



The Supreme Court of Texas

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July 26, 2023

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
cbabcock@jw.com

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters.

Small Estate Affidavit Kit and Muniment of Title Kit. In response to SB 512, passed by the 84th Legislature, the Court established the Probate Forms Task Force to draft forms for use by individuals representing themselves in certain probate matters. On July 6, 2023, the Task Force submitted a report and a proposed kit of forms for (1) a small estate affidavit proceeding and (2) the probate of a will as a muniment of title. The report and kits are attached to this letter. The Committee should review and make recommendations.

Permissive Appeals. In the attached emails, Chief Justices Christopher and Worthen suggest changes to the procedures for permissive appeals. The Committee should review and draft any recommended amendments.

As always, the Court is grateful for the Committee's counsel and your leadership.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan L. Hecht".

Nathan L. Hecht
Chief Justice

Attachments

Supreme Court of Texas Probate Forms Task Force

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Chair

Hon. Polly Jackson
Spencer

Members

Mr. Carlos Aguiñaga
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Ms. Julie Balovich
Mr. Craig Hopper
Ms. Cathy Horvath
Mr. Jerry Jones
Hon. Steve M. King
Ms. Trish McAllister
Ms. Christy Nisbett
Ms. Arielle Prangner

Supreme Court of Texas Liaison

Hon. Eva M. Guzman

Supreme Court of Texas Staff Representative

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June 27, 2023

Justice Brett Busby
The Supreme Court of Texas
Supreme Court Building
201 West 14th Street, Room 104
Austin, Texas 78701

RE: Report to the Supreme Court of Texas, Misc. Docket No. 16-9003

Dear Justice Busby and Justices of the Supreme Court of Texas:

The members of this task force appointed by the Supreme Court on January 21, 2016, are Judge Polly Jackson Spencer as chair, Carlos Aguinaga, Barbara McComas Anderson, Julie Balovich, Craig Hopper, Cathy Horvath, Jerry Frank Jones, Judge Steve M. King, Trish McAllister, Christy Nisbett, and Arielle M. Prangner. Of our original group, Christy Nisbett retired. Julie Balovich and Cathy Horvath both took different jobs but remained actively involved in the second phase of our assignment, the preparation of Muniment of Title Forms and Small Estate Affidavit Forms. We have continued to meet almost monthly either in person or by Zoom to work on this project, although the pandemic did interfere with our work as it did with basically everyone else's work. We also experienced quite a bit of turnover in the support people who have worked with us with a resulting loss of some of our work.

The process continues to be interesting, challenging, and educational but also much more difficult and time-consuming than any of us anticipated. Our committee consists of very detail-oriented people from different backgrounds – estate planning attorneys, Legal Aid attorneys, judges, and clerks – all of whom see problems relating to the use of these forms from different perspectives. We have tried to accommodate the concerns raised by each of us in drafting this second set of forms while keeping in mind our mandate to write forms in “plain language” for people to complete without the assistance of an attorney.

Preparation of the Muniment of Title Forms was perhaps the easiest of our assignments. We developed an application which we believe meets the statutory requirements and several affidavits that might be required at the time of a hearing with instructions regarding when those affidavits would be used. In the Instructions, we tried to explain and guide people to places where they could make determinations about the types of wills they might be trying to have probated, such as handwritten, witnessed, and/or self-proved wills. We also tried

to point people to some pitfalls they might encounter in doing this without an attorney, such as some other need for administration (a reason that probate as a muniment might not be appropriate), the fact that a MERP claim might exist and constitute a debt of the estate, and certain local rules which might have different requirements from those of other courts.

The Small Estate Affidavit forms were quite a bit more challenging. Trying to explain to lay people the differences between separate and community property as well as the nuances of Texas intestacy laws regarding the disposition of such property when there are children from more than one relationship, children who have been adopted by another, children for whom parental rights have been terminated, inheritance rights for half-siblings as opposed to full blood siblings and the potential overlay of homestead rights along with exempt property and associated rights is very difficult. Rather early into the development of these forms, we simply decided that the adopted child and half-sibling issues along with the concept of dividing property into paternal and maternal moieties was beyond anything that should be addressed by *pro se* people and referred them to an attorney. We initially developed some demonstrative charts as visuals for division of intestate property, but the charts became so complicated that even we could not understand them. They were discarded and simpler ones were developed by two members of the committee – Julie Balovich and Cathy Horvath. In our Instructions, we tried to include examples of how to complete the forms in a variety of family situations with different types of property, both separate and community and exempt and non-exempt.

We are pleased to present these forms to the Court as a product into which much time, thought and effort has gone. We recognize that the forms will be reviewed and likely revised by the Court. We also recognize that no form will be perfect and that they will probably be revised from time to time as the public uses them and provides information about their ease of use and general value. I speak for all of us when I say we would like to discuss any revisions the Court makes. I know I speak for all of us when I say that it has been an honor for us to be asked to be a part of this important work and this task force. We are now working on the final part of our assignment – development of TODD forms - and hope to provide those to the Court within the next few months.

Very truly yours,



Hon. Polly Jackson Spencer
Chair

**PROBATE OF WILL AS A MUNIMENT OF TITLE
INSTRUCTIONS**

(Texas Estates Codes §§ 257.001-257.103)

These instructions do not give legal advice and are not a substitute for the advice of a lawyer.

Normally, a Will has to be probated in court and an executor or an administrator appointed to carry out the wishes of the person who died, also called the “Decedent.” But sometimes a simpler process can be used to probate the Will as a “Muniment of Title.”

Recording certified copies of the Will and the Order as instructed below is a way to prove that the ownership of property has changed from the Decedent to the person or persons named in the Will. There is no separate deed.

Under this simpler process, an application to probate the Will is still filed in the court, and a hearing held, but no administrator or executor is appointed. These instructions explain when this simpler process can be used. These forms may be used if ALL of the following are true:

- Decedent had a Will that was never cancelled (“revoked”), **and** you have the original Will.
- Decedent’s only unpaid debt is secured by liens on real property (for instance, a mortgage).
- No children were born to or adopted by the Decedent after the Will was signed.
- Decedent died less than 4 years ago.
- The Will lists all beneficiaries by name.
- There is no Medicaid Estate Recovery Program (MERP) claim. *See Instruction 8.*
- There is no other need for an administration of the estate. *See Instruction 16.*

If one or more of the above are not true, these forms may not be appropriate. It may still be possible to have the Will probated, but you should contact an attorney.

You will need to file the original Will with the court. If you cannot file the original Will with the court, contact an attorney.

Included with these instructions are the following forms:

1. **Application to Probate Will as a Muniment of Title.** *You will need to complete this form to file with the original Will at the County Clerk’s office.*
2. **Testimony for Hearing (“Proof of Death and Other Facts”).** *You will always need to complete this form to be signed at the time of the hearing. Normally it will be the Applicant who signs this; however, it may be anyone who has personal knowledge of the facts set out in the form.*
3. **Testimony by a Subscribing Witness.** *This form may only be necessary in certain circumstances, such as when the Will is not self-proved.*
4. **Testimony Concerning Decedent’s Handwriting and Signature.** *This form may only be necessary in certain circumstances such as when the Will is entirely in the Decedent’s handwriting or is not self-proved.*

5. **Order Admitting Will to Probate as a Muniment of Title.** *You will always need to complete this form to have it available for the judge to sign at the time of the hearing.*
6. **Affidavit of Compliance.** *Unless waived by the judge, you will have to file this form to indicate which terms of the Will have been fulfilled and which terms remain unfulfilled.*

CAUTION: *If there is a gift in the Will to anyone other than you, some courts may have restrictions on how the muniment application can be used. For example, many courts require the signature of all beneficiaries. You may want to check with the County Clerk before filing to find out if there are any local rules. You may need to contact an attorney.*

These instructions do not give legal advice and are not a substitute for the advice of a lawyer.

Read these instructions carefully.

Instructions – Application for Probate of Will as a Muniment of Title

Top Part of the Form/Heading:

- *Cause Number* – Leave this blank. The County Clerk’s office will fill in the Cause Number when you file this form.
- *Estate of* – Write Decedent’s name as written in the Will. You may also wish to include other names by which Decedent was known.
- *In _____ Court* – Leave this blank. The County Clerk’s office will fill in the Court when you file this form.
- *_____ County, Texas* – Write in the name of the county where you are filing the application.

In the first sentence, write YOUR name as Applicant in the first blank and Decedent’s name in the second blank.

1. Write your name and your street address in the appropriate blanks.
2. You must have an interest in the estate such as a beneficiary named in the Will, or you are the executor named in the Will.
3. Write the last three digits of YOUR Social Security number and driver’s license number. Write which state gave you your driver’s license. If you do not have either of these, check the correct box.
4. Write the last three digits of Decedent’s Social Security number and driver’s license number. Write which state gave Decedent a driver’s license. If Decedent did not have either of these OR you don’t know the number, check the correct box.

5. Write the names of the county and state where Decedent was a resident at the time of the Decedent's death. If Decedent resided outside of Texas, check the box and explain why you are filing in this county.

If Decedent LIVED in Texas:

File the muniment application with the County Clerk of the county where Decedent lived. This is the county where Decedent had a home, even if they were living elsewhere at death, like in a nursing home or with a child.

If Decedent DID NOT LIVE in Texas, the county where the application should be filed is based on where the Decedent died:

- If Decedent died in Texas, file the muniment application with the County Clerk of:
 - the County where Decedent's principal estate was located; or
 - the County where Decedent died.
 - If Decedent died outside of Texas, file the muniment application with the County Clerk of:
 - the County where Decedent's next of kin live; or
 - If there is no next of kin in Texas, the County where Decedent's principal estate is located.
6. Write how old Decedent was at death, if you know that.
 7. Write when and where Decedent died.
 8. Medicaid Estate Recovery Program ("MERP"):

Check the applicable box on the application.

Claims for Medicaid recovery in Texas are debts of the estate. If Decedent applied for and received Medicaid benefits (or similar needs-based government benefits subject to repayment) on or after March 1, 2005, then the Medicaid Estate Recovery Program ("MERP") may have a claim against the estate. The court must receive evidence at the hearing that no claim exists **or that the claim was waived. NOTE: This does not refer to Medicare benefits.**

If such benefits were received, a court may require a certification from the Health and Human Services Commission that administers the Medicaid program in Texas. For more information and to obtain the certification, visit the website of the Texas Health and Human Services Commission: <https://www.hhs.texas.gov> and search for "MERP Certification Form."

9. Write how much Decedent's property is worth based on how much money you believe it could be sold for. Check the box for each type of property Decedent had:
- Real property:** Real property includes land and improvements, such as a house or mobile home designated as real property. It also includes oil, gas, and other mineral rights.
 - Personal property:** Personal property includes, but is not limited to, cash and bank accounts, stocks and bonds, clothing, household furnishings, vehicles, and jewelry.
10. Write the date of Decedent's Will. If the date of the Will is unknown, write "UNKNOWN" in the blank for the date.

Check the applicable box on the application.

If Decedent's Will is **ENTIRELY** handwritten by the Decedent, check the first box. The Will MUST be written and signed in only Decedent's handwriting. You will need to bring two (2) copies of the "Testimony Concerning Decedent's Handwriting and Signature" form and bring two witnesses who are familiar with Decedent's handwriting and signature to the hearing to provide testimony and sign the form.

If Decedent's Will was signed by two witnesses and the Decedent, check the second box and write the witnesses' names in the blanks. If any of the witnesses are beneficiaries in the Will, contact an attorney.

If Decedent's Will was not written **ENTIRELY** in Decedent's handwriting and was NOT signed by at least two witnesses, contact an attorney.

11. Check the applicable box on the application.

If Decedent's Will is self-proved, check the first box. A Will is self-proved if Decedent and two witnesses all signed the Will in front of a notary public, and there is a notarized statement that contains the facts and is in a form like those found in Texas Estates Code, §§ 251.104 and 251.1045.

If Decedent's Will is not self-proved, check the second box. If the Will is not self-proved, you will need to bring the "Testimony by Subscribing Witness" form and bring one of the witnesses who signed the Will to the hearing to provide testimony and sign the form. If none of the subscribing witnesses are able to attend the hearing, you will need to bring two (2) copies of the "Testimony Concerning Decedent's Handwriting and Signature" form and bring two witnesses who are familiar with Decedent's handwriting and signature to the hearing to provide testimony and sign the form.

12. Write the name and street address of the first living person named as executor in the Will.

13. You are stating that no children were born to or adopted by Decedent after the Will was signed.

You do not need to add any information here, but this must be a true statement. If any children were born to or adopted by Decedent after the Will was signed, **STOP HERE** and contact an attorney.

