

Small Estate Affidavit Instructions/Guidance

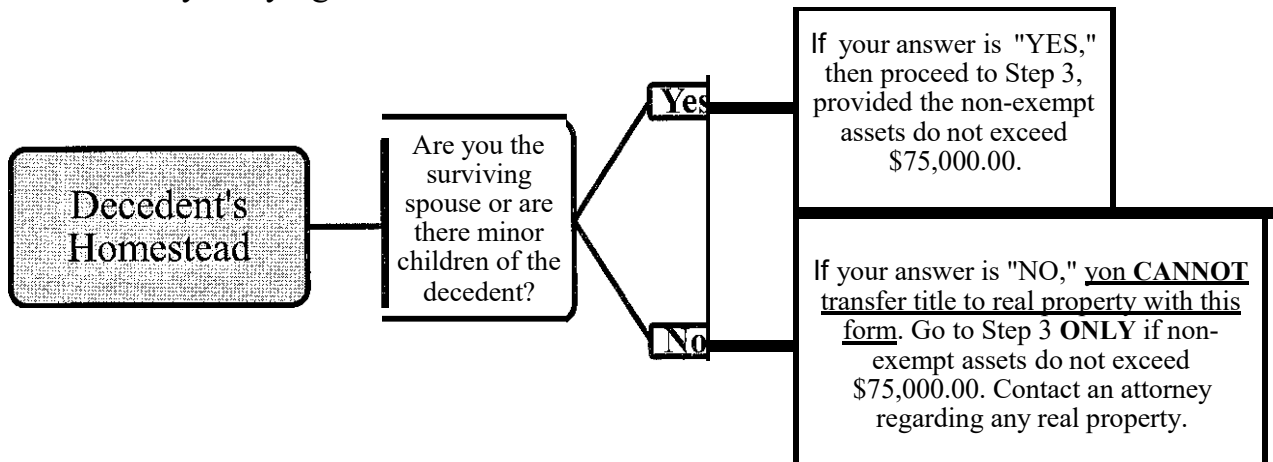
Before beginning this Small Estate Affidavit, please review the following to determine if a Small Estate Affidavit is proper to use.

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

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

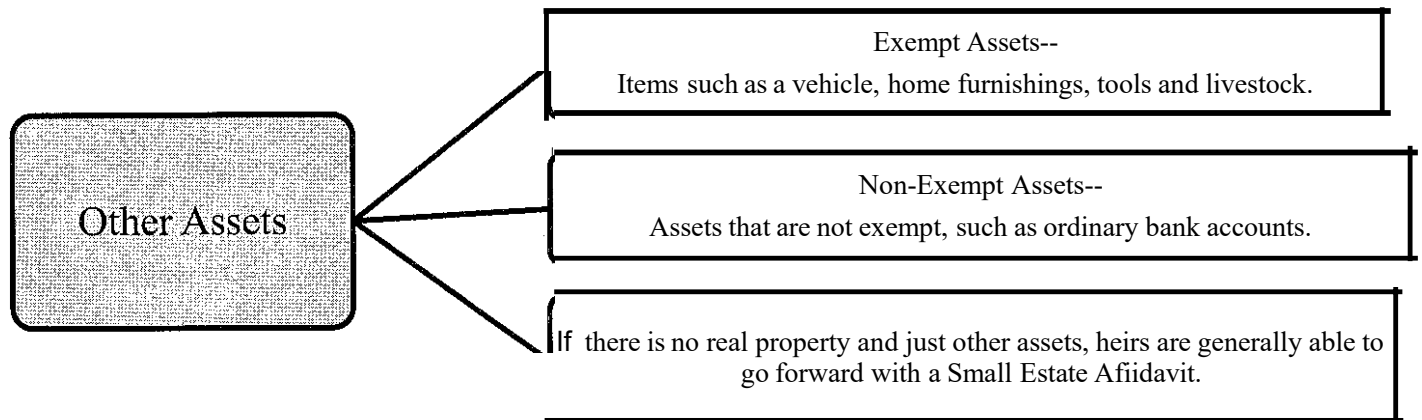
If no, proceed to Step 2.

