

SMALL ESTATE AFFIDAVIT CHECKLIST

Texas Estates Code Chapter 205 deals with Small Estate Affidavits (SEA). SEA can only be filed in limited circumstances. Before filing an SEA, carefully review this checklist. See also the requirements for filing a SEA in Chapter 205 of the Texas Estates Code and the rules for descent and distribution in Chapter 201. To prepare an SEA that the Court can approve you, need to understand **ALL** of the rules and requirements. The complexity of the Code poses many pitfalls for persons attempting to comply with the requirements. An attorney's assistance in drafting an SEA may prevent the denial of an Affidavit that might have been approved had the affidavit been prepared properly.

This checklist explains the basics but does not cover everything included in Chapter 201 and 205 of the Texas Estates Code.

1. No Will. An SEA cannot be used if Decedent left a Will. If Decedent has a Will, you will need to use a different probate procedure.
2. No Administration. An SEA cannot be approved if a petition for the appointment of a personal representative is pending, has been granted, or if an administration is needed.
3. Value of Estate. The value of the entire estate, excluding homestead and exempt property, does not exceed \$75,000.00.
4. Cannot be filed within 30 days of a Decedent's death.
5. Transfer of Title. An SEA may not be used to transfer title to real property other than the Decedent's homestead.
6. Death Certificate. Tom Green County Courts require a death certificate to be filed with all probate applications, including SEAs. An easily readable copy is fine, just be sure to cross out the social security number.
7. County of Residence. An SEA should be filed in the County where the Decedent resided.
8. Assets. You must list all assets of the Decedent. Include a full description of each and every asset. List everything. Indicate the value of each asset as precisely as possible.
 - a. Bank accounts – name of bank, account number (last four digits), balance in each account
 - b. Cash
 - c. Vehicles – year, make, model, VIN, and value
 - d. Real Estate – homestead, include legal description and physical address
 - e. Stocks – name of stock, number of shares, certificate number, value
 - f. Safe Deposit Boxes

- g. Indicate if assets are community or separate property
 - h. Exempt property – as defined by Texas Estate Code Chapter 353.051 and Texas Property Code Chapter 42
9. Liabilities. List all liabilities or debts. The estate of the decedent must be solvent; the debts/liabilities must not exceed the value of the assets. Do not leave this section blank.
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 or (3) include additional information proving that a MERP claim will not be filed.
11. **LIST ALL HEIRS.**
- a. List the name, address, phone number, capacity, and interest of each distributee.
 - b. All distributees who are listed must sign in front of a notary.
 - c. Minor/Incapacitated distributee – the natural guardian or next of kin of any minor/incapacitated distributee may sign and swear to the affidavit on behalf of the minor/incapacitated distributee.
 - d. Distributee who survived Decedent, but who is now deceased - you cannot use an SEA if no personal representative has been appointed to a now-deceased distributee.
 - e. Missing distributee – if you cannot find a distributee, you cannot use the SEA probate procedure.
12. Sworn by two disinterested witnesses – two disinterested witnesses must each sign and swear to the affidavit before a notary.
13. Possible hearing. The court does not usually require a hearing to approve an SEA. If a hearing is needed, the Court will contact you for a setting.

CAUSE NO. _____

ESTATE OF	§	COUNTY COURT AT LAW _____
	§	
_____	§	OF
	§	
DECEASED	§	TOM GREEN COUNTY, TEXAS

SMALL ESTATE AFFIDAVIT

On the dates indicated below, all of the Distributees of this estate and two disinterested witnesses personally appeared and, on their oath, did swear of 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 at (*Address, City, County, State*) _____, at the time of Decedent's death. (*if not in Tom Green County, affidavit must include facts supporting venue in Tom Green County*)
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 – mark (X) on the appropriate statement:
_____ The Decedent did not apply for or 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 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.

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

Description of Assets	Account/ Identification number (last 4 digits)	Indicate Community or Separate Property	Exempt Property (yes or no)	Value
<i>Example: Wells Fargo</i>	<i>1234</i>	<i>Community</i>	<i>No</i>	<i>\$4,000.00</i>

10. The legal description of Decedent's homestead is:

Lot_____

Block_____

Physical Address_____

- *Chapter 205 of the Texas Estates Code does not affect the disposition of property under the terms of a Will or other testamentary document, nor does it transfer title to real property other than the Decedent's homestead.*

11. ALL known liabilities of the Decedent's estate are listed here

Description of Liabilities and Debts	Account/ Identification Number (last 4 digits)	Indicate Community or Separate Property	Balance Due
<i>Example: Capital One Credit Card</i>	<i>4321</i>	<i>Separate</i>	<i>\$4,000.00</i>

12. That the names, addresses, and telephone numbers of all distributees, and their right to receive money or property or to have such evidences of money, property, or other right, to the extent that the assets, exclusive of homestead and exempt property, exceed the known liabilities of the estate are as follows:

Names, addresses, and phone numbers of distributees (Inheritors)	Capacity in which claim is made	Portion of estate to which entitled (to be completed by court)	
<i>Example: Jane Doe, 2005 Separate Way, San Angelo, Texas 76901 (325) 123-4567</i>	<i>Daughter</i>	<i>Community share</i>	<i>Separate share</i>

Affidavits and signatures of ALL Distributee(s):

(as needed, include additional signature pages for all distributees)

Every signature page for a distributee must include the box below

We, as Distributees and as indicated by our signatures below, do solemnly swear or affirm the following:

- a. *The foregoing Affidavit was completed by persons who have actual knowledge of the stated facts*
- b. *All of the facts stated in the foregoing Affidavit are true and complete; and*
- c. *Each of us has legal capacity*

We pray that this Affidavit be filed in the records of the Tom Green County Clerk; that the same be approved by the Court; and that the Clerk issue certified copies of the Affidavit and the order approving it as evidence of Distributees' right to inherit the property of Decedent as described above.