14. Check the applicable box on the application.

Check the first box if:

- a. Decedent was not married when the Will was signed and did not later get married,
- b. Decedent was not married when the Will was signed, got married, and was still married to that person at death, or
- c. Decedent was married when the Will was signed, and still married to that person at death.

Check the second box if:

- Decedent was married when the Will was signed but was NOT married to that person at death. Write the spouse's name and the date the marriage ended. *This would apply if the Decedent's spouse died after the date of the Will but before the Decedent died, or if a marriage of the Decedent was dissolved after the date of the Will by divorce or annulment.*

IMPORTANT: If Decedent was married at death, the spouse may have legal rights that might affect the distribution of the estate.

15. You are stating that at the time of filing this application, Decedent's only unpaid debts are secured by liens on real estate, like a mortgage. You do not need to add any information here, but this must be a true statement. If there are other debts, they must be paid off or resolved prior to filing.

16. You are stating that at the time of filing this application, an administration of the estate is not necessary.

Examples of situations that *may require* an administration include, but are not limited to:

- the need for a court-approved inventory,
- the need to take legal action to collect estate assets,
- a stock transfer agent or financial institution requirement,
- a title company requirement for real property transactions,
- an insurance company requirement,
- the need to sue on behalf of the estate,
- the need to defend the estate from lawsuits, or
- there is a MERP claim against the estate.

17. Check the applicable box on the application.

Check the first box if the Will does not name a charity or the State of Texas or any agency of the State as a beneficiary.

Check the second box if the State of Texas, any agency of the State of Texas (which includes Texas state colleges and universities), or a charity (which includes other colleges and universities) is a beneficiary. Write the name of each charitable or State beneficiary in the blank.

18. If you were not able to answer any of the questions, explain why not in the blank.

WHAT NOW?

- 1) Go to the County Clerk's office to file your muniment application. Take with you:
 - a. Original Will
 - b. Completed "Application for Probate of Will as a Muniment of Title" form
 - c. Filing Fee. Look on the Clerk's website or call the Clerk to find the filing fee and accepted methods of payment. If you do not have money to pay the court fees, you may qualify for a fee waiver. See <https://www.txcourts.gov> for the form "Statement of Inability to Afford Payment of Court Costs or an Appeal Bond."
 - d. Original Death Certificate or other form of proof of death if required by the court.

- 2) Check with your court to:
 - a. Get a court date and time;
 - b. Learn the manner of hearing (in person or remotely via computer or phone);
 - c. Find out what documents need to be sent to the court before the hearing;
 - d. Determine if any documents need to be signed in advance;
 - e. Determine if there are any local rules or other guidance available; and
 - f. Be prepared to appear at the hearing with any other witnesses whose testimony is required.

- 3) After the hearing:
 - a. Get certified copies of the Will and the signed Order Admitting Will to Probate as a Muniment of Title.
 - b. A beneficiary may use the certified copies of the Will and the Order Admitting Will to Probate as a Muniment of Title to collect property and money due to a beneficiary under the terms of the Will.
 - c. If the estate includes real property and title to real property is changed by the Order Admitting Will to Probate as a Muniment of Title and the Will, certified copies of both documents will need to be recorded in the Official Public Records of each county where real property is located.
 - d. Complete and file the "Affidavit of Compliance" form if the Court did not waive the filing. The "Affidavit of Compliance" form must be filed within 180 days of the date the Order Admitting Will to Probate as a Muniment of Title was signed.

CAUSE NUMBER _____

ESTATE OF

IN

PROBATE COURT

COUNTY COURT

COUNTY COURT AT LAW

_____,

NO. _____

DECEASED

_____ COUNTY, TEXAS

Application for Probate of Will as a Muniment of Title

TO THE HONORABLE JUDGE OF SAID COURT:

_____ ("Applicant") provides the following information to the Court for the probate of the written Will of _____ ("Decedent") as a Muniment of Title:

1. My name and street address are: _____

Name

Street Address

City

State

ZIP

2. I have an interest in this estate or I am the Executor named in the Will.

3. The last three digits of my Social Security number are: _____.

OR

I do not have a Social Security number.

The last three digits of my driver's license are: _____. State issuing license: _____.

OR

I do not have a driver's license.

4. The last three digits of Decedent's Social Security number are: _____.

OR

Decedent did not have a Social Security number or I do not know Decedent's Social Security number.

The last three digits of Decedent's driver's license are: _____. State issuing license: _____.

OR

Decedent did not have a driver's license or I do not know Decedent's driver's license number.

5. Decedent was a resident of _____ County, _____, at the time of death.
County State

Check if applicable:

Decedent was not a resident of Texas at the time of death, and I am filing in this court because: _____.

6. Decedent died on _____, in _____, _____, _____.
Date City County State

7. Decedent died at the age of _____ (if known).
Age

8. **Check ONE:** *See #8 in Instructions.*

Decedent did not apply for, or receive, Medicaid benefits (or similar needs-based government benefits subject to repayment) on or after March 1, 2005.

OR

Decedent received Medicaid benefits (or similar needs-based government benefits subject to repayment) on or after March 1, 2005, but Applicant will provide the court with a MERP certification which states that Decedent's estate owes no money to the State of Texas as a result of the payment of those benefits.

9. Decedent owned property with an estimated value of \$_____. The property can generally be described as:

Check all that apply: *See #9 in Instructions.*

- real property
- personal property

10. Decedent left a valid written Will, dated _____ (if known), that was never revoked and is filed with this application, and was:

Check ONE: *See #10 in Instructions.*

written and signed entirely in Decedent's handwriting.

OR

signed by Decedent and at least two witnesses.

The names of the witnesses who signed the Will are

_____ and _____.

If any of the witnesses are beneficiaries, STOP HERE and contact an attorney.

11. Check ONE: *See #11 in Instructions.*

The Will is self-proved in the manner provided by law.

OR

The Will is not self-proved. *See instructions about additional requirements.*

12. The Will named _____ as executor, whose street address is _____.
Street Address City State ZIP

13. No children were born to or adopted by Decedent after the Will was signed. *If this is not true, see #13 in Instructions.*

14. Check ONE: *See #14 in Instructions.*

No marriage of the Decedent ended after the Will was signed.

OR

After the Will was signed, Decedent's marriage to _____ ended on _____.

If more than one marriage ended after the Will was signed, add additional pages.

15. Decedent's only unpaid debts, if any, are secured by liens on real estate.

16. An administration of the estate is not necessary. *See #16 in Instructions.*

17. Check ONE: *See #17 in Instructions.*

Neither the State of Texas, nor any agency of the State, nor any charitable organization is named by the Will as a beneficiary.

OR

The State of Texas, an agency of the State, or a charitable organization is named by the Will as a beneficiary. *Write the name of each:*

18. If any information requested above is missing, explain why: _____

(Attach separate sheet if necessary.)

I ask that citation issue as required by law; the Will be admitted to probate as a Muniment of Title without any administration; and such other orders be made as the Court may deem proper.

Respectfully submitted,

Signature

Printed Name

Telephone

E-mail

Applicant Pro Se

CAUSE NUMBER _____

ESTATE OF

IN PROBATE COURT

COUNTY COURT

COUNTY COURT AT LAW

_____,

NO. _____

DECEASED

_____ COUNTY, TEXAS

Testimony for Hearing
("Proof of Death and Other Facts")

On this day, _____ personally appeared in open court, was sworn, and made the following statements:

1. My name and street address are:

Printed Name

Street Address

_____ *City* _____ *State* _____ *ZIP*

2. Decedent _____ (Name of Person who Died), died on _____ (Date of Death) in _____ (City), _____ County, _____ (State), at the age of _____, and Decedent died less than four years before the application was filed.

3. The jurisdiction and venue facts set forth in the muniment application are correct.

4. The document, now shown to me and which is dated _____ (if known), and which purports to be Decedent's Will, was never revoked so far as I know.

5. No child or children were born to or adopted by the Decedent after the date of this Will.

6. Check One:

No marriage of Decedent ended after the date the Will was signed.

OR

After the Will was signed, Decedent's marriage to _____ ended on _____. *If more than one marriage ended after the will was signed, add additional information.*

7. The only unpaid debts, if any, are secured by liens on real estate and there is no need for an administration of Decedent's estate.

8. Check One:

Decedent did not apply for, or receive, Medicaid benefits on or after March 1, 2005.

OR

Decedent received Medicaid benefits on or after March 1, 2005, but Applicant has provided the court with a MERP certification which states that Decedent's estate owes no money to the State of Texas as a result of the payment of those benefits.

9. Check One:

Neither the State of Texas, nor any agency of the State, nor any charitable organization is named by the Will as a beneficiary.

OR

The State of Texas, an agency of the State, or a charitable organization is named by the Will as a beneficiary.

Signature

STATE OF TEXAS
COUNTY OF _____

Subscribed and sworn to before me by the Witness identified above on
_____, 20____.

Court Clerk or Notary Public

(Court or Notary Seal)

CAUSE NUMBER

ESTATE OF

IN

PROBATE COURT

COUNTY COURT

COUNTY COURT AT LAW

DECEASED

NO. _____

_____ COUNTY, TEXAS

Testimony by Subscribing Witness

(Use only if Will is not self-proved)

On this day, _____ personally appeared in open court, was sworn, and made the following statements:

1. My name and street address are:

_____ *Printed Name*

_____ *Street Address*

_____ *City* _____ *State* _____ *ZIP*

2. I was a witness to the Will of _____ (“Decedent”); the Will is dated _____ (if known);

3. I knew Decedent to be the person who signed the Will;

4. Decedent told me and the other witness that Decedent signed this document as Decedent’s Will;

5. All witnesses signed our names in front of Decedent because Decedent asked us to;

6. At that time, Decedent was at least eighteen (18) years of age and was of sound mind; and

7. At that time, all witnesses were at least fourteen (14) years old.

_____ *Signature*

STATE OF TEXAS

COUNTY OF _____

Subscribed and sworn to before me by the Witness identified above on

_____.

_____ *Court Clerk or Notary Public*

Court or Notary Seal

Testimony by Subscribing Witness

CAUSE NUMBER _____

ESTATE OF

IN

PROBATE COURT

COUNTY COURT

COUNTY COURT AT LAW

_____,
DECEASED

NO. _____

_____ COUNTY, TEXAS

Testimony Concerning Decedent's Handwriting and Signature

On this day, _____ personally appeared in open court, was sworn, and made the following statements:

1. My name and street address are:

Printed Name

Street Address

_____ *City* _____ *State* _____ *ZIP*

2. With regard to the document now shown to me, dated _____ (if known) and which states that it is the Will of _____, ("Decedent"):

- a. I personally knew Decedent during Decedent's lifetime and on the date that the Will was signed;
- b. When the Will was signed, Decedent was at least eighteen (18) years of age and was of sound mind;
- c. I am familiar with the handwriting and signature of Decedent;
- d. The Will was signed by Decedent; and
- e. If the Will is handwritten, it is written **entirely** in Decedent's own handwriting.

Signature

STATE OF TEXAS

COUNTY OF _____

Subscribed and sworn to before me by the Witness identified above on

_____.

Court Clerk or Notary Public

Court or Notary Seal

CAUSE NUMBER _____

ESTATE OF

IN PROBATE COURT
 COUNTY COURT
 COUNTY COURT AT LAW
NO. _____

_____,
DECEASED

_____ COUNTY, TEXAS

Order Admitting Will to Probate as a Muniment of Title

On this day the Court heard the Application for Probate of Will as a Muniment of Title filed by _____ (“Applicant”) in the Estate of _____, (“Decedent”). The Court, having heard the evidence and having reviewed the Will and other documents filed herein, finds that:

1. This Court has jurisdiction and venue over this estate, proceeding, and subject matter;
2. Every citation and notice required by law has been issued, served and returned in the manner and for the length of time required by law;
3. Decedent died on _____, at the age of _____ (____) years in _____ City, _____ County, State of _____ and the Application to probate the Will was filed less than four years after Decedent’s death;
4. Decedent left a written Will dated _____ (if dated), executed with the formalities and solemnities and under the circumstances required by law to make it a valid Will ("the Will"); that on such date, Decedent had attained the age of 18 years, and was of sound mind; that the Will was not revoked by Decedent;
5. Check ONE:
 Neither the State of Texas, nor any agency of the State, nor any charitable organization is named in the Will as a beneficiary;
OR
 The State of Texas, an agency of the State, or a charitable organization is named in the Will as a beneficiary as set forth in the Will;
6. No objection to or contest of the Will has been filed;
7. All of the necessary proof required for the probate of the Will has been made;
8. The Will is entitled to probate;

9. Check ONE:

Decedent did not apply for, or receive, Medicaid benefits (or similar needs-based government benefits subject to repayment) on or after March 1, 2005;

OR

Decedent received Medicaid benefits (or similar needs-based government benefits subject to repayment) on or after March 1, 2005, but Applicant has provided the court with a MERP certification which states that Decedent's estate owes no money to the State of Texas as a result of the payment of those benefits;

10. There are no unpaid debts owed by the Decedent's estate, excluding debts secured by liens on real estate;

11. There is no necessity for an administration in this estate; and

12. The Will should be admitted to probate as a Muniment of Title.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. Decedent's Will dated _____ (if dated) is admitted to probate as a Muniment of Title only.
2. The Clerk of this Court is ordered to record the Will, together with the application for probate and the testimony given in these proceedings, in the Judge's Probate Docket of this Court.
3. This order shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the Decedent's estate and to persons purchasing from or otherwise dealing with the estate, for payment or transfer to the persons described in this Will as entitled to receive a particular asset without administration, and further, the persons entitled to property under this Will shall be entitled to deal with the properties to which they are so entitled in the same manner as if the record of title to those properties were vested in their names.