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 County Court at Law Two's website: https://mctx.org/departments/departments_a_-_c/county_courts/county_court_at_law_2/index.php
- **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 A-H

- 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.
- The correct box needs to be checked regarding Medicaid. If the decedent did receive Medicaid on or after March 1, 2005, be sure to read what supporting document needs to be filed with the Small Estate Affidavit.

Section I: Assets

- **Section I** 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:
 - o **Bank accounts** - name of the bank, account number, and balance in each account.
 - o **Cash** - value and location.
 - o **Vehicles** - including the year, make and model, vehicle identification number and value.
 - o **Real Estate** - homestead only (it **only** passes to a surviving spouse or minor children)
 - o **Stocks** - name of the stock, the number of shares, certificate number, and the value at death.
 - o **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.
 - o 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.
 - o Please indicate whether the assets are community or separate property.
 - o 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."

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 J. 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 K. Family History:

- Please read the instructions and complete the parts that are specific to the decedent's family history.

Section L. Distributees:

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

Signatures of Distributees:

- All distributees who are listed in Section L 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.

Disinterested Witnesses:

- Two disinterested witnesses who knew the family history must sign the Small Estate Affidavit in front of a notary. These witnesses must not have or be entitled to any share of the Decedent's assets.

Note:

- 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.**

******Payments by mail should be in the form of a cashier's check or money order payable to Montgomery County Clerk. Please call the clerk to find out the cost of filing. ******

Mailing address:

Montgomery County Clerk, Probate Department, P.O Box 959, Conroe, Texas 77305

To verify if Small Estate has been approved, you may call 936-539-7892 or search the link below.

<http://odyssey.mctx.org/County/Search.aspx?ID=200>

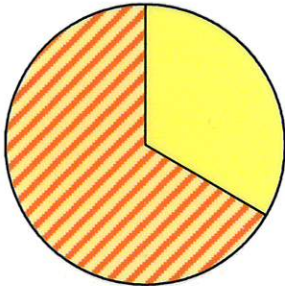
Texas Descent and Distribution¹

The Legal Effect of Not Having a Will (for decedents dying after 9/1/1993)

Compliments of Judge Guy Herman, Travis County Probate Court No. 1

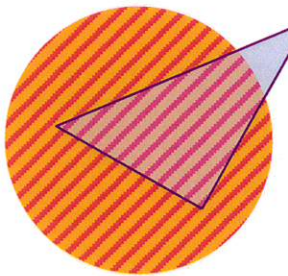
1. Married Person with Child[ren] or Other Descendants

A. Decedent's separate personal property (all that is not real property) (EC § 201.002(b))



- 1/3 to surviving spouse
- Children take 2/3 equally

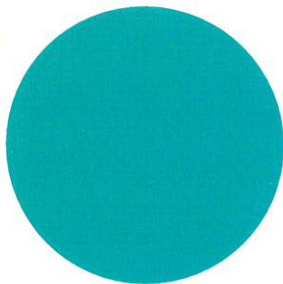
B. Decedent's separate real property (EC § 201.002(b))



- Surviving spouse gets 1/3 life estate
- Children take all equally, subject to surviving spouse's 1/3 life estate

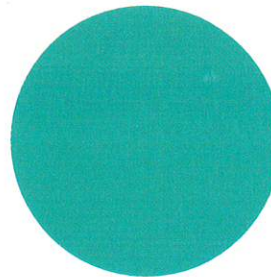
All separate real property will be owned outright by decedent's child[ren] or other descendants when surviving spouse dies.

