

COUNTY COURT AT LAW NO. 1

SMALL ESTATE AFFIDAVIT INSTRUCTIONS / GUIDE

Before beginning the Small Estate Affidavit (the “SEA”), please review the following to determine if the SEA is proper to use in your situation.

Texas Estates Code Chapter 205 dealing with Small Estate Affidavits generates much confusion. Banks, insurance companies, and title companies often tell individuals to file an SEA without considering the limited circumstances in which an SEA can be granted. Individuals then fill out a form without reading the statute and without understanding Texas intestacy law. Many SEAs are denied for problems that cannot be corrected, and the denied applicant lose their filing fee. Many other SEAs cannot be approved without amendment. Approval of an SEA is within the Court’s discretion.

Before filing an SEA, carefully review these instructions/guide and the attached chart regarding Texas descent and distribution. See also the requirements for SEAs 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 will need to understand all of the rules and requirements. The complexity of the Code poses many pitfalls for non-lawyers – and even some lawyers – attempting to comply with the requirements. An attorney’s assistance in completing the SEA may prevent the denial of the Affidavit that might have been approved if the SEA had been prepared correctly.

These Instructions / Guide do not cover everything included in Chapters 201 & 205.

I. SEA DEFINITIONS

Form – Per the County Courts at Law Administrative Order dated September 30, 2014, all applicants shall use the Small Estate Affidavit located on the Courts’ website under Probate Forms/Information.

Decedent - The person who passed away (the deceased).

Domicile - a person's fixed, permanent, and principal home (i.e. where a person lives)

Distributee - Informally described as “next of kin”. When a person dies intestate (without a will) the decedent's distributees are generally entitled to receive the decedent's assets (pursuant to *Texas Descent and Distribution* laws).

Assets - Any property owned by decedent at the time of death that has any monetary value.

Liabilities - Any debts or financial obligations owed by Decedent.

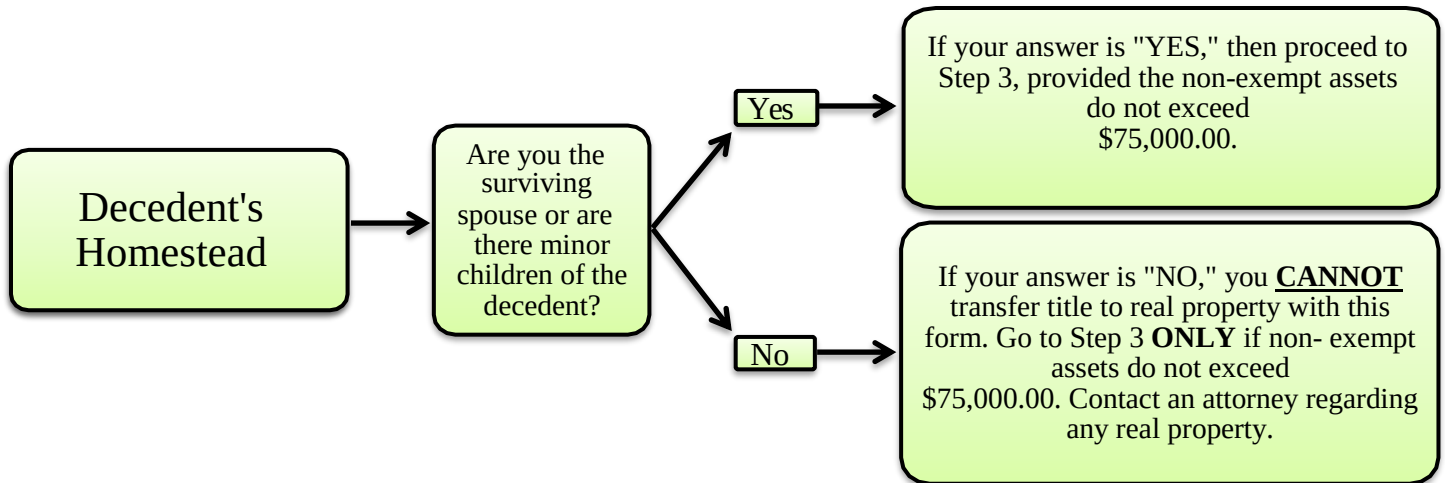
II. SEA GUIDE

STEP 1: DID THE DECEDENT DIE TESTATE (LEAVING A VALID WILL)?