IT IS FURTHER ORDERED that the Compliance Affidavit required under § 257.103 of the Texas Estates Code is waived is NOT waived.

SIGNED _____

JUDGE PRESIDING

CAUSE NUMBER _____

ESTATE OF

IN

PROBATE COURT

COUNTY COURT

COUNTY COURT AT LAW

DECEASED

NO. _____

_____ COUNTY, TEXAS

Affidavit of Compliance - Muniment of Title

On this day, _____ personally appeared, was sworn, and pursuant to Texas Estates Code § 257.103, made the following statements:

1. My name and residence address are as follows:

Printed Name

Street Address

City

State

Zip

2. On or about _____, I filed the Will of _____ in this cause for Probate as a Muniment of Title.
3. Said Will was admitted to Probate as a Muniment of Title by order signed _____.
4. Fewer than 180 days have passed since the order probating the Will was signed.
5. The following terms of the Will have been fulfilled: _____
- _____.
6. The following terms of the Will remain unfulfilled: _____
- _____.

Signature

STATE OF TEXAS

COUNTY OF _____

Subscribed and sworn to before me by the Witness identified above on

_____.

Court Clerk or Notary Public

Court or Notary Seal

Instructions

1. Unless waived by the Court, file this Affidavit within 180 days after the order probating the Will was signed (do not include this Instructions page when filing).
2. Section 5: Write all the things that have been done to carry out the terms of the Will.
3. Section 6: Write all the things that HAVE NOT been done to carry out the terms of the Will.

INSTRUCTIONS FOR SMALL ESTATE AFFIDAVIT

Included with these Instructions are the following:

1. Frequently Asked Questions (FAQs) for Small Estate Affidavit
2. Small Estate Affidavit
3. Order Approving Small Estate Affidavit
4. Asset Distribution Charts – Married
5. Asset Distribution Charts – Not Married

Read these instructions carefully.

THESE INSTRUCTIONS DO NOT GIVE LEGAL ADVICE AND ARE NOT A SUBSTITUTE FOR THE ADVICE OF A LAWYER.

WHEN TO USE THE SMALL ESTATE AFFIDAVIT:

The Small Estate Affidavit can be used if ALL these statements are true:

- The deceased person (Decedent) died **without a Will**. If there is a Will, this Small Estate Affidavit (“the Affidavit”) **cannot** be used.
- Decedent died at least thirty (30) days ago.
- At least one of the following survived Decedent (meaning they lived more than 120 hours after Decedent died):
 - A spouse (see “Married” definition in “Helpful Words to Know”)
 - A child or children, or other descendants (grandchildren, great-grandchildren, etc.)
 - A parent or parents
 - A sibling or siblings, or their descendants (nieces, nephews)
- The total value of Decedent’s assets (excluding homestead and exempt personal property) is not more than \$75,000.00.
 - Exempt personal property is listed in § 42.002 of the Texas Property Code. It only remains exempt if Decedent had a surviving spouse, minor children, unmarried adult children living with Decedent’s family, or incapacitated adult children.
 - Homestead retains its status as a Homestead only if Decedent had a surviving spouse or minor children.
 - For more information see Texas Estates Code § 353.051 and Texas Property Code Chapters 41 and 42.
- The total value of Decedent’s assets is more than the debts.

- The values of an exempt homestead and exempt personal property are not included in the total value of assets; and
- The amount of a mortgage on an exempt homestead and any debt secured by exempt property are not included in the total value of debts.
- No application for the appointment of a personal representative is pending with a court nor has one been granted by a court. (If you are not sure, you can research court records online or go to the County Clerk’s office in the county where Decedent resided or where Decedent’s principal estate was located. Such applications may be titled “Application for Letters of Administration” or “Application for Probate of Will and Issuance of Letters Testamentary.”)

These instructions DO NOT explain what to do if:

- One or more of Decedent’s children were born after Decedent died.
- One or more of Decedent’s heirs survived Decedent but have since died.
- Decedent had no spouse or children but had half-siblings.
- Decedent lost parental rights of a child or gave up a child for adoption.
- Decedent had no surviving spouse, children or their descendants, parents, or siblings or their descendants.

If any of these are true, contact an attorney.

Helpful Words to Know

Assets	Money and property that belonged to Decedent at the time of death, even if there are still outstanding debts against the property.
Children	Any person born to or adopted by Decedent, including any child of Decedent adopted by another person.
Community Property	Community property includes all real and personal property acquired during the marriage, except for separate property, which is defined below. Community Property is owned one-half by Decedent’s estate and one-half by Decedent’s surviving spouse. All property of a married decedent is considered to be community property unless you can show that it is separate property. Even if property is only in one spouse’s name, it may still be community property. See Texas Family Code § 3.002
Descendant	For purposes of this Affidavit, the descendants of a person are their children, their grandchildren, their great-grandchildren, and so on.

Disinterested Witness	<p>A person who is familiar with Decedent’s family history, marital status at death, children and grandchildren (including those not born of any marriage), and other family members, and who does <u>not</u> inherit property from Decedent.</p> <p>Each disinterested witness who signs the Affidavit is liable under Texas Estates Code § 205.007(c) for any damage or loss to any person that arises from a payment, delivery, transfer, or issuance made in reliance on the Affidavit.</p>
Estate Assets	<p>For purposes of this Affidavit, the term “Estate Assets” does not include any asset that passes <u>directly to a named person or persons who survived Decedent</u> by, for example:</p> <ul style="list-style-type: none"> • an account, vehicle, or deed that has a right of survivorship or transfer on death provision • a payable on death account • a life insurance policy • an annuity or retirement account <p>If a person named to receive any of these types of property did NOT survive Decedent, and there is no other person named as alternate beneficiary who survived Decedent, then the affected property may need to be included in the list of estate assets in Section 8 of the Small Estate Affidavit form.</p>
Exempt Property	<p>Exempt property includes the homestead, clothing, household goods and furnishings, a car for each family member with a driver’s license, two guns, jewelry, sporting equipment, farming or ranching equipment and tools used in a trade or profession, certain farm animals and their food, and household pets.</p> <p>Exempt personal property is listed in § 42.002 of the Texas Property Code. It only remains exempt if Decedent had a surviving spouse, minor children, unmarried adult children living with Decedent’s family, or incapacitated adult children.</p> <p>Homestead retains its status as a Homestead only if Decedent had a surviving spouse or minor children.</p> <p>For more information see Texas Estates Code §353.051 and Texas Property Code Chapters 41 and 42.</p>
Half-sibling	<p>A sister or brother of Decedent who has only one parent in common with Decedent.</p>

Heir	<p>For purposes of the Affidavit, an heir is a person entitled to a share of Decedent’s estate. Depending on who survives Decedent, the heirs may be Decedent’s spouse, children, grandchildren, great-grandchildren (and so on), parents, siblings, nieces and nephews, and great-nieces and great-nephews (and so on).</p> <p>A person who died before Decedent or less than 120 hours after Decedent is NOT an heir. <i>See definition of “SURVIVE,” and the Asset Distribution Charts.</i></p>
Homestead	<p>For a home to qualify as a homestead under the Affidavit:</p> <ul style="list-style-type: none"> • Decedent must have owned and used the home as Decedent’s main residence AND • Decedent must have a surviving spouse or minor child. (The spouse or child did not have to live in the home for it to be a homestead.)
Legally authorized representative	<p>The natural guardian (parents) or next of kin of any minor heir or the guardian of any other incapacitated heir.</p>
Married	<p>Decedent was married if Decedent and Decedent’s spouse had a valid marriage license or declaration of informal marriage from Texas, another state, or another country and were not divorced from each other or their marriage otherwise dissolved at the time of Decedent’s death.</p> <p>Decedent was married even if Decedent and Decedent’s spouse were separated at the time of Decedent’s death.</p> <p>Decedent may also have been married under common law if, at the time the marriage was created, Decedent and Decedent’s spouse:</p> <ul style="list-style-type: none"> • were not already married, informally or formally, to anyone else • were at least 18 years of age • agreed to be married • lived in Texas as a married couple after agreeing to be married AND • represented to others that they were married <p>If there is a question about whether Decedent’s marriage was valid, consult an attorney.</p>
Notary Public	<p>A notary public (“notary”) is a person authorized by law to swear that the people signing the Affidavit are who they say they are. A notary will sign and seal the Affidavit.</p>

Personal Property	Personal property includes, but is not limited to, cash and bank accounts, stocks and bonds, clothing, household furnishings, vehicles, and jewelry.
Real property	Real property includes land and improvements, such as a house or mobile home designated as real property. It also includes oil, gas, and other mineral rights.
Secured and Unsecured Debts	<p>A debt is “secured” when the creditor may take specific property to pay the debt. Examples of secured debts are a mortgage on a house or loan on a car. The mortgage is secured by the house; the car loan is secured by the car. The creditor may foreclose on the house or repossess the car to recover the debts if they are not paid. That is what makes them “secured” debts.</p> <p>Unsecured debts are all other debts for which no collateral or security was provided. Examples of unsecured debts are credit card balances or unpaid utility or medical bills.</p>
Separate Property	Separate property includes personal or real property owned by Decedent before a marriage or received during marriage by gift or inheritance. It also includes certain types of damages awarded during marriage from a personal injury lawsuit. All property of a married decedent is considered to be community property unless you can show that it is separate property. See Texas Family Code § 3.001.
Share	The part of the estate an heir has a right to receive.
Sibling	A sibling is a sister or brother of Decedent who has BOTH parents in common with Decedent.
Survive	For purposes of the Small Estate Affidavit form, to “survive” Decedent a person must live for at least 120 hours after Decedent died. <u>A person must survive Decedent in order to be an heir to the estate.</u>
Unmarried	<p>If Decedent was single, widowed, or divorced at death, Decedent was unmarried.</p> <p>If at death Decedent did not have a valid marriage license or declaration of informal marriage or did not meet the requirements for a common law marriage, Decedent was unmarried.</p>

Instructions for Filling Out the Small Estate Affidavit:

Some of the sections of the Affidavit will not need information added.

Top Part of the Form/Heading:

- *Case Number* – Leave this blank. The County Clerk’s office will fill in the Case Number when you file this form.
- *Estate of* – Write Decedent’s full name
- *In _____ Court* – Check the box next to the court type. If you are not sure, ask the County Clerk.
- *_____ County, Texas* – Write in the name of the county where you are filing the Affidavit.

Completing the Sections of the Affidavit:

1. Fill in the blanks with the information needed.
2. The Affidavit cannot be sworn to and signed until at least 30 days have passed since Decedent’s death. You do not need to add any information here, but this must be a true statement when the Affidavit is signed by all the heirs and disinterested witnesses.
3. Write the names of the county and state where Decedent was a resident at the time of Decedent’s death. If Decedent resided outside of Texas, check the box and explain why you are filing in this county.

If Decedent LIVED in Texas:

File the Affidavit with the County Clerk of the county where Decedent lived. This is the county where Decedent had a home, even if they were living elsewhere at death, like in a nursing home or with a child.

