SMALL ESTATE AFFIDAVIT CHECKLIST

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

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

1. No Will. An SEA cannot be used if Decedent left a Will. If Decedent has a Will, you will need to use a different probate procedure.
2. No Administration. An SEA cannot be approved if a petition for appointment of a personal representative is pending, has been granted, or if an administration is needed.
3. Value of Estate. The value of the entire estate, excluding homestead and exempt property, does not exceed $50,000.00.
4. Cannot be filed within 30 days of a Decedent's death.
5. Transfer of Title. An SEA may not be used to transfer title to real property other than the Decedent's homestead.
6. County of Residence. An SEA should be filed in the County where the Decedent resided.
7. Assets. You must list all assets of the Decedent. Include a full description of each and every asset. List everything. Indicate the value of each asset as precisely as possible.
    a. Bank accounts – name of bank, account number (last four digits), balance in each account
    b. Cash
    c. Vehicles – year, make, model, VIN, and value
    d. Real Estate – homestead, include legal description and physical address
    e. Stocks – name of stock, number of shares, certificate number, value
    f. Safe Deposit Boxes
    g. Indicate if assets are community or separate property
    h. Exempt property - as defined by Texas Estate Code Chapter 353.051 and Texas Property Code Chapter 42

8. Liabilities. List all liabilities or debts. The estate of the decedent must be solvent: the debts/liabilities must not exceed the value of the assets. Do not leave the section blank.
9. Medicaid. The SEA must indicate whether the Decedent applied for and received Medicaid benefits on or after March 1, 2005. If so, applicant must either (1) list as a liability the amount owed to Medicaid or (2) file a Medicaid Estate Recovery Program (MERP) certification or (3) include additional information proving that a MERP claim will not be filed.
10. **LIST ALL HEIR**
    a. List the name, address, phone number, capacity, and interest of each distributee.
    b. All distributees who are listed must sign in front of a notary
    c. Minor / Incapacitated distributee – the natural guardian or next of kin of any minor / incapacitated distributee may sign and swear to the affidavit on behalf of the minor / incapacitated distributee.
    d. Distributee who survived Decedent, but who is now deceased – you cannot use an SEA if no personal representative has been appointed to a now – deceased distributee.
    e. Missing distributee – if you cannot find a distributee, you cannot use the SEA probate procedure.
11. Sworn by two disinterested witnesses – two disinterested witnesses must each sign and swear to the affidavit before a notary.
12. Possible hearing. The court does not usually require a hearing to approve an SEA. If a hearing is needed, the Court will contact you for a setting.

No. _____

In the Estate of	§	In the County Court
_____,	§	Of
Deceased	§	Erath County, Texas

Small Estate Affidavit

Each of the undersigned (Distributees) being duly sworn, states on oath and furnish the following information to the Court:

1. _____ (Decedent) died on _____ in _____, _____ County, Texas. To the best of my knowledge, Decedent died intestate.

2. Decedent's domicile was in _____ County, Texas, where the principal part of Decedent's property at the time of death was situated.

3. There is no petition for the appointment of a personal representative pending, nor has one been granted for the Decedent's Estate.

4. Decedent died more than thirty (30) days prior to the filing of this Small Estate Affidavit.

5. The total value of all of the known assets of the Decedent, as of the date of his/her death, not including the homestead nor exempt property, does not exceed $50,000. Known assets exceed the known liabilities of the Estate, exclusive of liabilities secured by homestead and exempt property.

6. The only real property of the Estate of the Decedent is a homestead which is community property and located at _____. The Estate's interest (1/2) in said homestead is valued at $_____, and is described as follows:

(Legal Description)

7. At the time of Decedent's death, he/she was married/widowed/etc. to _____.

8. The names, addresses, relationship of each Distributee to the Decedent, and the share of the Estate to which Distributee is entitled are as follows:

A.
Name _____
Address: _____
(City, State Zip) _____
Relationship: _____
Share of Estate _____%

B.
Name _____
Address: _____
(City, State Zip) _____
Relationship: _____
Share of Estate: _____%

C.
Name: _____
Address: _____
(City, State Zip) _____
Relationship: _____
Share of Estate: _____%

D.
Name: _____
Address: _____
(City, State Zip) _____
Relationship _____
Share of Estate: _____%

No. _____

Small Estate Affidavit (Continued)

9. The known assets and liabilities of Decedent's Estate are as follows:

Assets Other Than Real Estate

Description: _____ Estimated Value: _____ Encumbrances:

_____

_____

_____

_____

Liabilities

None _____

_____

_____

_____

10. Distributee(s) state(s) that the facts contained in this Affidavit are true and correct and ask(s) that this Affidavit be approved by the Court; filed in the Small Estates Records; and the Clerk issue certified copies of the Affidavit and Order so that Distributee(s) may present the Certified Copy to persons owing money to the Estate of _____ Distributee(s) may also present the Certified Copy of this Affidavit to person(s) acting as registrar, fiduciary, or transfer agent of anyone having evidence of interest, indebtedness, property, or other right belonging to this Estate so that such person may pay, deliver, issue or transfer such property or right.

_____ _____

(Typed Name),Distributee (Typed Name), Distributee

_____ _____

(Typed Name), Distributee (Typed Name), Distributee

Sworn to and Subscribed Before Me by (list distributees) _____,
this __ day of ____, 20__, to certify which witness my hand and seal of office.

_____

Notary Public, State of Texas

No. _____

Small Estate Affidavit (Continued)

Witnesses:

The undersigned witnesses, being first duly sworn, states on oath that:

"I have no financial or beneficial interest in the Estate of _____, Deceased, and I am not related to Decedent under the laws of descent and distribution of the State of Texas. The facts stated in this Affidavit are true and correct."

_____ _____

(Typed Name), Witness (Typed Name), Witness

Sworn to and Subscribed Before Me by _____, this __ day of ____, 20___, to certify which witness my hand and seal of office.

_____

Notary Public, State of Texas

Sworn to and Subscribed Before Me by _____, this __ day of ____, 20___, to certify which witness my hand and seal of office.

_____

Notary Public, State of Texas

No. _____

Small Estate Affidavit (Continued)

No.

In the Estate of	§	In the County Court
_____,	§	Of
Deceased	§	Erath County, Texas

Order Approving Small Estate Affidavit

On this day, the Court considered the Affidavit of the Distributees of this Estate and the court finds that the above Affidavit complies with the terms and provisions of Section 137, Texas Probate Code. Further, this Court finds that it has jurisdiction and venue; that this Estate qualifies under the provisions of the Probate Code as a Small Estate; and that the Affidavit should be approved.

It is Ordered that the foregoing Affidavit is now approved. It shall be recorded in the Small Estates Records or in the Official Public Records (according to Chapter 194, Local Government Code).

The Clerk of this Court shall issue certified copies of the Recorded Affidavit as needed. Such certified copies of the Affidavit shall authorize any person owing money to the Estate of the Deceased to distribute that money to the Distributee(s) as stated in the Affidavit.

Further, anyone having possession of any property of the Estate; or acting as registrar, fiduciary, or transfer agent of anyone having evidence of interest, indebtedness, property, or other right belonging to this Estate; shall pay, deliver, issue or transfer such property or right to the Distributee(s) as stated in the Affidavit.

Signed this _____ day of _____, 20___.

_____

Judge, County Court at Law
Erath County, Texas