If **YES**, you CANNOT use the Small Estate Affidavit.

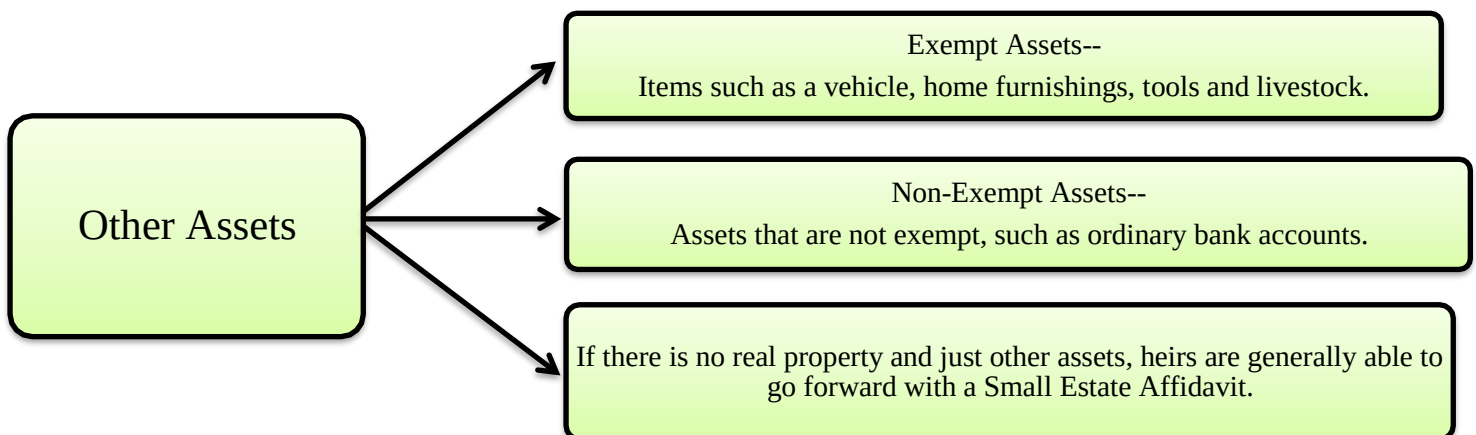
If **NO**, proceed to Step 2.

STEP 2: WHAT ARE YOU TRYING TO TRANSFER?



NOTE: THE SEA CANNOT 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: DO YOU HAVE TO LIST THE ASSETS?



NOTE: PLEASE INDICATE WHETHER THE PROPERTY/ASSETS ARE SEPARATE OR COMMUNITY PROPERTY.

Separate Property – Property owned before the 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.

III. SEA INSTRUCTIONS

Sections A-G. General Information

- A. It is important that the full name of the deceased person, the date of death, and the county of death be shown in the form.

- B.** No form should be completed or filed until thirty (30) days have elapsed since death.
- C.** Where did decedent live? (Please include county of residence).
- D.** The SEA must state whether the person died intestate (without leaving a Will).
- E.** Please confirm that a petition for the appointment of a personal representative is not pending nor has one been granted.
- F.** The value of the *entire* estate, not including homestead and exempt property, does not exceed \$75,000.
- G.** The value of the *entire* estate, not including homestead and exempt property, exceeds the known liabilities.

Section H. Medicaid

In this section, you must indicate whether the Decedent applied for and/or received Medicaid benefits on or after March 1, 2005. Please check the box that applies.

Section I. Assets

You *must* list ALL the assets of the Decedent with a full description of each and every asset belonging to the Decedent at the time of death. Assets are any property owned that has monetary value, including:

Bank accounts – name of the bank, last three digits of the 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 – Decedent's homestead is the only property that can be transferred by an SEA; even then an SEA cannot transfer homestead to someone who wasn't homesteading with decedent when decedent died.

Stocks – name of the stock, the number of shares, last three digits of the certificate number, and the value at death (if within the last year).

Safe Deposit Boxes – if the Decedent had one, an Application to Open Safe Deposit Box and Examine Papers must be filed with the Court. Once opened, the applicant shall present the Court with an Inventory of what is in that box with a proper description and value of each item recovered.

