

## Small Estate Affidavit Checklist – Orange County Court at Law

Texas Estates Code Chapter 205 governs probate by Small Estate Affidavit (SEA), a method of transferring probate property under certain limited circumstances. *Approval of an SEA is within the Court's discretion.*

Before filing an SEA, carefully review both the requirements in Chapter 205 of the Texas Estates Code as well as the rules for descent and distribution in Chapter 201. To prepare an SEA that the Court can approve, you will need to understand *all* of the rules and requirements. The complexity of the Code poses many pitfalls for non-lawyers attempting to comply with the requirements. An attorney's assistance in drafting an SEA may prevent the denial of an Affidavit that might have been approved if the Affidavit had been prepared correctly.

 This checklist explains the basics, but the list does not cover everything included in Chapter 205 and does not address any of the rules in Chapter 201.

1. **Use the SEA form.** To increase the chances that an SEA will include all necessary information, the Court recommends that applicants use the SEA form that is available on the Court's website, effective September 1, 2015. If necessary, include extra pages to provide additional information. The SEA must be completed by persons who have actual knowledge of the stated facts.
2. **Cover Sheet.** Since 2010, Texas Rule of Civil Procedure 78a has required that a Civil Case Information Sheet, including contact information, be filed with all original applications. These "cover sheets" are to be filed at the time an SEA is first filed. The Court will not consider an SEA unless the cover sheets are on file.
3. **Death Certificate.** The Orange County Court at Law requires a death certificate to be filed with SEAs. An easily readable copy is fine. The social security number must be crossed out.
4. **Cannot be filed within 30 days of Decedent's death.** An SEA cannot be filed within 30 days of Decedent's death.
5. **County where Decedent resided.** An SEA should be filed in the county where Decedent resided if Decedent had a domicile or fixed place of residence in Texas. If that's not Orange County, add facts to support venue in Orange County. Remember that granting an SEA is in the Court's discretion; it is unusual for the Court to approve an SEA for a Decedent who did not have a fixed place of residence in Orange County.
6. **No Will.** By statute, an SEA cannot be used where Decedent left a will. Applicants must swear that the Decedent died without a will.
7. **No Administration.** An SEA cannot be approved if a petition for the appointment of a personal representative is pending or has been granted or if it appears that an administration is needed.
8. **Assets.**
  - **List everything.** The SEA must list *all* of Decedent's known estate assets – not just some of them. Assets are any property owned that has monetary value, including cash or bank accounts, vehicles, household furnishings, and real property.
  - **Limited estate.** The SEA must show that the total assets of the estate are \$50,000 or less, not including the homestead (see below) and exempt property.
  - **Provide sufficient detail.** Indicate the value of each asset as precisely as possible, describing the property with sufficient detail so that it is clear exactly what property is being transferred by Affidavit. For example, include VIN numbers for cars and include the last four digits of any account numbers.
  - **If Decedent was married at the date of death:**
    - ✓ State whether *each* asset was Decedent's community property **or** Decedent's separate property.
    - ✓ For each asset, give the *facts* that explain why the asset was community or separate property.
  - **Exempt property.** If you are claiming that an asset is exempt property, allege the exempt status in

the “additional information” column on the SEA form.

- **Real property: homestead to homestead.** The only real property that can be transferred by an SEA is Decedent’s **homestead** property; even then, real property cannot be transferred by an SEA unless the real property *will be inherited by an heir who was homesteading with the Decedent when Decedent died* – a surviving spouse or unmarried child of Decedent who resided on property with Decedent. If this is the case, the SEA must include sufficient facts to support the homestead exemption **and** must also include the legal description **and** street address of the property.

## 9. Liabilities.

- **List everything.** The SEA must list all of Decedent’s debts and other liabilities, including all credit card balances, doctor’s bills, utility bills, etc. – *anything* owed by Decedent and not paid off. As one of the liabilities, the SEA must list any attorney’s fees paid or to be paid for preparation of the Affidavit.
- **Provide sufficient detail.** Indicate the amount of each liability as precisely as possible, describing the debt or other liability with sufficient detail so that it is clear who the creditor is. Also indicate at least the last four digits of any known account numbers.