If Decedent DID NOT LIVE in Texas, the county where the Affidavit should be filed is based on where Decedent died:

- If Decedent died in Texas, file the Affidavit with the County Clerk of:
 - the County where Decedent’s principal estate was located; or
 - the County where Decedent died.
 - If Decedent died outside of Texas, file the Affidavit with the County Clerk of:
 - the County where Decedent’s next of kin live; or
 - if there is no next of kin in Texas, the County where Decedent’s principal estate is located.
4. You cannot file the Affidavit if an application for appointment of a personal representative is pending or has been granted by the court. If you are not sure, you can search the court records online or go to the County Clerk’s office in the county where Decedent resided or where Decedent’s principal estate was located. Such applications may be titled “Application for Letters of Administration” or “Application for Probate of Will and Issuance of Letters Testamentary.”

5. You do not need to add any information here, but this must be a true statement when the Affidavit is signed by all the heirs and disinterested witnesses. In Section 8 of the Affidavit form, you will list ALL of Decedent's assets, and indicate whether an asset is exempt property. Decedent's assets (not including the homestead and other exempt property) must be worth \$75,000 or less to use the Affidavit. You will need to follow Section 8 of these instructions to find the total value of the non-exempt assets. If the total is more than \$75,000, you cannot use the Affidavit.
6. You do not need to add any information here, but this must be a true statement when the Affidavit is signed by all the heirs and disinterested witnesses. In section 9 of the Affidavit form, you will list ALL of Decedent's debts and indicate whether a debt is secured by exempt property. Decedent **MUST** have more non-exempt assets than debts not secured by exempt property to use the Affidavit. You will need to follow Section 9 of these instructions to find the total amount of debts not secured by exempt property. If total non-exempt debts are more than the total non-exempt assets, you cannot use the Affidavit.
7. Medicaid Estate Recovery Program ("MERP"):

Check the applicable box in section 7 of the form.

Claims for Medicaid recovery in Texas are debts of the estate. If Decedent applied for and received Medicaid benefits (or similar needs-based government benefits subject to repayment) on or after March 1, 2005, then the Medicaid Estate Recovery Program ("MERP") may have a claim against the estate. **NOTE: This does not refer to Medicare benefits.**

If such benefits were received, a court may require a certification from the Health and Human Services Commission that administers the Medicaid program in Texas. For more information and to obtain the certification, visit the website of the Texas Health and Human Services Commission: <https://www.hhs.texas.gov> and search for "MERP Certification Form."

Find out if the court requires you to attach certification that Decedent's estate is not subject to a MERP Claim. You may be able to learn this by asking the court staff.

8. Estate Assets

This is the section of the Affidavit form where you will list all of Decedent's assets at the time of death. There are two tables in this section – one for Separate Property Assets (four columns) and one for Community Property Assets (five columns).

If Decedent was NOT married at death, there will be no community property; list all assets in the "Separate Property Assets" table and mark through or write "N/A" across the Community Property Assets table.

A married Decedent can have community property *AND* separate property. If Decedent WAS married at death, generally each asset will be listed in the "Community Property Assets" table OR the "Separate Property Assets" table, but not both.

Separate Property Assets

Separate Property assets include all personal and real property owned by Decedent before a marriage or received during marriage by gift or inheritance. It also includes certain types of damages awarded during marriage from a personal injury lawsuit. All property of a married Decedent is considered community property unless you can show that it is separate property. See Texas Family Code § 3.001.

Community Property Assets

Community Property assets of a married Decedent include all real and personal property acquired during the marriage, except for separate property. Community property assets are owned one-half by Decedent's estate and one-half by Decedent's surviving spouse. All property of a married Decedent is considered community property unless you can show that it is separate property. Even if property is only in one spouse's name, it may still be community property. See Texas Family Code § 3.002.

Completing the Estate Assets Tables

Column 1: Description of Assets (Both Separate & Community Property Tables)

Write a description of each asset in Decedent's estate. Provide enough detail to identify each asset and the percentage owned by Decedent. Example: bank name, account type & last three digits of the account number; description of the car (make & model) plus the vehicle identification number (VIN); life insurance company name, address, policy number; and legal description of real property (may be found on property deed or property tax statement).

Do not list any asset that passes directly to a named person or persons who survived Decedent, for example:

- an account, vehicle, or deed that has a right of survivorship or transfer on death provision
- a payable on death account
- a life insurance policy
- an annuity or retirement account

If a person named to receive any of these types of property did NOT survive Decedent, and there is no other person named as alternate beneficiary who survived Decedent, then that property may need to be included here.

You must include any asset that passes directly to the estate, for example: if the estate is named as a beneficiary, if there are no named beneficiaries, or if none of the named beneficiaries is alive.

If Decedent was married at death and any assets are listed as "Separate Property," explain why the asset is Separate Property, for example "inherited from parent," "owned before marriage," etc. See Texas Family Code § 3.001-3.003.

Column 2: Acc't #

Write the last three digits of the account number for the asset, if applicable.

Column 3: Exempt (yes/no)

Write "Yes" if the asset is exempt property; write "No" if it is not.

Exempt property includes the homestead, clothing, household goods and furnishings, a car for each family member with a driver's license, two guns, jewelry, sporting equipment, farming or ranching equipment and tools used in a trade or profession, certain farm animals and their food, and household pets. See Texas Property Code Chapters 41 and 42.

Column 4: Value (100%)

Write the entire value of the asset on the date of the Affidavit.

The Affidavit cannot be approved with an asset of "unknown" value.

Column 5: Value (50%) (Community Property Assets Table ONLY)

Write 50% (half) of the entire value of the asset on the date of the Affidavit. The amount entered in this column is the estate's share of the asset; this is the value that should be included in the total and when calculating the exempt property total.

The Affidavit cannot be approved with an asset of "unknown" value.

EXAMPLES OF HOW TO COMPLETE THE ESTATE ASSETS TABLES:

SEPARATE PROPERTY ASSETS

Description of Separate Property Assets For married Decedent, explain why it is Separate Property	<u>Acc't # (last 3 digits)</u>	<u>Exempt (yes/no)</u>	<u>Value (100%)</u>
<i>1964 Ford Fairlane, VIN 9999999 (Inherited from father)</i>	N/A	No	\$1,200.00
<i>1984 Fender Stratocaster electric guitar (purchased before marriage)</i>	N/A	No	\$850.00

TOTAL VALUE: \$ 2,050.00

In the example above, none of the assets listed are exempt ("No"), so the total *non-exempt* SEPARATE property is \$2,050.00.

COMMUNITY PROPERTY ASSETS

Description of Community Property Assets	Acc't # (last 3 digits)	Exempt (yes/no)	Full Value (100%)	Estate Value (50%)
<i>Wells Fargo Savings Account</i>	123	No	\$4,000.00	\$2,000.00
<i>2014 Chevy Tahoe, VIN 88888888888888</i>	N/A	Yes	\$12,000.00	\$6,000.00
<i>Personal and household goods, clothing, tools, furnishings</i>	N/A	Yes	\$2,000.00	\$1,000.00
<i>Homestead: 123 County Road 10, Smithville, Texas; Legal: Jones Survey, Unit #5, Block 3, Lot 9, Smith County, Texas</i>	N/A	Yes	\$125,000.00	\$62,500.00

TOTAL NON-EXEMPT ESTATE VALUE: \$ 2,000.00

In the example above, there are three exempt assets (“Yes”) totaling \$69,500.00 listed in the Community Property Assets table and one non-exempt asset (“No”) totaling \$2,000.00, so the total *non-exempt* COMMUNITY property is \$2,000.00.

Add together the total non-exempt Separate Property and the total non-exempt Community Property to reach the total Estate Value of non-exempt assets:

TOTAL NON-EXEMPT SEPARATE PROPERTY: \$2,050.00
TOTAL NON-EXEMPT COMMUNITY PROPERTY: + 2,000.00
TOTAL NON-EXEMPT ASSETS: \$4,050.00

If the total estate value of non-exempt assets is more than \$75,000, you will not be able to use the Small Estate Affidavit (see Section 5).

9. Debts

If none, write "none."

If funeral expenses are to be paid or reimbursed from estate assets, include them in this table.

Column 1: Description of Debts

List each debt on which money is still owed by Decedent’s estate on the date of the Affidavit. Provide enough detail to identify each debt.

Column 2: Acc’t #

Write the last three numbers of the account number associated with the debt, if any.

Column 3: Is the debt secured by exempt property? (yes/no)

Write “Yes” if the debt is secured by exempt property; write “No” if it is not.

A debt is “secured” when the creditor may take specific property to pay the debt; examples include, but are not limited to, a mortgage on a house or loan on a car. The mortgage is secured by the house; the car loan is secured by the car. The creditor may foreclose or repossess those assets to recover the debts if they are not paid – that is what makes them “secured” debts.

Unsecured debts are all other debts for which no collateral or security was provided; examples include, but are not limited to, credit card balances or unpaid utility or medical bills.

Exempt property includes the homestead, clothing, household goods and furnishings, a car for each family member with a driver’s license, two guns, jewelry, sporting equipment, farming or ranching equipment and tools used in a trade or profession, certain farm animals and their food, and household pets. See “Helpful Words to Know” (above) and Texas Property Code §§ 41 and 42.

Column 4: Balance Due

Write how much is still owed on the debt on the date of the Affidavit.

After completing the table in “Section 9: Debts” and entering the total at the bottom, subtract the value of any debt that is secured by exempt property – the result will be the total amount of debts not secured by exempt property. If the total is more than the total value of non-exempt assets listed in Section 8, you will not be able to use the Small Estate Affidavit (see Section 6).

EXAMPLE OF HOW TO COMPLETE THE DEBTS TABLE:

DEBTS

Description of Debts	Acc’t # (last 3 digits)	Is the debt secured by exempt property? (yes/no)	Balance Due
<i>Capital One Credit Card</i>	431	No	\$300.00
<i>Wells Fargo Bank, auto loan, 2014 Chevy Tahoe, VIN 88888888888888</i>	987	Yes	\$1,200.00
<i>First Capital Mortgage, mortgage balance on 123 County Road 10, Smithville, Texas</i>	654	Yes	\$58,200.00

TOTAL \$ 59,700.00

In the example table above, there are two debts totaling \$59,400.00 that are secured by exempt property (“Yes”), and one debt in the amount of \$300.00 that is NOT secured by exempt property (“No”). THE TOTAL AMOUNT OF DEBTS NOT SECURED BY EXEMPT PROPERTY is \$300.00, as shown above. This amount must be LESS THAN the total value of NON-EXEMPT ASSETS - \$4,050.00 in the example shown in Section 8, “Estate Assets,” above.

TOTAL DEBTS NOT SECURED BY EXEMPT PROPERTY: \$300.00

NON-EXEMPT ASSETS (\$4,050.00) are greater than DEBTS NOT SECURED BY EXEMPT PROPERTY (\$300.00), so the Small Estate Affidavit may be used based in this example.

TOTAL NON-EXEMPT ASSETS: \$4,050.00

TOTAL DEBTS NOT SECURED BY EXEMPT PROPERTY: - \$300.00

TOTAL ESTATE VALUE (MUST BE \$75,000.00 OR LESS): \$3,750.00

10. Family History

This section has 5 parts. You **MUST** completely answer sections A (“Marriage”) and B (“Children”).

If Decedent has a surviving spouse **and/or** children, you do not need to complete Sections C (“Parents”) and D (“Siblings”), and you can skip to Section 11 (“Asset Distribution Table”).

If Decedent has a surviving spouse but no children or other descendants, you **WILL** have to complete Section C (“Parents”) and you may have to complete Section D (“Siblings”).

You will list the names of Decedent’s heirs and indicate whether they are under 18 years old. Provide the name of the other parent of each of Decedent’s children.

If any of Decedent’s heirs died **after** Decedent died, contact an attorney.

A. Marriage

If Decedent was not married when they died, check the first box and proceed to Section B: Children. If Decedent was married, check the second box and write the name of Decedent’s spouse and the date they were married.

B. Children

If Decedent **DID NOT** have or adopt any children, mark the first checkbox, and go to Section C (“Parents”).

If Decedent **DID** have or adopt any children, mark the second checkbox. You will need to know the names of all of Decedent’s children, the name of their other parent, whether they are under 18, the date of death of any child who did not survive Decedent, and the names and ages of the children or grandchildren of any deceased child.

In the first boxed section, list **ALL** of Decedent’s children, whether living or deceased, and the name of each child’s other parent. If the child is under 18 on the date of the Affidavit, check the “under 18” box next to their name. If Decedent had children who were given up for adoption or for whom Decedent’s parental rights were terminated, contact an attorney.

In the second boxed section, mark the first checkbox if all Decedent's children were alive when Decedent died. Mark the second checkbox if any of Decedent's children died before Decedent. If so, list the deceased child's name, date of death, and the names of any children of that child (Decedent's grandchildren), whether living or deceased.