Applicant must identify any claimed exempt property (as defined by Texas Estates Code § 353.051 and Texas Property Code Chapter 42).

It is very important to indicate the value of each asset as precisely as possible. The SEA cannot be approved with any asset of "unknown value." Please indicate whether the assets are community or separate property.

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 indicate that no liability or debts exist in this section. Do not leave this section blank.

Section K. Family History

The applicant shall provide all necessary information relating to Decedent's family as completely as possible. Do not leave out any information. Do not fail to complete this section.

Section L. Distributees

List the name, address, telephone number, and email address of all distributees. Be sure to include the capacity and interest (share of property) of each distributee. See [Texas Descent and Distribution Chart](#) on Fort Bend County's website. Heirships shall be required upon a distributees death prior to filing of this form.

Affidavits and Signatures of Distributees

All distributees who are listed in Section "L" shall sign in front of a notary. Missing distributees shall require an Heirship. If the distributee is a minor, the form must be signed by a natural parent of the minor, a court appointed guardian with a copy of letters of guardianship attached, or by the court appointed managing conservator with judgment papers attached. The SEA also requires that they print their names.

Affidavits and Signatures of Disinterested Witnesses

This Small Estate Affidavit shall be signed in front of a Notary Public, by two disinterested witnesses who had significant knowledge of Decedents family history.

IV. WHAT'S NEXT

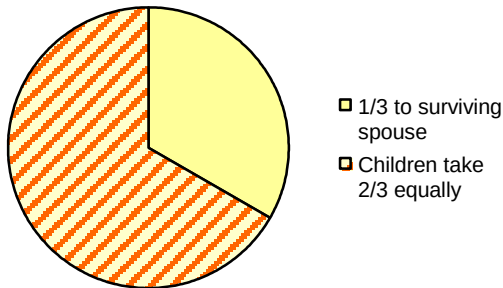
1. File the completed SEA and Order and pay all required fees.
2. Deliver or file a Certified/Original Death Certificate to the Probate Auditor of the Court of record.
(The Original will be returned upon approval or destroyed)
3. Some Courts may require a hearing. The Court will contact you to set a hearing if needed.
4. Allow the Court sufficient time to review the SEA.

Texas Descent and Distribution¹

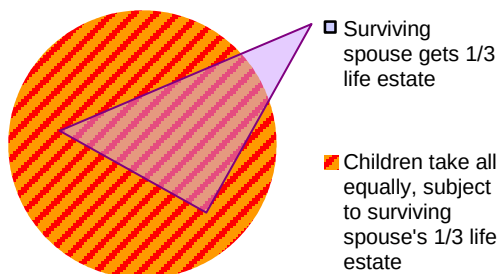
The Legal Effect of Not Having a Will (for decedents dying after 9/1/1993) **Compliments of Judge Christopher G. Morales, Fort Bend County Court at Law No. 1**

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))

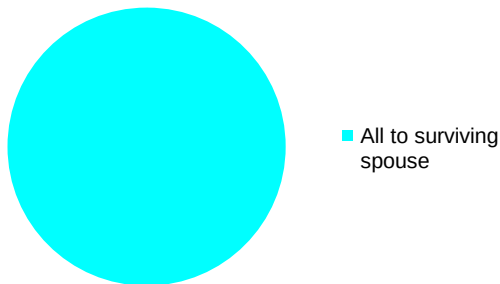


B. Decedent's separate real property (EC § 201.002(b))

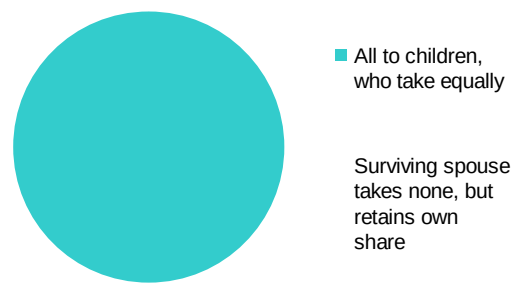


All separate real property will be owned outright by decedent's child[ren] or other descendants when surviving spouse dies.