C. Decedent's share of community property when all surviving children and descendants of deceased are also children or descendants of surviving spouse. (EC § 201.003(b)(2))



- All to surviving spouse

C. Decedent's share of community property when there are children or other descendants from outside of the existing marriage on the date of decedent's death (or if decedent died before September 1, 1993) (EC § 201.003(c))

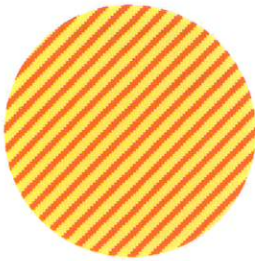


- All to children, who take equally
- Surviving spouse takes none, but retains own share

¹ The charts in this handout illustrate the general rules of descent and distribution under Texas law. In addition to the statutory references noted throughout, see the following Texas Estates Code (EC) provisions, among others: § 201.101, Determination of Per Capita with Representation Distribution (fka per stirpes); § 201.051 et seq., Matters Affecting Inheritance (including Adoption [§ 201.054] and Collateral Kindred of Whole and Half Blood [§ 201.057]); Advancements, §§ 201.151 & 201.152; and Requirement of Survival by 120 Hours, §§ 121.052 & 121.053 (see also §§ 121.151-121.153).

2. Married Person with No Child or Descendant

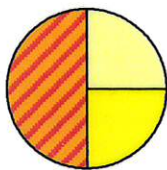
A. Decedent's separate personal property (all that is not real property) (EC § 201.002(c)(1))



■ All to surviving spouse

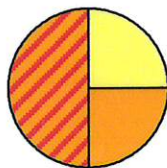
B. Decedent's separate real property (EC § 201.002)

If decedent is survived by **both** mother and father. EC §§ 201.001(c) & 201.002(c)(2) & (3).



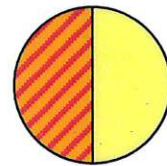
■ 1/4 to father
■ 1/4 to mother
■ 1/2 to surviving spouse

If decedent is survived (1) by mother **or** father **and** (2) by sibling(s) or their descendants. EC §§ 201.001(d)(1) & 201.002(c)(2) & (3).



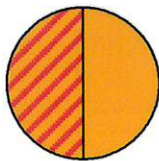
■ 1/4 to surviving parent
■ 1/4 to siblings, etc.
■ 1/2 to surviving spouse

If decedent is survived by mother **or** father, **but is not** survived by any sibling(s) or their descendants. EC §§ 201.001(d)(2) & 201.002(c)(2) & (3).



■ 1/2 to surviving parent
■ 1/2 to surviving spouse

If decedent is survived by neither parent, but **is** survived by sibling(s) or their descendants. EC §§ 201.001(e) & 201.002(c)(2) & (3).



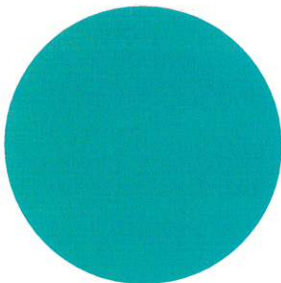
■ 1/2 to siblings, etc.
■ 1/2 to surviving spouse

If decedent is survived by no parent, no sibling, and no descendant of a sibling. EC § 201.002(d).



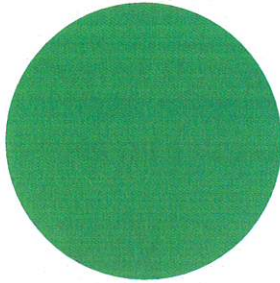
■ All to surviving spouse

C. Decedent's share of community property (EC § 201.003(b)(1))



■ All to surviving spouse

3. Unmarried Person with Child[ren] or Other Descendants (EC § 201.001(b))

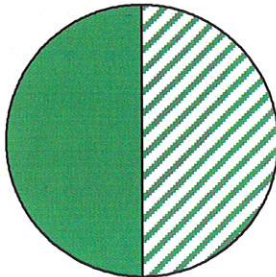


■ All to children,
who take equally

4. Unmarried Person with No Child or Descendant

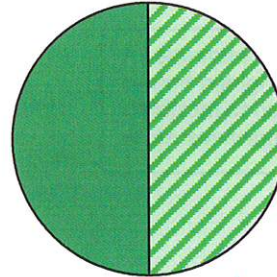
All property passes depending on who survived the decedent:¹

If decedent is survived by **both** mother and father. EC § 201.001(c).