Example: Decedent had three children (Child A, Child B, and Child C). List their names in the first boxed section. Child A died two years before Decedent and had one child (Grandchild X). In the second boxed section, write Child A's name, the date Child A died, and Grandchild X's name.

If Grandchild X did not survive Decedent, you would need to use a separate sheet of paper to list Grandchild X's children.

If any of Decedent's children, grandchildren, or great-grandchildren survived Decedent, skip Section C: Parents and Section D: Siblings, and go to "Section 11. Asset Distribution".

C. Parents

List the names of Decedent's parents. You will need to indicate if one or both of Decedent's parents are living or deceased, and, if deceased, their date(s) of death, if known. Mark the checkbox next to the statement that is true and fill in the blanks.

If both of Decedent's parents survived Decedent, skip Section D (Siblings) and go to Section 11 ("Asset Distribution").

D. Siblings

If Decedent DID NOT have any siblings, write "none" across the first boxed section and proceed to Section 11 ("Asset Distribution").

If Decedent DID have siblings, list ALL of Decedent's siblings, whether living or deceased in the first boxed section. If any sibling is under 18 on the date of the Affidavit, check the "under 18" box next to their name. Write the names of the parents of each sibling on the lines provided.

If any of Decedent's siblings did **not** survive Decedent, write the deceased sibling's name, date of death, and the names of their children (Decedent's nephews and/or nieces), if any, in the second boxed section.

E. Other:

If Decedent did not have a surviving spouse, child or other descendant, parent, sibling, niece, nephew, or any other descendant of a sibling, you need to contact an attorney. The Small Estate Affidavit may not be appropriate to use in this situation.

11. Asset Distribution Table

In this section, you will list each heir's name and current address. You will write how they are related to Decedent (for example: spouse, child, parent, etc.). Use the attached "Asset Distribution Charts" to determine each heir's share of Decedent's estate. See "Helpful Words to Know" for definitions of any words you do not understand.

If Decedent DID have a surviving spouse, indicate in the appropriate boxes the heirs' shares of Separate and Community Property using the chart included as Item #4 in the Instructions package, "**Asset Distribution Chart – Married**" to complete this section of the Affidavit.

If Decedent DID NOT have a surviving spouse, indicate in the appropriate boxes the heirs' shares of Separate Property using the chart included as Item #5 in the Instructions package, "**Asset Distribution Chart – NOT Married**" to complete this section of the Affidavit. DO NOT enter anything in the boxes under column labeled "Share of Married Decedent's Community Property".

Below are examples provided for instructional purposes only; you will need to use the attached Asset Distribution Charts to find the correct distribution for the Affidavit you are completing. The fractional shares shown in the example charts are based on the example given; shares are determined by the number of heirs who have an interest in that property. See the Asset Distribution Charts for more detailed explanation.

(This section intentionally left blank.)

EXAMPLES OF HOW TO COMPLETE THE ASSET DISTRIBUTION TABLE:

EXAMPLE 1 (See “Asset Distribution Chart - MARRIED”, Chart 1.a.):

- Decedent has surviving spouse
- Decedent has 2 surviving children whose other parent is the surviving spouse

For each Heir, list:

Name & Address	Relationship to Decedent	Share of Married Decedent’s Community Property	Share of Separate <u>Personal</u> Property	Share of Separate <u>Real</u> Property
JANE DOE, 123 County Road 10, Smithville, Texas 77777	Surviving Spouse	100%	1/3	1/3 life estate
MARK DOE, 987 County Road 10, Smithville, Texas 77777	Son	None	1/3	1/2 subject to 1/3 life estate
SUSAN DOE, 345 Park Lane Avenue, Dallas, Texas 70000	Daughter	None	1/3	1/2 subject to 1/3 life estate

EXAMPLE 2 (See “Asset Distribution Charts – NOT MARRIED”, Chart 1.a.):

- Decedent not married at death
- Decedent had 2 children
 - One child died before Decedent leaving 2 surviving children who are both Decedent’s grandchildren

For each Heir, list:

Name & Address	Relationship to Decedent	Share of Married Decedent’s Community Property	Share of Separate <u>Personal</u> Property	Share of Separate <u>Real</u> Property
VIET THANH NGUYEN, 987 County Road 10, Smithville, Texas 77777	Son	N/A	1/2	1/2
LAN DUONG, 1212 Fair Avenue, Dallas, Texas 70000	Granddaughter	N/A	1/4	1/4
LINH DINH, 111 Sunflower Drive, Austin, Texas 75555	Grandson	N/A	1/4	1/4

EXAMPLE 3 (See “Asset Distribution Charts - MARRIED”, Chart I.b.):

- Decedent has a surviving spouse
- Decedent had 3 children
 - One child is from a previous marriage (other parent is not Decedent’s surviving spouse)
 - One child died before Decedent leaving 2 children who are both Decedent’s grandchildren

For each Heir, list:

Name & Address	Relationship to Decedent	Share of Married Decedent’s Community Property	Share of Separate Personal Property	Share of Separate Real Property
ELVERA SANCHEZ, 123 County Road 10, Smithville, Texas 77777	Surviving Spouse	None	1/3	1/3 life estate
MARK SANCHEZ, 123 County Road 10, Smithville, Texas 77777	Son	1/3	2/9	1/3 subject to 1/3 life estate
JEFF SANCHEZ, 987 County Road 10, Smithville, Texas 77777	Son	1/3	2/9	1/3 subject to 1/3 life estate
TRACEY DAVIS, 1212 Fair Avenue, Dallas, Texas 70000	Granddaughter	1/6	1/9	1/6 subject to 1/3 life estate
WILLIAM SANCHEZ, 111 Sunflower Drive, Austin, Texas 75555	Grandson	1/6	1/9	1/6 subject to 1/3 life estate

EXAMPLE 4 (See “Asset Distribution Charts - MARRIED”, Chart II.b.):

- Decedent has a surviving spouse
- Decedent has 1 surviving parent
- Decedent has 2 surviving siblings
- Decedent had no children

For each Heir, list:

Name & Address	Relationship to Decedent	Share of Married Decedent’s Community Property	Share of Separate <u>Personal</u> Property	Share of Separate <u>Real</u> Property
MONROE SUNDANCER, 44 Lance Road, Nocona, Texas 76255	Surviving Spouse	All	All	1/2
MARY TEN BEARS, 20135 White Wolf Road, Spanish Fort, Texas 77777	Mother	None	None	1/4
MARCUS TEN BEARS, 987 Brush Arbor, Benjamin, Texas 79505	Brother	None	None	1/8
JULIA TEN BEARS HORSEBACK, 345 Parfleche Circle, Dublin, Texas 76446	Sister	None	None	1/8

EXAMPLE 5 (See “Asset Distribution Charts – NOT MARRIED”, Chart II.c.):

- Decedent NOT married at death
- Decedent had no children
- Decedent has one surviving parent
- Decedent has 2 siblings
 - One sibling survived Decedent
 - One sibling died before Decedent
 - 2 surviving children of sibling

For each Heir, list:

Name & Address	Relationship to Decedent	Share of Married Decedent’s Community Property	Share of Separate <u>Personal</u> Property	Share of Separate <u>Real</u> Property
DEPAK PADNYA, 135 County Road 10, Smithville, Texas 77777	Father	N/A	1/2	1/2
SUNITTA WILLIAMS, 345 Park Lane Avenue, Dallas, Texas 70000	Sister	N/A	1/4	1/4
JAY ANNADJ, 999 Poplar Street, Austin, Texas 75555	Nephew	N/A	1/8	1/8
DINA ANNADJ, 555 Elm Street, Victoria, Texas 77902	Niece	N/A	1/8	1/8

Instructions for signing the Small Estate Affidavit form:

When the Small Estate Affidavit form is completely filled out, all of the heirs and two disinterested witnesses must sign it before a notary public. Original signatures (not photocopied) are required on the form filed with the court, unless the Small Estate Affidavit will be electronically filed through the state authorized e-filing portal. To register as a user, visit <https://efile.txcourts.gov/ofswweb> and click "Register." If e-filing with the court, you should retain the original signed and notarized Small Estate Affidavit and provide it to the court if and when required to do so.

Heir Sworn Statement:

All heirs 18 years of age or older MUST sign the Small Estate Affidavit. By signing the Affidavit, you are swearing or affirming that you know the information in the Affidavit is true. You are also stating that you have legal capacity. This means you are 18 years of age or older and have not been legally declared incapacitated.

If there are any heirs who do not have legal capacity because they are a minor or have a disability that prevents them from understanding the contents and purpose of the Small Estate Affidavit, their legally authorized representative can sign for them. *If the legally authorized representative who is signing for a minor heir is also an heir of Decedent, that person will need to sign two separate execution pages (sworn statement with notarized signature) – one as the legally authorized representative of the minor heir, and another as an heir in their own right.*

Any heir or witness who signs the Affidavit may be held responsible for any loss or damage caused to someone from the use of the Affidavit.

DO NOT SIGN UNTIL YOU ARE WITH A NOTARY. Write your name on the line provided and sign in front of a notary public. There may be a fee for the notary's services.

Disinterested Witness Statement

Two disinterested witnesses MUST sign the Affidavit. A disinterested witness cannot receive anything from Decedent's estate. By signing the Affidavit, you are swearing or affirming that you know the information in the Affidavit is true. You are also stating that you have legal capacity. This means you are 18 years of age or older and have not been legally declared incapacitated.

Any heir or witness who signs the Affidavit may be held responsible for any loss or damage caused to someone from the use of the Affidavit.

DO NOT SIGN UNTIL YOU ARE WITH A NOTARY. Write your name on the line provided and sign in front of a notary public. There may be a fee for the notary's services.

FREQUENTLY ASKED QUESTIONS (FAQs) FOR SMALL ESTATE AFFIDAVIT

Frequently Asked Questions

Some important words are explained below, but if there are other words that you do not know, check the list of words and definitions called “Helpful Words to Know” beginning on page 3 of INSTRUCTIONS FOR SMALL ESTATE AFFIDAVIT.

1. *Who is Decedent?*

Decedent is the person who died. When you see “Decedent’s property” or “Decedent’s homestead,” we are talking about the property or homestead that belonged to the person who died.

2. *Who is an heir?*

An heir is a person who has a right to get some or all of Decedent’s property after they die. If the Decedent was married when they died, their surviving spouse is an heir. If the Decedent had children, the children, or their descendants such as grandchildren or great-grandchildren (and so on) are heirs. A person’s parents, siblings, nieces and nephews, great-nieces and great-nephews (and so on) may also be heirs. However, a person who dies fewer than 120 hours after the Decedent died is NOT an heir even if the person is the Decedent’s spouse or child.

3. *What is a homestead?*

A homestead is a home the Decedent owned and used as the main place they lived. In order for the property to be a homestead for transfer under the Small Estate Affidavit, Decedent must have a surviving spouse or minor child. (The spouse or child did not have to live in the home for it to be a homestead.)

4. *What can I do with a Small Estate Affidavit?*

You can use the Small Estate Affidavit to transfer Decedent’s money and property to the heirs if Decedent left no Will and the value of all of the property is less than a certain amount. You can also use the Small Estate Affidavit to transfer title to Decedent’s homestead to the heirs. You CANNOT use the Small Estate Affidavit to transfer title to any real property that is not a homestead, such as rental property or an undeveloped lot.

5. *What qualifies as a small estate?*

The value of the estate is \$75,000 or less. You do not have to count certain property called “exempt property” or property that passes directly to a specific, named person (such as life insurance) when you add up the value of all of the property.

The value of the estate assets must also be more than the amount of debts owed by Decedent. You do not have to count debts secured by homestead or exempt property, such as a mortgage or car loan.

For more information about what type of property and debts you do not have to count, look under “Estate assets,” “Exempt property,” and “Secured and Unsecured Debts,” in “Helpful Words to Know” in the Instructions.

6. ***Who can use a Small Estate Affidavit?***

Any heir or legally authorized representative of an heir can use the Small Estate Affidavit. A “legally authorized representative” is a natural guardian (such as the parents or next of kin) of an heir who is under 18 years old, or the court-appointed guardian of any other incapacitated heir. An incapacitated heir is someone who is unable to manage their affairs due to disability, age, injury, illness, or other reasons.