**10. Solvent.** The total of the assets (not including the homestead and exempt property) must exceed the total known liabilities, not including liabilities secured by homestead and exempt property. If they do not, the SEA must be denied. (Distributees can pay off enough debts that the assets exceed the remaining liabilities.)

**11. Medicaid.** The SEA must indicate whether the Decedent applied for and received Medicaid benefits on or after March 1, 2005. If so, Applicant must either (1) list as a liability the amount owed to Medicaid or (2) file a Medicaid Estate Recovery Program (MERP) certification that Decedent’s estate is not subject to a MERP claim or (3) include additional information proving that a MERP claim will not be filed. For more information, see [http://www.dads.state.tx.us/services/estate\\_recovery/index.html](http://www.dads.state.tx.us/services/estate_recovery/index.html).

**12. Family history.** The SEA must state the *facts* about Decedent’s marital and family history in sufficient detail that it is clear who inherits Decedent’s property and the shares of those Distributees/heirs under Texas law. The Court’s approved SEA form will lead you through the appropriate questions, except for relatively unusual situations, as long as you fill out the form carefully and completely. For rules regarding descent and distribution, see Texas Estate Code Chapter 201 and the “Who Takes if You Don’t Have a Will?”.

**13. Correct inheritance shares.** In “L” of the Court’s approved SEA form, you must list the name, address, phone number, email address, and fax number (if available) of every Distributee (heir) of Decedent’s estate, along with the shares of each Distributee. Non-lawyers often do not understand who inherits under Texas law or what shares each Distributee inherits. The references in #12 above may help you fill out the chart in “L.” Note the following:

- **If Decedent was married at the date of death,** the SEA must state the shares of each Distributee in all three types of property: separate personal property, separate real property, and Decedent’s share of the community property. (The surviving spouse will retain his or her own share of the community property.) It is not sufficient to say that there was no separate property or no separate real property.
- **If Decedent was single at the date of death,** there is no community property. Put “NA” in the community property column.

**14. Signed and sworn to by all Distributees.** Every Distributee who has legal capacity must sign and swear to the Affidavit before a notary. Use as many signature pages as needed.

- **Is there a minor or otherwise incapacitated Distributee?** If warranted by the facts, the natural guardian or next of kin of any minor Distributee or the guardian of any other incapacitated Distributee may sign and swear to the Affidavit on behalf of the minor or otherwise incapacitated Distributee.

- **Is there a missing Distributee?** If you do not know where to find a Distributee, you cannot use the Small Estate Affidavit probate procedure and must file an Application to Determine Heirship. Note that an Applicant for determination of heirship must be represented by an attorney.

**15. Sworn to by two disinterested witnesses:** Two disinterested witnesses must each sign and swear to the Affidavit before a notary. These witnesses must be able to swear to *all* of the facts included in the SEA, not only the family history facts. Disinterested witnesses are witnesses who have no interest in Decedent's estate and who are not related to Decedent under the laws of descent and distribution of the State of Texas.

**16. Possible hearing.** The Orange County Court at Law may require a hearing before an SEA will be approved. If a hearing is needed, the Court will contact you to set a hearing. *Do not set a hearing until the Court has asked you to do so.*

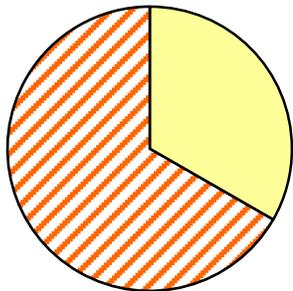
# Texas Descent and Distribution<sup>1</sup>

