Public and swear to the contents of the affidavit.
- 4 Assets and liabilities must be identified and described and all values must clearly be set out with all assets designated as separate or community property.
- 5 The heirship of the Decedent must be set out with the names and addresses of all heirs shown, their relationship to the Decedent, and the share each heir will take shown.
- 6 All marriages, divorces or deaths of spouses and births and deaths of children must be listed.
 - a If any children or descendants of the Decedent are NOT also children and descendants of the surviving spouse, this fact must be shown
 - b. If any other person survived the Decedent other than children, such as parents, grandparents, brothers and sisters, half-brothers and half-sisters, or other people, this fact must be shown.
 - c. No one is the heir of a living person, so that if a child of the Decedent would inherit a share, that child's children would not inherit from the Decedent.

Effect of the order? The order approving the small estate affidavit does not order any property transferred, but only finds that the affidavit:

- 1 complies with provisions of the Texas Estate Code
- 2 has been filed in the proper court
- 3 the estate qualifies as a "small estate" under the Estate Code
- 4 the affidavit should be approved and
- 5 directs the Probate Clerk to record the affidavit and issue copies to all persons entitled to them.

IT IS ILLEGAL for any county employee to give you any advice on the use of the form.