7. ***What do I need to fill out a Small Estate Affidavit?***

- All heirs must sign the Affidavit. You CANNOT leave out any heir. The natural guardian must sign for any heir who is under 18 years old, and a court-appointed guardian must sign for an incapacitated adult.
- Two disinterested witnesses must also sign the Affidavit. A “disinterested witness” is a person who is familiar with Decedent’s family history, marital status at death, children and grandchildren, and other family members, and who will not inherit property from Decedent. Decedent’s close friend is an example of someone who could be a disinterested witness. Decedent’s sibling or cousin might also be an example of a disinterested witness, as long as that person would not inherit any property. The disinterested witnesses must swear that the information in the Affidavit is true.
- Notary Public. Each heir and disinterested witness must go to a notary public and swear that the information in the Affidavit is true, subject to penalties of perjury. A notary public may charge a fee for this service. Your bank may have a notary. You can also find a list of notaries by going to the Texas Secretary of State’s website (<https://sos.state.tx.us>) and clicking on “Notary, Apostilles & Authentications” in the top ribbon.
- Information about Decedent’s assets. You will need to list **ALL** of Decedent’s assets, with the last three digits of account numbers (if known) and how much the asset is worth. Additionally, if the Decedent was married at death you must state if an asset is separate or community property. See “Community Property” and “Separate Property” in “Helpful Words to Know” and Section 8 (“Estate Assets”) in the Instructions for more information on separate and community property.

- Information about Decedent's debts. You will need to list **ALL** of Decedent's debts, with the last three digits of account numbers (if known) and the amount of outstanding debt. See "Secured and Unsecured Debts" in "Helpful Words to Know" and Section 9 ("Debts") in the Instructions for more information on debts.
- Information about Decedent's heirs. You will need to list the names and addresses of **ALL** of Decedent's heirs. If you do not know the names and addresses of all of Decedent's heirs, you will NOT be able to use the Small Estate Affidavit.

8. *What does it mean if I sign the Small Estate Affidavit?*

If you sign the Affidavit, it means that you have:

- personal knowledge of Decedent's family, including Decedent's marriages,
- personal knowledge of Decedent's assets, AND
- personal knowledge of Decedent's debts

AND you understand and acknowledge that:

- **By signing the Affidavit, you may be liable under Texas Estate Code § 205.007(c) for any damage or loss to any person arising from a payment, delivery, transfer, or issuance made in reliance on the Affidavit.**

9. *Where do I file the Small Estate Affidavit?*

If Decedent LIVED in Texas:

File the Affidavit with the County Clerk of the county where Decedent lived. This is the county where Decedent had a home, even if they were living elsewhere at death, like in a nursing home or with a child.

If Decedent DID NOT LIVE in Texas, the county where the Affidavit should be filed is based on where Decedent died:

- If Decedent died in Texas, file the Affidavit with the County Clerk of:
 - the County where Decedent's principal estate was located; or
 - the County where Decedent died.
- If Decedent died outside of Texas, file the Affidavit with the County Clerk of:
 - the County where Decedent's next of kin live; or
 - if there is no next of kin in Texas, the County where Decedent's principal estate is located.

10. *How much does it cost to file a Small Estate Affidavit?*

Look on the County Clerk's website in the county where you will file the Affidavit or call the County Clerk's office for filing fee information.

11. *What if I cannot afford the filing fee?*

If you cannot afford the filing fee, you can ask the court to waive (eliminate) your filing fees and court costs by filling out and filing a Statement of Inability to Afford Payment of Court Costs. You can get a Statement of Inability to Afford Payment of Court Costs form by asking the County Clerk for a copy of the form. The clerk is required to provide you the form at no cost. You can also find the form at <https://www.txcourts.gov>. See Texas Rule of Civil Procedure 145.

12. *How do I use the Small Estate Affidavit after it has been approved by the court?*

Once approved by the court, you can use a certified copy of the Small Estate Affidavit and the Order Approving Small Estate Affidavit to collect and transfer the money and property of Decedent's estate.

- After the judge signs the Order Approving Small Estate Affidavit, purchase certified copies of the Affidavit and the Order from the County Clerk's office. You may need more than one certified copy to collect all the money and property.
- Take a certified copy to each person, business, or other organization holding Decedent's assets to:
 - Collect Decedent's money or other property from people, businesses, or organizations who have it;
 - Access Decedent's bank accounts;
 - Transfer title to the homestead by recording the Affidavit and Order in the County Clerk's office of the county where the homestead is located.

13. *What if Decedent had children who were given up for adoption or for whom Decedent's parental rights were terminated?*

Contact an attorney.

14. *What if Decedent had half-siblings?*

Contact an attorney.

15. *What if Decedent has a child who was born after Decedent died?*

Contact an attorney.

CASE NUMBER _____

ESTATE OF _____ § IN PROBATE COURT
 COUNTY COURT
 COUNTY COURT AT LAW NO. _____
DECEASED § _____ COUNTY, TEXAS

SMALL ESTATE AFFIDAVIT
PURSUANT TO TEXAS ESTATES CODE CHAPTER 205

The information in this Affidavit is true according to the heirs and witnesses who swore to or affirmed its truth.

1. The person who died ("Decedent"), _____, died on _____,
First, Middle, and Last Name
_____ in _____, _____ County, _____.
MM/DD/YYYY City County State

Decedent did not leave a Will. The last three digits of Decedent's driver's license number are _____ and the last three digits of Decedent's Social Security number are _____.

If you do not know this information, explain why: _____
Be prepared to provide a copy of the death certificate.

2. Decedent died at least thirty (30) days ago.
3. Decedent was a resident of _____ County, _____, at the time of death.
County State

Check if applicable:

Decedent was not a resident of this county at the time of death, and I am filing in this county because: _____.

- 4. No other probate proceeding has been filed.
- 5. On the date of this Affidavit, the total value of Decedent's estate assets is not more than \$75,000. This value does not include the value of the homestead or other exempt property. *For a home to qualify as a homestead under this Affidavit, Decedent must have owned the house (even if still paying for it) and used it as his/her main residence, AND Decedent must have a surviving spouse or minor child. (The spouse or child did not have to live in the house for it to be a homestead.) See instructions for a definition of exempt property.*
- 6. On the date of this Affidavit, the total value of Decedent's estate assets (not including the homestead and other exempt property) is more than the total of Decedent's known debts (not including debts secured by the homestead or other exempt property).

7. Medicaid Estate Recovery Program (See Instructions):

Check one:

- Decedent did not apply for, nor receive, Medicaid benefits (or similar needs-based government benefits subject to repayment) on or after March 1, 2005.
- Decedent received Medicaid benefits (or similar needs-based government benefits subject to repayment) on or after March 1, 2005, but a MERP certification which states that Decedent's estate owes no money to the State of Texas as a result of the payment of those benefits has been attached if required by this court.
- Decedent did apply for and receive Medicaid benefits (or similar needs-based government benefits subject to repayment) on or after March 1, 2005, and the Medicaid Estate Recovery Program claim is listed as a debt in section 9.

8. Estate Assets Tables:

All assets of Decedent's estate, including homestead and other exempt property, are listed in these tables.

SEPARATE PROPERTY ASSETS

Description of Separate Property Assets Explain Why it is Separate Property	Acc't # (last 3 digits)	Exempt (yes/no)	Value (100%)

TOTAL \$ _____

COMMUNITY PROPERTY ASSETS

Description of Community Property Assets	Acc't # (last 3 digits)	Exempt (yes/no)	Value (100%)	Estate Value (50%)

TOTAL \$ _____

9. Debts:

All remaining debts of Decedent's estate are listed here. The Balance Due is the amount owed on the date of this Affidavit.

DEBTS

Description of Debts	Acc't # (last 3 digits)	Is the debt secured by exempt property? (yes/no)	Balance Due

TOTAL \$ _____

10. Family history: *Put check marks in the small boxes by the statements that apply and provide the information as indicated.*

A. Marriage:

Decedent was NOT married when Decedent died.

OR

Decedent was married to and survived by _____. They were married on _____ (date). *Someone survived Decedent if they lived more than 120 hours after Decedent died.*

B. Children:

- Decedent did NOT have or adopt any children, whether now living or deceased.
If you check this box, go to C. "Parents".
- All children born to or adopted by Decedent, whether now living or deceased, are listed below.

These are all of Decedent's children (*Use additional pages as necessary*):

<u>Name of Child</u>	<u>Check if under 18</u>	<u>Name of Child's Other Parent</u>
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____

- All of Decedent's children survived Decedent. *Someone "survived" Decedent if they lived more than 120 hours after Decedent died.*

OR

- These are Decedent's children who DID NOT survive Decedent.

Deceased Child's Name
Write deceased child's name

Date child died
MM/DD/YYYY

If this child had children, name them.
If not, write None or N/A.:
If any of these grandchildren also died before Decedent, use a separate page to give date of death and names of all of that person's children.

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

If ANY of Decedent's children, grandchildren, or great-grandchildren survived Decedent, skip to "Section 11. Asset Distribution."

C. Parents:

Decedent's parents are _____ and _____.
Parent 1 Name Parent 2 Name

Check ONE:

- Both of Decedent's parents survived Decedent.
- One of Decedent's parents DID NOT survive Decedent. This parent, _____, died on _____, if known.
Name Date

- Neither of Decedent's parents survived Decedent.
- _____, died on _____, if known.
Parent 1 Name Date
- _____, died on _____, if known.
Parent 2 Name Date

If both of Decedent's parents survived Decedent, skip to "11. Asset Distribution Table".

D. Siblings (Use additional pages as necessary):

These are all of Decedent's siblings (including half-siblings). If there are half-siblings, contact an attorney. **If none, write "none."**

<u>Sibling Name</u>	<u>Check if Under 18</u>	<u>Sibling's Parents' Names</u>
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	_____

- All of Decedent's siblings (including half-siblings) survived Decedent. *Someone "survived" Decedent if they lived more than 120 hours after Decedent died.*

OR

- These are Decedent's siblings (including half-siblings) who DID NOT survive Decedent.

<u>Deceased Sibling's Name</u> <i>Write deceased sibling's name</i>	<u>Date of Death</u> <i>MM/DD/YYYY</i>	Names of surviving children of Deceased Sibling <u><i>If none, write None or N/A:</i></u> <i>If any of these nephews/nieces also died before Decedent, use a separate page to give date of death and names of all of that person's children.</i>

E. Other

If no one listed in sections A-D above survived Decedent but there are other relatives that did survive Decedent, you should contact an attorney.

11. Asset Distribution Table:

Based on the family history given in this Affidavit, the following table lists all of Decedent's heirs at law, together with their fractional interests in Decedent's estate.

List each person getting a share of Decedent's estate. List each person's share of each type of property in the estate. If Decedent was not married, do not enter anything in the column labeled "Share of Married Decedent's Community Property".

THE FOLLOWING TABLE MUST BE FILLED OUT: DO NOT fill out this table without reading and following the Asset Distribution Charts included with the Instructions for Small Estate Affidavit.

ASSET DISTRIBUTION TABLE

For each Heir, list the following:

Name & Address	Relationship to Decedent	Share of Married Decedent's Community Property	Share of Separate <u>Personal</u> Property	Share of Separate <u>Real</u> Property

Name & Address	Relationship to Decedent	Share of Married Decedent's Community Property	Share of Separate <u>Personal</u> Property	Share of Separate <u>Real</u> Property

Signatures and Sworn Statements of Every Person Who Gets a Share of Decedent's Estate:

Include other signature pages for each person as needed.

STATE OF _____

COUNTY OF _____

I am: *(Check one)*

- an heir of the Decedent, or
- the legally authorized representative of _____, who is an heir of the Decedent, authorized by §205.002(a)(1)(C), Texas Estates Code to sign this Affidavit.

I swear or affirm that:

- a. I have personal knowledge of the facts stated in this Affidavit, and these facts are true and complete;
- b. I have legal capacity;
- c. **By signing this Affidavit, I understand that I am liable under Texas Estate Code § 205.007(c) for any damage or loss to any person arising from a payment, delivery, transfer, or issuance made in reliance on the Affidavit. See FAQ #8 for what this means.**

Printed Name of Heir or Legally Authorized Representative

Signature of Heir or Legally Authorized Representative

SWORN TO AND SUBSCRIBED before me by _____, an heir or legally authorized representative on _____ (Date).

(Seal)

Notary Public, State of _____

Identification Number: _____

Signatures and Sworn Statements of Every Person Who Gets a Share of Decedent's Estate:

Include other signature pages for each person as needed.

STATE OF _____

COUNTY OF _____

I am:

- an heir of the Decedent, or
- the legally authorized representative of _____, who is an heir of the Decedent, authorized by §205.002(a)(1)(C), Texas Estates Code to sign this Affidavit.

