LUCY ADAME-CLARK

COUNTY CLERK BEXAR COUNTY

BEXAR COUNTY COURTHOUSE
100 DOLOROSA, SUITE 104
SAN ANTONIO, TEXAS 78205

January 20, 2021

NEW POLICY REGARDING SMALL ESTATE AFFIDAVITS

Effective Monday, February 1, 2021, filing fees are due at the time of filing and are payable in cash, check or debit/credit card. **Refunds will not be issued once the Small Estate Affidavit has been filed with the Bexar County Clerk's Office**. It is the responsibility of the filer to ensure that the affidavit meets the filing requirements before filing it in the County Clerk's Office. Please make a copy of your Small Estate Affidavit for your records **prior** to filing.

Please remember that all applicants who submit a Small Estate Affidavit for consideration by the Bexar County Probate Courts shall submit the proposed form and order in compliance with the form and order attached to Administrative Order No. 2019-02.

The Probate Courts will review the Small Estate Affidavit form that was filed in the County Clerk's Office. If approved, the court will sign the order that is attached as part of the Small Estate Affidavit. If the Court does not approve the Small Estate Affidavit, the court will contact you directly with further information.

NO. _____

ESTATE OF	§	**IN THE PROBATE COURT**
	§	
_____,	§	**NO. _____**
	§	
DECEASED	§	**BEXAR 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 Bexar County, the affidavit must include facts supporting venue in Bexar 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 total value of Decedent's estate assets on the date of this affidavit, not including homestead and exempt property, is $75,000.00 or less.

G. The total value of Decedent's estate assets, not including homestead and exempt property, exceeds the total value of 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 (2) 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.

NOTE: Community property is property acquired during marriage other than by gift or inheritance.
Separate property is property owned before marriage or acquired by gift or inheritance during marriage.

Description of Asset(s) *List each asset with enough detail to identify exactly what the asset is. For **example**, give bank name and last four digits of an account number; give life insurance company name; give description of car plus VIN number; give address & legal description of real property.*	**$$ Value of Decedent's interest on date of affidavit** *For each asset, list the value of Decedent's interest in that asset. An affidavit cannot be approved with an asset of "unknown" value.*	**Additional information** *1. If decedent was married, indicate:* • *whether each asset was community or separate property, **and*** • ***facts** that explain why the asset was community or separate, **and*** • total value of each community property asset. *2. If decedent was survived by a spouse, minor children, or unmarried adult children who lived with decedent, the list of known estate assets must indicate which assets applicant claims are exempt. See checklist for more information.* *Use additional pages as necessary.*

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

J. All liabilities/debts of the Decedent's estate and their values must be listed here, as of the date the affidavit is signed. The affidavit must list ***all*** of Decedent's existing debts and other liabilities including all credit card balances, doctor and hospital bills, utility bills, etc. – *everything* owed by Decedent or Decedent's estate and not paid off.

If none, write "none."

If funeral debts or attorney's fees and expenses will be paid from estate assets, list them here.

Description of Liabilities / Debts: *List with enough detail to identify the creditor & any account.*	**Balance Due**

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

K. The following facts regarding Decedent's family history show who is entitled to what share of Decedent's estate, to the extent that the assets of Decedent's estate, 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 and whether or not parental rights were later terminated. If parental rights were terminated for any child, give details on separate page(s).

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, by birth or adoption, were alive when Decedent died.

OR

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

Name of deceased child (followed by the name of the deceased child's other parent in parentheses)	**Date child died**	**Names of all children of the deceased child** *(if any of these children died before Decedent, use a separate page to give date of death, plus names & birth dates of all grandchildren)*

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

AND/OR

☐ The following of Decedent's children, by birth or adoption, 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 children, grandchildren, or great-grandchildren.

☐ The following are all of Decedent's brothers and sisters **who were alive on the date Decedent died**, including half-brothers and half-sisters who were born to *either* of Decedent's parents. If none, write "none." If any of the following are now deceased, indicate date of death.

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.)

AND

☐ 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**.

If none, write "none."

Name of deceased brother or sister (followed by the date of death in parentheses)	Full or half sibling?	Names of all children of deceased brother or sister (nephews and nieces of Decedent) that were alive on the date Decedent died.	Birth dates of nieces & nephews

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

Family History #6: Other.

Fill out a separate page (or pages) ***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.

Before filling out the chart, see #12 & #14 and pages 5-7 of the Court's Small Estate Affidavit 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 interests in Decedent's estate:

For each Distributee, list: **1. Name** **2. Address** **3. Telephone number** **4. Email address**	**Share of separate personal property** (this column **MUST** be filled out)	**Share of separate real property** (this column **MUST** be filled out, *even if* you do not list any real property)	**Share of decedent's community property** (if decedent was married, you **must** always fill out this column)

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

Affidavits and signatures of <u>all</u> Distributee(s).

As needed, include other signature pages for additional distributees.

****** <u>Every</u> signature page for <u>every</u> distributee must include the box below:***

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

- *the foregoing Affidavit was completed by persons who have actual knowledge of the stated facts;*
- *all of the facts stated in the foregoing Affidavit are true and complete; and*
- *each of us has legal capacity.*

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

We understand that Estates Code §205.007(c) provides that "[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."

STATE OF _____ §
COUNTY OF _____ §

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

_____ _____
Distributee's printed name Distributee's signature

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

_____
(SEAL) Notary Public, State of _____

STATE OF _____ §
COUNTY OF _____ §

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

_____ _____
Distributee's printed name Distributee's signature

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

_____
(SEAL) Notary Public, State of _____

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:

NO._____

IN RE ESTATE OF

_____

DECEASED

IN THE PROBATE COURT

NO._____

BEXAR COUNTY, TEXAS

ORDER REGARDING SMALL ESTATE AFFIDAVIT

On this day, the court considered the Small Estate Affidavit for the distributees of the above estate. Based on the representations of the applicant(s) and the witnesses in the Affidavit, the court finds:

that the Affidavit complies with the terms and provisions of the Texas Estates Code,

that this court has jurisdiction and venue,

that this estate qualifies under the provisions of the Estates Code as a Small Estate and that the distributees are entitled to the personal property of the decedent, to the extent the assets exceed the known liabilities, exclusive of homestead and exempt property.

Nothing herein transfers title to real estate, except as to realty that is homestead, nor affects the disposition of property under a will or other testamentary instrument, nor does the court make any determination as to the separate or community nature of any property.

The Court further finds that the following heir(s) is/are a minor(s):

_____,

_____,

(name, including last 3 digits of the minors' social security number(s) (add lines as necessary), and that his/her share of decedent's property should be directly

deposited into the registry of the court, in an interest bearing account according to Texas Estates Code § 1355 *et seq.*

IT IS, THEREFORE, ORDERED by the court that the Affidavit is hereby approved as set out above. The Affidavit shall forthwith be recorded in the records of the County Clerk, and the clerk of this Court shall issue certified copies thereof to all persons entitled thereto.

IT IS FURTHER ORDRERED that any person or entity owing money or property to the estate shall pay that money or property to the following adult heirs:

_____,

_____,

_____,

(names of each adult heir, and you can add lines as necessary)

outright, and shall pay money or property belonging to decedent's minor heirs _____,_____into the registry of the Court, into an interest bearing account for the benefit of the minor heir pursuant to Section 1355 of the Texas Estates Code.

IT IS FURTHER ORDERED that the distributees shall provide and cooperate with the Clerk of the Court in providing any information and completing all documentation necessary to establish such an account for a minor beneficiary.

SIGNED on_____ .

_____

JUDGE PRESIDING