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))



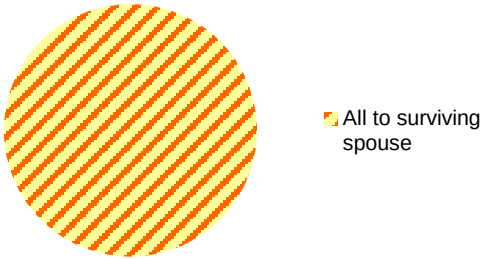
C. Decedent's share of community property when there are children or other descendants from outside of the existing marriage on the date of decedent's death (or if decedent died before September 1, 1993) (EC § 201.003(c))



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

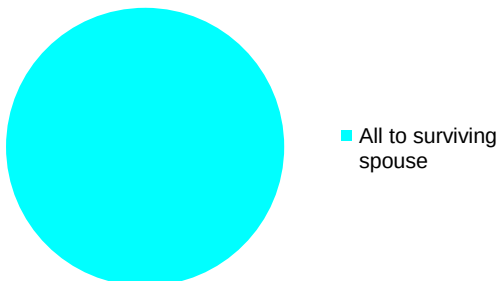
A. Decedent's separate personal property (all that is not real property) (EC § 201.002(c)(1))



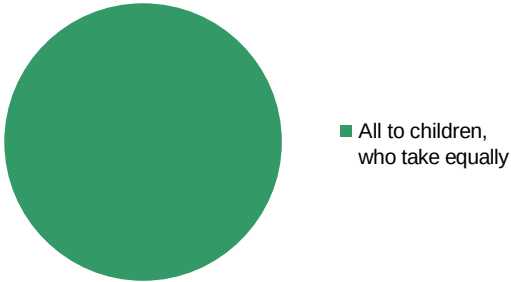
B. Decedent's separate real property (EC § 201.002)

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))



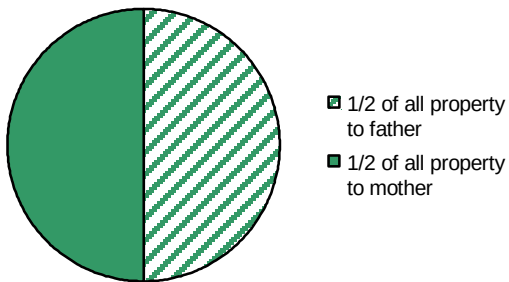
3. Unmarried Person with Child[ren] or Other Descendants (EC § 201.001(b))



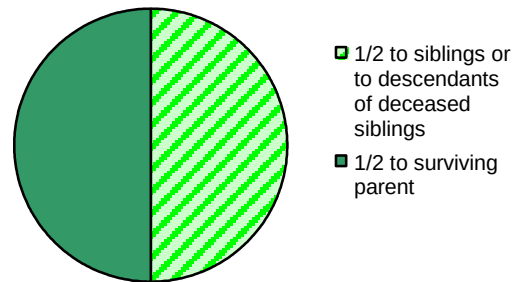
4. Unmarried Person with No Child or Descendant

All property passes depending on who survived the decedent:¹

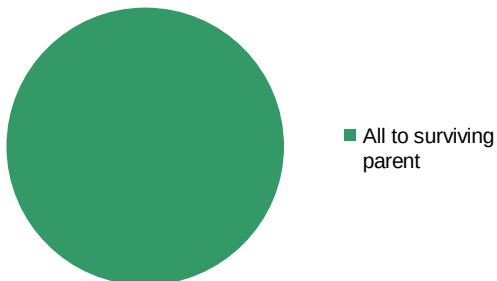
If decedent is survived by **both** mother and father. EC § 201.001(c).



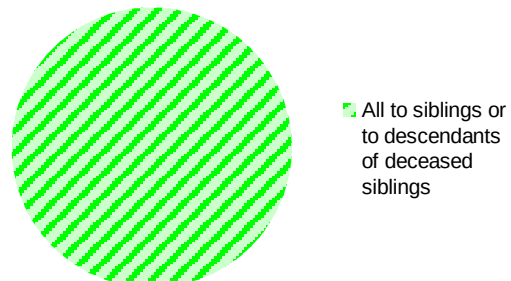
If decedent is survived (1) by mother **or** father **and** (2) by sibling(s) or their descendants. EC § 201.001(d)(1).



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



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



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