

Small Estate Affidavit Checklist – Parker County Probate Court

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 available from the Parker County Probate Court.** To increase the chances that an SEA will include all necessary information, the Court requires that applicants use the SEA form that is available from the court. 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.** No cover sheet for SEA is required at this time.
- 3. Death Certificate.** The Parker County Probate Court requires a death certificate to be filed with all probate applications, including 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.**
- 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 Parker County, add facts to support venue in Parker 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 Parker 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 \$75,000 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.

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 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 the "Who Takes if You Don't Have a Will?" document on the Court's website and Texas Estate Code Chapter 201.

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 Parker County Probate Court 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.*