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

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

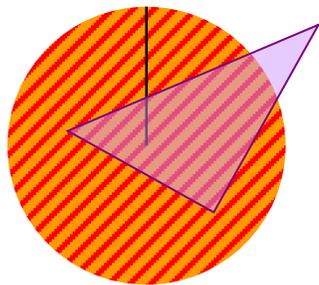
## 1. Married Person with Child[ren] or Other Descendants

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



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

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

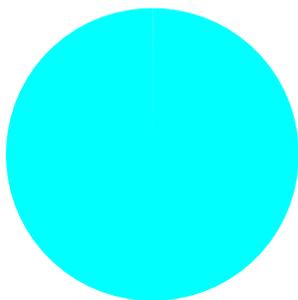


- Surviving spouse gets 1/3 life estate
- Children take all equally, subject to surviving spouse's 1/3 life estate

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

### C. Decedent's share of community property when all surviving children and descendants of deceased are also children or descendants of surviving spouse.

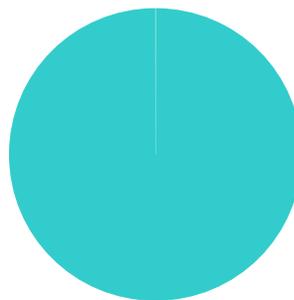
(EC § 201.003(b)(2))



- All to surviving spouse

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

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



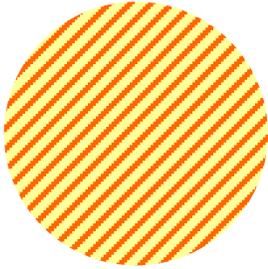
- All to children, who take equally

Surviving spouse takes none, but retains own share

<sup>1</sup> The charts in this handout, **Compliments of Judge Guy Herman, Travis County Probate Court No. 1**, illustrate the general rules of descent and distribution under Texas law. In addition to the statutory references noted throughout, see the following Texas Estates Code (EC) provisions, among others: § 201.101, Determination of Per Capita with Representation Distribution (fka per stirpes); § 201.051 et seq., Matters Affecting Inheritance (including Adoption [§ 201.054] and Collateral Kindred of Whole and Half Blood [§ 201.057]); Advancements, §§ 201.151 & 201.152; and Requirement of Survival by 120 Hours, §§ 121.052 & 121.053 (see also §§ 121.151-121.153).  
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## 2. Married Person with No Child or Descendant

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

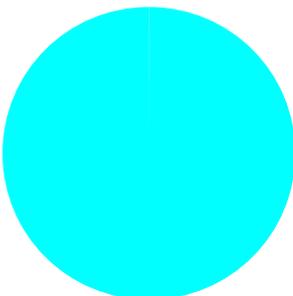


All to surviving spouse

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

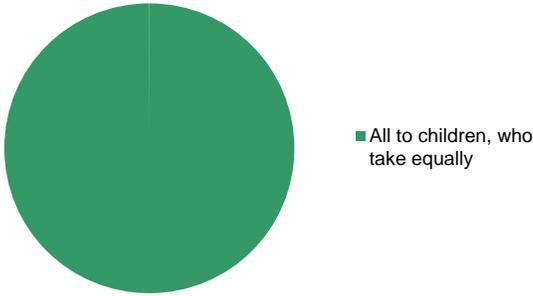
<p>If decedent is survived by <b>both</b> mother and father. EC §§ 201.001(c) &amp; 201.002(c)(2) &amp; (3).</p> <ul style="list-style-type: none"> <li>□ 1/4 to father</li> <li>■ 1/4 to mother</li> <li>■ 1/2 to surviving spouse</li> </ul>	<p>If decedent is survived (1) by mother <b>or</b> father <b>and</b> (2) by sibling(s) or their descendants. EC §§ 201.001(d)(1) &amp; 201.002(c)(2) &amp; (3).</p> <ul style="list-style-type: none"> <li>□ 1/4 to surviving parent</li> <li>■ 1/4 to siblings, etc.</li> <li>■ 1/2 to surviving spouse</li> </ul>	<p>If decedent is survived by mother <b>or</b> father, <b>but is not</b> survived by any sibling(s) or their descendants. EC §§ 201.001(d)(2) &amp; 201.002(c)(2) &amp; (3).</p> <ul style="list-style-type: none"> <li>□ 1/2 to surviving parent</li> <li>■ 1/2 to surviving spouse</li> </ul>
<p>If decedent is survived by neither parent, but <b>is</b> survived by sibling(s) or their descendants. EC §§ 201.001(e) &amp; 201.002(c)(2) &amp; (3).</p> <ul style="list-style-type: none"> <li>■ 1/2 to siblings, etc.</li> <li>■ 1/2 to surviving spouse</li> </ul>	<p>If decedent is survived by no parent, no sibling, and no descendant of a sibling. EC § 201.002(d).</p> <ul style="list-style-type: none"> <li>■ All to surviving spouse</li> </ul>	