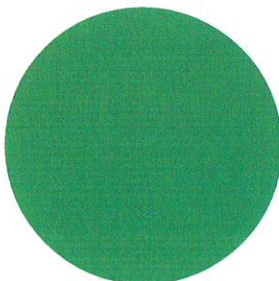
■ 1/2 of all property
to father
■ 1/2 of all property
to mother

If decedent is survived (1) by mother **or** father **and** (2) by sibling(s) or their descendants. EC § 201.001(d)(1).



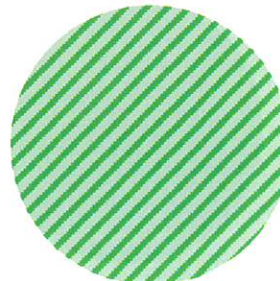
■ 1/2 to siblings or
to descendants
of deceased
siblings
■ 1/2 to surviving
parent

If decedent is survived by mother **or** father, **but is not** survived by any sibling(s) or their descendants. EC § 201.001(d)(2).



■ All to surviving
parent

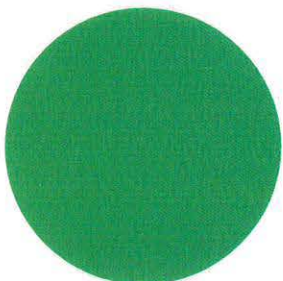
If decedent is survived by **neither parent**, but **is** survived by sibling(s) or their descendants. EC § 201.001(e).



■ All to siblings or
to descendants
of deceased
siblings

¹ If none of the four situations above applies, see EC § 201.001(f)-(h).

3. Unmarried Person with Child[ren] or Other Descendants (EC § 201.001(b))

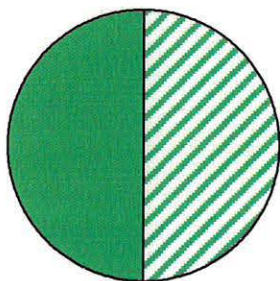


■ All to children,
who take equally

4. Unmarried Person with No Child or Descendant

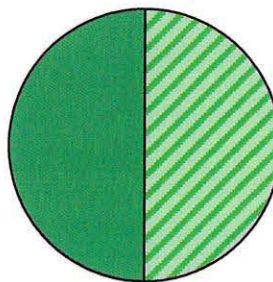
All property passes depending on who survived the decedent:¹

If decedent is survived by **both** mother and father. EC § 201.001(c).



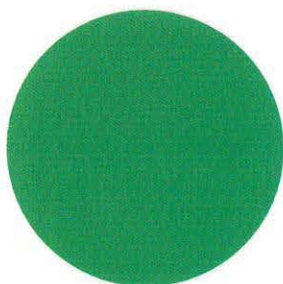
■ 1/2 of all property
to father
■ 1/2 of all property
to mother

If decedent is survived (1) by mother **or** father **and** (2) by sibling(s) or their descendants. EC § 201.001(d)(1).



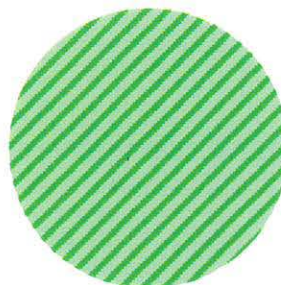
■ 1/2 to siblings or
to descendants
of deceased
siblings
■ 1/2 to surviving
parent

If decedent is survived by mother **or** father, **but is not** survived by any sibling(s) or their descendants. EC § 201.001(d)(2).



■ All to surviving
parent

If decedent is survived by **neither parent**, but **is** survived by sibling(s) or their descendants. EC § 201.001(e).



■ All to siblings or
to descendants
of deceased
siblings

¹ If none of the four situations above applies, see EC § 201.001(f)-(h).