I swear or affirm that:

- a. I have personal knowledge of the facts stated in this Affidavit, and these facts are true and complete;
- b. I have legal capacity;
- c. **By signing this Affidavit, I understand that I am liable under Texas Estate Code § 205.007(c) for any damage or loss to any person arising from a payment, delivery, transfer, or issuance made in reliance on the Affidavit. See FAQ #8 for what this means.**

Printed Name of Heir or Legally Authorized Representative

Signature of Heir or Legally Authorized Representative

SWORN TO AND SUBSCRIBED before me by _____, an heir or legally authorized representative on _____ (Date).

(Seal)

Notary Public, State of _____

Identification Number: _____

Signatures and Sworn Statements of Every Person Who Gets a Share of Decedent's Estate:

Include other signature pages for each person as needed.

STATE OF _____

COUNTY OF _____

I am:

- an heir of the Decedent, or
- the legally authorized representative of _____, who is an heir of the Decedent, authorized by §205.002(a)(1)(C), Texas Estates Code to sign this Affidavit.

I swear or affirm that:

- a. I have personal knowledge of the facts stated in this Affidavit, and these facts are true and complete;
- b. I have legal capacity;
- c. **By signing this Affidavit, I understand that I am liable under Texas Estate Code § 205.007(c) for any damage or loss to any person arising from a payment, delivery, transfer, or issuance made in reliance on the Affidavit. See FAQ #8 for what this means.**

Printed Name of Heir or Legally Authorized Representative

Signature of Heir or Legally Authorized Representative

SWORN TO AND SUBSCRIBED before me by _____, an heir or legally authorized representative on _____ (Date).

(Seal)

Notary Public, State of _____

Identification Number: _____

Signatures and Sworn Statements of TWO DISINTERESTED WITNESSES:

STATE OF _____
COUNTY OF _____

I, as a Disinterested Witness to this Affidavit, as indicated by my signature below, do solemnly swear or affirm:

- a. I have legal capacity;
- b. I am not getting anything from the Decedent’s estate;
- c. I have personal knowledge of the facts stated in this Affidavit, and these facts are true and complete; and
- d. **I understand that I am liable under Texas Estate Code § 205.007(c) for any damage or loss to any person arising from a payment, delivery, transfer, or issuance made in reliance on this Affidavit.**
See FAQ #8 for what this means.

Printed Name of Disinterested Witness

Signature of Disinterested Witness

SWORN TO AND SUBSCRIBED before me by _____, a disinterested witness,
on _____ (Date).

(Seal)

Notary Public, State of _____
Identification Number: _____

STATE OF _____
COUNTY OF _____

I, as a Disinterested Witness to this Affidavit, as indicated by my signature below, do solemnly swear or affirm:

- a. I have legal capacity;
- b. I am not getting anything from the Decedent’s estate;
- c. I have personal knowledge of the facts stated in this Affidavit, and these facts are true and complete; and
- d. **I understand that I am liable under Texas Estate Code § 205.007(c) for any damage or loss to any person arising from a payment, delivery, transfer, or issuance made in reliance on this Affidavit.**
See FAQ #8 for what this means.

Printed Name of Disinterested Witness

Signature of Disinterested Witness

SWORN TO AND SUBSCRIBED before me by _____, a disinterested witness,
on _____ (Date).

(Seal)

Notary Public, State of _____
Identification Number: _____

CASE NUMBER _____

ESTATE OF

§

IN

PROBATE COURT

COUNTY COURT

COUNTY COURT AT LAW NO. _____

_____,

§

DECEASED

§

_____ COUNTY, TEXAS

ORDER APPROVING SMALL ESTATE AFFIDAVIT

On this day, the Court considered the above Small Estate Affidavit and the Court finds that:

1. This court has jurisdiction and venue;
2. The Affidavit conforms to the terms and provisions of Texas Estates Code Chapter 205; and
3. The Affidavit should be approved.

It is therefore ORDERED that the foregoing Affidavit is APPROVED.

A person making a payment, delivery, transfer, or issuance under the foregoing Affidavit is released to the same extent as if made to a personal representative of Decedent.

SIGNED _____

JUDGE PRESIDING

Asset Distribution Charts (Who gets what?)

If Decedent Was MARRIED at Time of Death and there is No Will

When and why do you use these charts?

The purpose of these charts is to help you complete the “Asset Distribution Table” section of the Small Estate Affidavit form. In the form, you will need to write in the share that each surviving heir will inherit. These charts will help you figure out what share each person gets.

The charts below apply only if:

- Decedent was married when they died;
- Surviving spouse lived more than 120 hours after Decedent’s death;
- Decedent did not leave a Will; and
- Decedent died on or after September 1, 1993.

These charts do not apply if Decedent died before September 1, 1993 – in that situation, you should contact an attorney.

For each heir, you need to determine these things:

- what fraction of the community property assets they get,
- what fraction of the separate real property they get, and
- what fraction of the separate personal property they get.

What is the difference between community and separate property?

A married Decedent will likely have “community property” and may have “separate property.” You need to know if property was “community” or “separate” when filling out the Small Estate Affidavit.

Community property is all real and personal property acquired during the marriage, except for separate property. Community Property is owned one-half by Decedent’s estate and one-half by Decedent’s surviving spouse. All property of a married Decedent is considered to be community property unless you can show that it is separate property. Even if property is only in one spouse’s name, it may still be community property. See [Texas Family Code § 3.002](#).

Separate property is personal or real property owned before a marriage or received during marriage by gift or inheritance. It also includes some damages awarded during marriage from a personal injury lawsuit. Any asset listed as Separate Property in the Small Estate Affidavit form must include an explanation of why it is considered Separate Property. All property of a married Decedent is considered to be community property unless you can show that it is separate property. See [Texas Family Code § 3.001](#).

What is the difference between personal and real property?

Any separate property will also need to be listed as “personal property” or “real property.” This difference does not matter for community property.

Personal property includes, but is not limited to, cash and bank accounts, clothing, household furnishings, vehicles, and jewelry.

Real property is land and improvements, such as a house or mobile home designated as real property, and also includes oil, gas, and other mineral rights.

What is the difference between a life estate and a homestead right?

A **life estate** gives the surviving spouse certain rights and obligations during their lifetime. The life estate ends when the surviving spouse dies. You must list the life estate in the asset distribution table.

A **homestead** right is a right to exclusive use and occupancy of the property during a lifetime. The surviving spouse may have homestead rights. Decedent’s minor children may also have homestead rights. **An attorney can explain what those rights are.** For purpose of the asset distribution table, you do not list the homestead right. However, knowing if there are homestead rights is important to understand who can live in the property.

What if a person who would be an heir dies before Decedent?

It depends.

If a person who would have been an heir dies before Decedent, usually their children get that deceased parent’s share equally. If the person had no children or other descendants, you do not include them in figuring out the number of shares.

However, if **all** of the people who are related to Decedent in the same way (for example, all of the children or all of the siblings of Decedent) die before Decedent, usually those people’s children will all share that portion of Decedent’s estate equally.

If one or more of the children of the predeceased heir also died before Decedent, consult an attorney.

Who gets what?

This is an explanation of the charts below, and the number of each item listed below will be shown in the related chart.

I. IF DECEDENT WAS MARRIED WITH CHILDREN:

a. If all of the children are the children of the surviving spouse (CHART I.a.):

1. **Community property:** all of it goes to the surviving spouse.
2. **Separate personal property:**

- a. The surviving spouse gets a 1/3 interest in Decedent’s separate personal property.
- b. The children share the remaining 2/3 interest in Decedent’s separate personal property.

3. **Separate real property:**
 - a. The surviving spouse gets a 1/3 life estate interest and may have homestead rights to the property during their lifetime.
 - b. The children inherit in equal parts all of the property, but it is subject to the surviving spouse's 1/3 life estate and homestead rights, if any.
- b. If any of the children are not the children of the surviving spouse (CHART I.b.):
 1. **Community property:**
 - a. The surviving spouse keeps their own 1/2 share of the community property.
 - b. The children share equally in Decedent's 1/2 interest subject to the surviving spouse's homestead rights, if any.
 2. **Separate personal property:**
 - a. The surviving spouse gets a 1/3 interest in Decedent's separate personal property.
 - b. The children share the remaining 2/3 interest in Decedent's separate personal property.
 3. **Separate real property**
 - a. The surviving spouse gets a 1/3 life estate interest and may have homestead rights to the property during their lifetime.
 - b. The children inherit in equal parts all of the property, but it is subject to the surviving spouse's 1/3 life estate and homestead rights, if any.

II. IF THE DECEDENT WAS MARRIED AND DID NOT HAVE CHILDREN:

- a. If Decedent was survived by both parents (CHART II.a.):
 1. **Community property:** all of it goes to the surviving spouse.
 2. **Separate personal property:** all of it goes to the surviving spouse.
 3. **Separate real property:**
 - a. The surviving spouse gets 1/2 of the separate real property and may have homestead rights to all of the property during their lifetime.
 - b. The parents each get 1/4 of the separate real property subject to the surviving spouse's homestead rights, if any.
- b. If Decedent had one surviving parent and had surviving siblings (or their descendants) (CHART II.b.):
 1. **Community property:** all of it goes to the surviving spouse.
 2. **Separate personal property:** all of it goes to the surviving spouse.
 3. **Separate real property:**
 - a. The surviving spouse gets 1/2 of the separate real property and may have homestead rights to the property during their lifetime.
 - b. The parent gets 1/4 of the separate real property, but it is subject to the surviving spouse's homestead rights, if any.

- c. The siblings share in equal parts the other 1/4 of the separate real property, but it is subject to the surviving spouse's homestead rights, if any.
- c. If Decedent had one surviving parent and no surviving siblings (or their descendants) (CHART II.c.):
 - 1. **Community property:** all of it goes to the surviving spouse.
 - 2. **Separate personal property:** all of it goes to the surviving spouse.
 - 3. **Separate real property:**
 - a. The surviving spouse gets 1/2 of the separate real property and may have homestead rights to the property during their lifetime.
 - b. The surviving parent gets 1/2 of the separate real property, but it is subject to the surviving spouse's homestead rights, if any.
- d. If Decedent had no surviving parents but did have surviving siblings (or their descendants who take their deceased parent's share) (CHART II.d.):
 - 1. **Community property:** all of it goes to the surviving spouse.
 - 2. **Separate personal property:** all of it goes to the surviving spouse.
 - 3. **Separate real property:**
 - a. The surviving spouse gets 1/2 of the separate real property and may have homestead rights to the property during their lifetime.
 - b. The siblings (or their descendants) get the other 1/2 of the separate real property subject to the surviving spouse's homestead rights to the property during their lifetime, if any.
- e. If Decedent had no surviving parents and no surviving siblings (or their descendants) (CHART II.e.):
 - 1. **Community property:** all of it goes to the surviving spouse.
 - 2. **Separate personal property:** all of it goes to the surviving spouse.
 - 3. **Separate real property:** all of it goes to the surviving spouse.