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



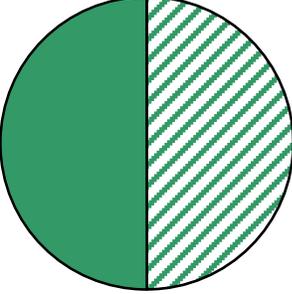
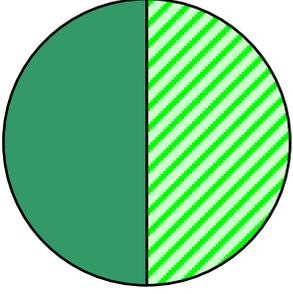
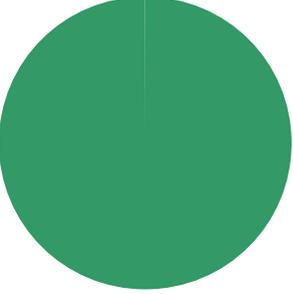
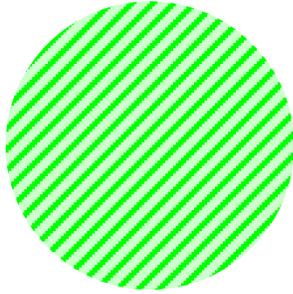
All to surviving spouse

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



### 4. Unmarried Person with No Child or Descendant

All property passes depending on who survived the decedent:<sup>1</sup>

<p>If decedent is survived by <b>both</b> mother and father. EC § 201.001(c).</p>  <ul style="list-style-type: none"> <li>■ 1/2 of all property to father</li> <li>■ 1/2 of all property to mother</li> </ul>	<p>If decedent is survived (1) by mother <b>or</b> father <b>and</b> (2) by sibling(s) or their descendants. EC § 201.001(d)(1).</p>  <ul style="list-style-type: none"> <li>■ 1/2 to siblings or to descendants of deceased siblings</li> <li>■ 1/2 to surviving parent</li> </ul>
<p>If decedent is survived by mother <b>or</b> father, <b>but is not</b> survived by any sibling(s) or their descendants. EC § 201.001(d)(2).</p>  <ul style="list-style-type: none"> <li>■ All to surviving parent</li> </ul>	<p>If decedent is survived by <b>neither</b> parent, but <b>is</b> survived by sibling(s) or their descendants. EC § 201.001(e).</p>  <ul style="list-style-type: none"> <li>■ All to siblings or to descendants of deceased siblings</li> </ul>

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

Estate of

§  
§  
§  
§  
§

In the County Court at Law

\_\_\_\_\_

of

Deceased

Orange County, Texas

### Small Estate Affidavit

On the dates indicated below, all of the Distributees of this estate and two disinterested witnesses personally appeared and, on their oath, did swear or affirm to the accuracy of the following facts, pursuant to Chapter 205 of the Texas Estates Code:

- A. Decedent, \_\_\_\_\_, died on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ in \_\_\_\_\_ County, Texas. A copy of Decedent's death certificate will be filed in this cause number at the time this Affidavit is filed.
- B. More than 30 days have elapsed since Decedent's death.
- C. Decedent was a resident of and domiciled in \_\_\_\_\_ County, Texas, at the time of Decedent's death. *[If not Orange County, the affidavit must include facts supporting venue in Orange County.]*
- D. Decedent died without a will.
- E. No administration is pending or has been granted in Decedent's estate and none appears necessary.
- F. The value of the entire assets of the estate of Decedent, not including homestead and exempt property, does not exceed \$50,000.00.
- G. The value of the entire assets of the estate of Decedent, not including homestead and exempt property, exceeds the known liabilities.
- H. Medicaid – check the accurate box:
  - The Decedent did not apply for and receive Medicaid benefits on or after March 1, 2005.
  - OR**
  - Decedent did apply for and receive Medicaid benefits on or after March 1, 2005, and the Medicaid Estate Recovery Program claim is listed as a liability in section "J" below.
  - OR**
  - The Decedent did apply for and receive Medicaid benefits on or after March 1, 2005, but there is no Medicaid claim against the estate. *[If this box is checked, applicant(s) must either (1) file a Medicaid Estate Recovery Program (MERP) certification that decedent's estate is not subject to a MERP claim or (3) include additional information proving that a MERP claim will not be filed.]*

I. All assets of the Decedent's estate and their values are listed here.

<b>Asset</b> <i>List with enough detail to identify the asset, including the last three digits of any account number(s).</i>	<b>Value</b>	<b>Additional information</b> <i>If decedent was married, indicate:</i> <ul style="list-style-type: none"> <li>• <b>whether each asset was community or separate property, and</b></li> <li>• <b>facts that explain why the asset was community or separate</b></li> </ul> <i>If exempt property, so indicate.</i> <i>Use additional pages as necessary.</i>

*(Continue list as necessary. If list is continued on another page, please note.)*

J. All liabilities of the Decedent's estate (including attorney fees and funeral debts) and their values are listed here. If none, write "none."

<b>Creditor</b> <i>List with enough detail to identify the creditor &amp; any account.</i>	<b>Amount of Liability</b>

*(Continue list as necessary. If list is continued on another page, please note.)*

K. The following facts regarding Decedent's family history show the Distributees' entitlement to Decedent's estate to the extent that the assets, exclusive of homestead and exempt property, exceed the liabilities of Decedent's estate. **[Put check marks in the appropriate small boxes, and provide additional information as indicated.]**

**Family History #1: Marriage.**

On the date of Decedent's death, Decedent was a single person.

**OR**

On the date of Decedent's death, Decedent was married to \_\_\_\_\_.

The date they were married: \_\_\_\_\_.

**Family History #2: Children.**

- Decedent had no children by birth or adoption, and Decedent did not take any children into Decedent's home to raise as a child. (Skip to Family History #4 if you check this box.)

**OR**

- The following children were born to or adopted by Decedent (list all children, whether or not the child is still alive).

Child's name	Birth date, if known	Name of child's other parent

*(Continue list as necessary. If list is continued on another page, please note.)*

**Family History #3: Children, part 2. Answer if Decedent had any children.**

- All of Decedent's children, natural born or adopted, were alive when Decedent died.

**OR**

- The following of Decedent's children, natural born or adopted, died before the Decedent's death **and were survived by children (or grandchildren or great-grandchildren):**

Name of deceased child	Date child died	Names of all children of the deceased child <i>(if any of these children died before Decedent, use a separate page to give date of death, plus names &amp; birth dates of all grandchildren)</i>

*(Continue list as necessary. If list is continued on another page, please note.)*

**AND/OR**

- The following of Decedent's children, natural born or adopted, died before the Decedent's death **and were not survived by any children, grandchildren, or great-grandchildren:**

Name of deceased child	Date child died

*(Continue list as necessary. If list is continued on another page, please note.)*

***If Decedent was survived by any children, grandchildren, or great-grandchildren, you do not need to answer Family History #4 about Parents or Family History #5 about Sisters and Brothers. You may skip to "L" (following #5).***

**Family History #4: Parents.**

The Decedent was survived by both parents, \_\_\_\_\_ (mother) and \_\_\_\_\_ (father).