We understand that Estates Code §205.007(c) provides that “each person who execute(s) [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”

STATE OF TEXAS §
COUNTY OF TOM GREEN §

I am a Distributee in the Estate of _____, Deceased. I swear or affirm that I have personal knowledge of the facts stated in the foregoing Affidavit and that the facts contained in the Affidavit are true and complete to the best of my knowledge.

Distributee's printed name

Distributtee's signature

SWORN TO AND SUBSCRIBED before me by _____ (name of Distributee), a Distributee, on this the _____ day of _____, 20____.

(seal)

Notary Public, State of _____

STATE OF TEXAS §
COUNTY OF TOM GREEN §

I am a Distributee in the Estate of _____, Deceased. I swear or affirm that I have personal knowledge of the facts stated in the foregoing Affidavit and that the facts contained in the Affidavit are true and complete to the best of my knowledge.

Distributtee's printed name

Distributtee's signature

SWORN TO AND SUBSCRIBED before me by _____ (name of Distributee), a Distributee, on this the _____ day of _____, 20____.

(seal)

Notary Public, State of

COUNTY OF TOM GREEN §
STATE OF TEXAS §

HEIRSHIP AFFIDAVIT

To be filled out and signed by two disinterested witnesses.

Note: A disinterested witness is someone who does not inherit from the decedent

Before me, the undersigned authority, on this day personally appeared _____
(first disinterested witness)
and _____, who being first by me duly sworn on oath state:
(second disinterested witness)

I. Witness Information

I, _____, reside at _____
(first disinterested witness) (address)
_____, _____ County, _____.
(city) (county) (state)

I am personally acquainted with the family history and facts of heirship of

_____, deceased, hereinafter called "Decedent" who
(name of deceased)

was my _____. I knew decedent for _____ years.
(relationship to decedent)

I, _____, reside at _____
(second disinterested witness) (address)
_____, _____ County, _____.
(city) (county) (state)

I am personally acquainted with the family history and facts of heirship of

_____, deceased, hereinafter called "Decedent" who
(name of deceased)

was my _____. I knew decedent for _____ years.
(relationship to decedent)

II. Decedent Information

Decedent died on _____, in _____ County,
(date of death) (county)

State of _____, without leaving a Will.

III. Marital History

(mark an X on statement that applies)

_____ Decedent was married to _____ on _____,
(surviving spouse) (date of marriage)
and remained married until decedent's death and was never divorced.

_____ Decedent was never married.

_____ Decedent was not married at the time of death but was married to _____
(name of spouse)
on _____, and was widowed/divorced on _____.
(date of marriage) (circle one) (date of termination of marriage)

IV. Family History

(mark an X on statement that applies)

_____ Decedent had no children

_____ Decedent had the following children by birth or adoption: (list all children living or deceased)

Name	Address	Age or Date of Death

Decedent never adopted any children nor cared for any children in the home other than the above named children.

Is the surviving spouse the biological or adoptive parent of all children listed above? ____Yes ____No

If any child of Decedent is deceased, list all children of the deceased child or children.

Name of Deceased child: _____

Children of Deceased Child

Name	Address	Age or Date of Death

Name of Deceased child: _____

Children of Deceased Child

Name	Address	Age or Date of Death

If decedent was not survived by children or grandchildren, then complete.

Parents of Decedent *(list both parents living or deceased)*

Name	Address	Age or Date of Death

If decedent was not survived by their parents or only one parent, then complete.

Brother(s) and/or Sister(s) of decedent *(list all sibling living or deceased)*

Name	Address	Age or Date of Death

If any brother(s) or sister(s) has predeceased decedent then complete.

Names of deceased brother/sister: _____

Children of Deceased Brother/Sister

Name	Address	Age or Date of Death

The above statements are true and correct.

Executed on _____
(date)

(Signature of first disinterested witness)

(Signature of second disinterested witness)

SWORN TO AND SUBSCRIBED before me, by _____
(print name of first disinterested witness)

on _____, to certify which witness my hand and seal of office.
(date)

(seal)

Notary Public in and for the State of Texas

SWORN TO AND SUBSCRIBED before me, by _____
(print name of second disinterested witness)

on _____, to certify which witness my hand and seal of office.
(date)

(seal)

Notary Public in and for the State of Texas

CAUSE NO. _____

ESTATE OF	§	COUNTY COURT AT LAW _____
	§	
_____	§	OF
	§	
DECEASED	§	TOM GREEN COUNTY, TEXAS

ORDER APPROVING
SMALL ESTATE AFFIDAVIT

On this day, the Court having considered the Small Estate Affidavit of the Distributee of this Estate, the Court finds that the Affidavit complies with the terms and provisions of Chapter 205 of the Texas Estates code, that this Court has jurisdiction and Venue, that this Estate qualifies under the provisions of the Estates Code of a Small Estate, and that the Affidavit should be approved.

It is therefore ORDERED, ADJUDGED, AND DECREED that the foregoing Affidavit be and is hereby APPROVED.

Signed this _____ day of _____, 20____.

Judge Presiding