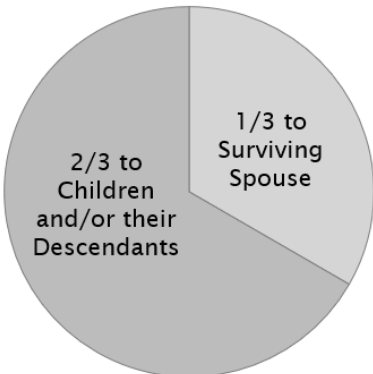
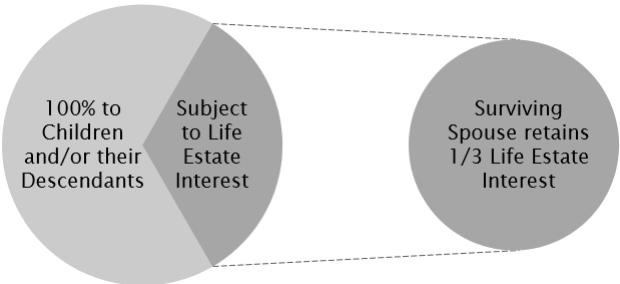
CHART I.a. – Married Person with children, all from current marriage		
COMMUNITY PROPERTY	SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.003(b)(2)	Texas Estates Code §201.002(b)	Texas Estates Code §201.002(b)(3)
<p>i.a.1.</p>  <p>All to Surviving Spouse</p>	<p>i.a.2.</p>  <p>2/3 to Children and/or their Descendants 1/3 to Surviving Spouse</p>	<p>i.a.3.</p>  <p>100% to Children and/or their Descendants Subject to Life Estate Interest Surviving Spouse retains 1/3 Life Estate Interest</p>


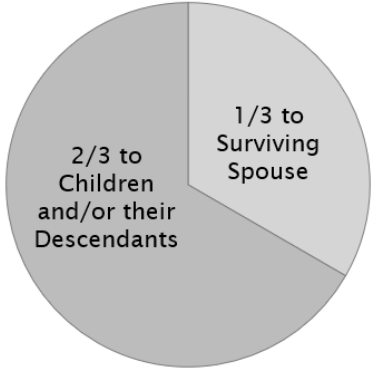
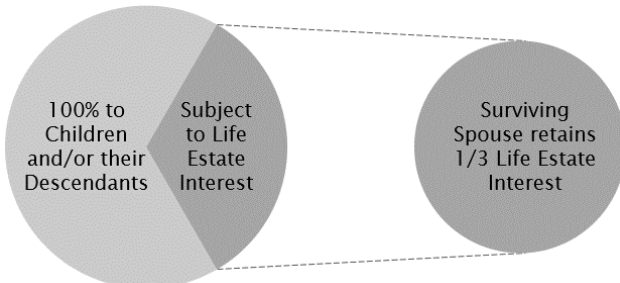
CHART I.b. – Married Person with children from outside current marriage		
COMMUNITY PROPERTY	SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.003(c)	Texas Estates Code §201.002(b)	Texas Estates Code §201.002(b)(3)
<p>i.b.1.</p>  <p>Surviving Spouse keeps their own 1/2 Decedent's 1/2 to Children and/or Descendants</p>	<p>i.b.2.</p>  <p>2/3 to Children and/or their Descendants 1/3 to Surviving Spouse</p>	<p>i.b.3.</p>  <p>100% to Children and/or their Descendants Subject to Life Estate Interest Surviving Spouse retains 1/3 Life Estate Interest</p>



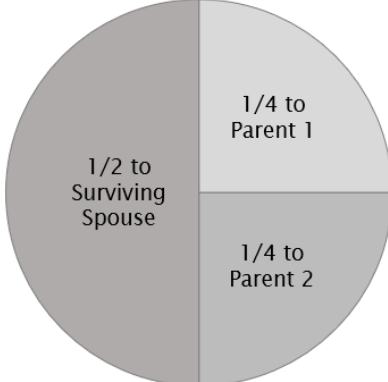
CHART II.a. – Married Person with no children – survived by both parents		
COMMUNITY PROPERTY	SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.003(b)(1)	Texas Estates Code §201.002(c)	Texas Estates Code §201.002(c)
 <p>All to Surviving Spouse</p> <p>II.a.1.</p>	 <p>All to Surviving Spouse</p> <p>II.a.2</p>	 <p>1/2 to Surviving Spouse</p> <p>1/4 to Parent 1</p> <p>1/4 to Parent 2</p> <p>II.a.3</p>


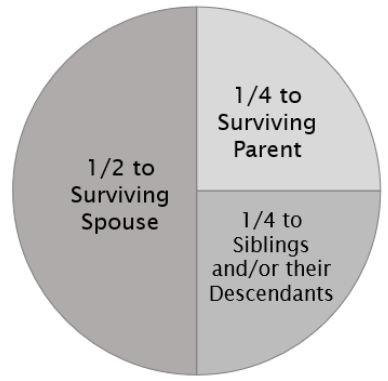
CHART II.b. – Married Person with no children – survived by one parent and siblings or their descendants		
COMMUNITY PROPERTY	SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.003(b)(1)	Texas Estates Code §201.002(c)	Texas Estates Code §201.002(c)
 <p>All to Surviving Spouse</p> <p>II.b.1</p>	 <p>All to Surviving Spouse</p> <p>II.b.2</p>	 <p>1/2 to Surviving Spouse</p> <p>1/4 to Surviving Parent</p> <p>1/4 to Siblings and/or their Descendants</p> <p>II.b.3</p>



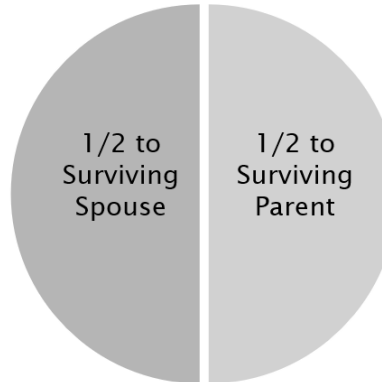
CHART II.c. – Married Person with no children – survived by one parent, and no surviving siblings or their descendants		
COMMUNITY PROPERTY	SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.003(b)(1)	Texas Estates Code §201.002(c)	Texas Estates Code §201.002(c)
<p>II.c.1</p>  <p>All to Surviving Spouse</p>	<p>II.c.2</p>  <p>All to Surviving Spouse</p>	<p>II.c.3</p>  <p>1/2 to Surviving Spouse 1/2 to Surviving Parent</p>







CHART II.d. – Married Person with no children – no surviving parents, but there are surviving siblings and/or their descendants		
COMMUNITY PROPERTY	SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.003(b)(1)	Texas Estates Code §201.002(c)	Texas Estates Code §201.002(c)
<p>II.d.1</p>  <p>All to Surviving Spouse</p>	<p>II.d.2</p>  <p>All to Surviving Spouse</p>	<p>II.d.3</p>  <p>1/2 to Surviving Spouse 1/2 to Surviving Siblings and/or their Descendants</p>

CHART II.e. – Married Person with no children – no surviving parents, siblings, or siblings’ descendants

COMMUNITY PROPERTY	SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.003(b)(1)	Texas Estates Code §201.002(c)	Texas Estates Code §201.002(d)
 <p>All to Surviving Spouse</p>	 <p>All to Surviving Spouse</p>	 <p>All to Surviving Spouse</p>
II.e.1	II.e.2	II.e.3

Asset Distribution Charts (Who gets what?)

If Decedent Was NOT MARRIED at Time of Death and there is No Will

When and why do you use these charts?

The purpose of these charts is to help you complete the “Asset Distribution Table” section of the Small Estate Affidavit form. In the form, you will need to write in the share that each surviving heir will inherit. These charts will help you figure out what share each person gets.

The charts below apply only if:

- Decedent was unmarried when they died;
- At least one child, grandchild, parent, sibling, or sibling’s descendant(s) lived more than 120 hours after Decedent’s death; and
- Decedent did not leave a Will.

For each heir, you need to determine what fraction of the property they get. When a person is not married, all of their property is separate property at their death. Real and personal property are treated the same for the heirs of unmarried persons.

What if a person who would be an heir dies before Decedent?

It depends.

If a person who would have been an heir dies before Decedent, usually their children get that deceased parent’s share equally. If the person had no children or other descendants, you do not include them in figuring out the number of shares.

However, if **all** of the people who are related to Decedent in the same way (for example, all of the children or all of the siblings of Decedent) die before Decedent, usually those people’s children will all share that portion of Decedent’s estate equally.

If one or more of the children of the predeceased heir also died before Decedent, consult an attorney.

Who gets what?

This is an explanation of the charts below, and the number of each item listed below will be shown in the related chart.

I. IF DECEDENT WAS UNMARRIED WITH CHILDREN:

- a. All of the children share the property in equal shares.

II. IF DECEDENT WAS UNMARRIED WITH NO CHILDREN:

- a. If both parents survive, each will inherit 1/2 of the estate.
- b. If one parent survives and there are no siblings, the surviving parent inherits the entire estate.
- c. If one parent survives and there are siblings, the surviving parent inherits 1/2 of the estate and the siblings would share in the other 1/2 of the estate.
- d. If there are no surviving parents, the siblings will share in the entire estate in equal parts.



CHART I.a. – Unmarried Person with Children	
SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.001(b)	Texas Estates Code §201.001(b)
 <p>All to Children and/or their Descendants</p>	 <p>All to Children and/or their Descendants</p>
I.a.	I.a.

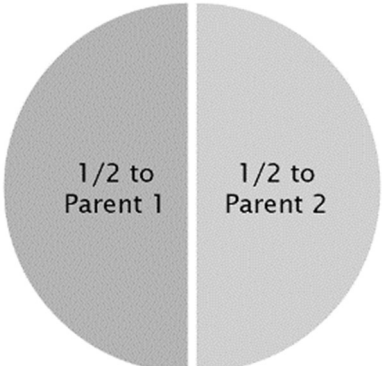
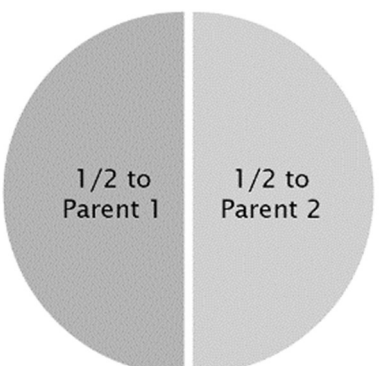
CHART II.a. – Unmarried Person with No Children – Both Parents Survived	
SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.001(c)	Texas Estates Code §201.001(c)
 <p>1/2 to Parent 1 1/2 to Parent 2</p>	 <p>1/2 to Parent 1 1/2 to Parent 2</p>
II.a.	II.a.



CHART II.b. – Unmarried Person with No Children – One Parent Survived; No Siblings or Siblings’ Descendants Survived	
SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.001(d)(2)	Texas Estates Code §201.001(d)(2)
 <p>All to Surviving Parent</p>	 <p>All to Surviving Parent</p>
II.b.	II.b.





CHART II.c. – Unmarried Person with No Children – One Parent Survived; Siblings and/or Siblings’ Descendants Survived	
SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.001(d)(1)	Texas Estates Code §201.001(d)(1)
 <p>1/2 to Surviving Parent</p> <p>1/2 to Siblings and/or their Descendants</p>	 <p>1/2 to Surviving Parent</p> <p>1/2 to Siblings and/or their Descendants</p>
II.c.	II.c.

CHART II.d. – Unmarried Person with No Children – No Parent Survived; Siblings and/or Siblings’ Descendants Survived	
SEPARATE PERSONAL PROPERTY	SEPARATE REAL PROPERTY
Texas Estates Code §201.001(e)	Texas Estates Code §201.001(e)
 <p>All to Siblings and/or their Descendants</p>	 <p>All to Siblings and/or their Descendants</p>
II.d.	II.d.

Subject: Permissive appeals

Date: Thursday, June 15, 2023 at 3:06:27 PM Central Daylight Time

From: Tracy Christopher

To: Chip Babcock, Nathan Hecht, Jane Bland, Jaclyn Daumerie, Tracy Christopher

Dear Chief Justice Hecht, Justice Bland and Chip,

I think the procedures related to permissive appeals need to be changed, given the new statute. Right now we review a 15 page petition for permission to appeal. It's often agreed, so we never see the other side of the issue. Unlike at the Supreme Court, we are unable to call for briefing before we decide whether to grant the petition. I think that needs to be changed. At a minimum, all briefing below and the reporters record, if any, needs to be included. Given the de novo review by the Supreme Court, I would think the Court would also like full briefing at our level. Many practitioners think their issue is a controlling one when it isn't. Many trial judges get confused as to whether there is a substantial ground for disagreement, when there isn't. If the trial judge made the correct legal call below, we have denied the petition.

If the legislature wanted us to grant all agreed permissive appeals, they could have written it that way. It has to be different from all the other interlocutory appeals.

Thank you for considering this.

Tracy Christopher

Chief Justice of the 14th Court of Appeals.

P.S. We need a current Justice of a COA on the appellate subcommittee.

P.P.S. Sorry to hear you are unavailable for the meeting, Chip.

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Vernis McGill

From: Tracy Christopher
Sent: Tuesday, July 25, 2023 2:59 PM
To: Rulescomments
Subject: TRAP 28.3

To the members of the Supreme Court:

This comment is in response to the new law and changes to rule 28.3.

In order to properly determine whether or not to grant a permission to appeal, we need more than the order. We need all of the information currently required for original proceedings—including 52.7(a)

While you may believe that parties will automatically supply that information, we have received motions for permissive appeal with nothing but the order.

Thank you for considering this change.

Tracy Christopher
Chief Justice, 14th Court of Appeals
Houston, TX 77002
[REDACTED]

From: [James Worthen](#)
To: [Rulescomments](#)
Cc: [Appellate Court Chiefs](#)
Subject: Proposed Amendments to TRAP 28.3
Date: Tuesday, July 25, 2023 4:04:19 PM

To: Chief Justice Hecht, Justices Lehrmann, Boyd, Devine, Blacklock, Busby, Bland, Huddle and Young,

I share Fourteenth COA Chief Justice Christopher's concerns regarding the changes to TRAP 28.3. My experience has been that more information, rather than less, is helpful in the administration of justice. I agree with her that the new TRAP 28.3 should require, at a minimum, the same information listed in TRAP 52.7 (a).

Thank you for your consideration.

Jim Worthen