**OR**

Decedent was survived by only one parent, \_\_\_\_\_.  
Decedent's other parent, \_\_\_\_\_, died on \_\_\_\_\_.

**OR**

Both of Decedent's parents died before Decedent's death.

**Family History #5: Sisters and Brothers.**

*The following information about Decedent's sisters and brothers is not needed if Decedent was survived by both parents or by a spouse or by children, grandchildren, or great-grandchildren.*

The following are all of Decedent's **surviving** brothers and sisters, including half-brothers and half-sisters who were born to *either* of Decedent's parents:

Name of brother or sister	State whether full or half-sibling	Birth date

*(Continue list as necessary. If list is continued on another page, please note.)*

The following of Decedent's brothers and sisters (including half-brothers and half-sisters who were born to *either* of Decedent's parents) **died before Decedent's death**:

Name of deceased brother or sister	Full or half sibling?	Names of each surviving child of the deceased brother or sister (nephews and nieces of Decedent)	Birth dates of surviving nieces & nephews

*(Continue list as necessary. If list is continued on another page, please note.)*

**Family History #6: Other.**

Fill out a separate page if Decedent was survived by none of the following: spouse, child, grandchild, parent, brother, sister, half-brother, half-sister, niece, or nephew. If Decedent was survived by none of the above, list all of the surviving relatives of Decedent on a separate page. Specify Decedent's family history with respect to each of the survivors, giving sufficient detail about names, birth dates, death dates, and relationships to explain how each survivor is related to Decedent.

**EVERYONE MUST FILL OUT THE FOLLOWING CHART.** (See #13 of the checklist.)

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

For each Distributee, list: 1. Name 2. Address 3. Telephone number 4. Email address 5. Fax number, if available	Share of separate personal property (always fill out this column)	Share of separate real property (always fill out this column)	Share of decedent's community property (fill out this column if decedent was married)

*(Continue list as necessary. If list is continued on another page, please note.)*



**Affidavits and signatures of two disinterested witnesses**

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

I have no interest in the Estate of \_\_\_\_\_, Deceased, and am not related to Decedent under the laws of descent and distribution of the State of Texas. I swear or affirm that the facts contained in this Affidavit regarding family history, assets, and liabilities are true and complete to the best of my knowledge.

*I understand that Estates Code §205.007(c) provides that "[e]ach person who execute[s] [this] affidavit is liable for any damage or loss to any person that arises from a payment, delivery, transfer, or issuance made in reliance on the affidavit."*

\_\_\_\_\_  
Disinterested Witness's printed name

\_\_\_\_\_  
Disinterested Witness's signature

SWORN TO AND SUBSCRIBED before me by \_\_\_\_\_ [name of witness],  
a disinterested witness, on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

I have no interest in the Estate of \_\_\_\_\_, Deceased, and am not related to Decedent under the laws of descent and distribution of the State of Texas. I swear or affirm that the facts contained in this Affidavit regarding family history, assets, and liabilities are true and complete to the best of my knowledge.

*I understand that Estates Code §205.007(c) provides that "[e]ach person who execute[s] [this] affidavit is liable for any damage or loss to any person that arises from a payment, delivery, transfer, or issuance made in reliance on the affidavit."*

\_\_\_\_\_  
Disinterested Witness's printed name

\_\_\_\_\_  
Disinterested Witness's signature

SWORN TO AND SUBSCRIBED before me by \_\_\_\_\_ [name of witness],  
disinterested witness, on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**Prepared in the Law Office of:**  
[Attorney signature block]