

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.

<p>Description of Asset(s)</p> <p><i>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.</i></p>	<p>\$\$ value of Decedent's interest on date of affidavit</p> <p><i>For each asset, list the value of Decedent's interest in that asset. An affidavit cannot be approved with an asset of "unknown" value.</i></p>	<p>Additional information</p> <p><i>1. If decedent was married, indicate:</i></p> <ul style="list-style-type: none"> • <i>whether each asset was community or separate property, and</i> • <i>facts that explain why the asset was community or separate, and</i> • <i>total value of each community property asset.</i> <p><i>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.</i></p> <p><i>Use additional pages as necessary.</i></p>

Description of Asset(s) <i>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.</i>	\$\$ value of Decedent's interest on date of affidavit <i>For each asset, list the value of Decedent's interest in that asset. An affidavit cannot be approved with an asset of "unknown" value.</i>	Additional information 1. <i>If decedent was married, indicate:</i> <ul style="list-style-type: none"> • <i>whether each asset was community or separate property, and</i> • <i>facts that explain why the asset was community or separate, and</i> • <i>total value of each community property asset.</i> 2. <i>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.</i> <i>Use additional pages as necessary.</i>

(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: <i>List with enough detail to identify the creditor & any account.</i>	Balance Due

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

If you did not list attorney's fees as a liability above but one or more distributees have paid or will pay attorney's fees for this small estate affidavit, indicate the amount of those fees here: \$_____.

Also indicate who has paid or will pay the fees: _____.

- 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. *(If any child died after the Decedent, talk with a lawyer before getting signatures on this form.)*

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. <i>If any died before Decedent died, contact the Court.</i>	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 L of the Instructions & Forms Using a Small Estate to Probate an Estate in Texas and the Texas Descent and Distribution Chart.

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, <i>even if</i> 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.)

N. 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], a disinterested witness, on this the _____ day of _____, 20_____.

(SEAL)

Notary Public, State of _____

Instructions & Forms for Using a Small Estate Affidavit to Probate an Estate in Texas

These instructions explain the basic steps to use a Small Estate Affidavit (SEA) to probate an estate in Texas. Each step includes a link to the form or forms needed for that step.

Use these instructions if:

- the decedent died without a will, and
- the decedent's total assets were less than \$75,000 (not including homestead and exempt property).

Do NOT use these instructions if:

- the debts are greater than the value of the assets; or
- the decedent owned real property unless both of the following are true:
 - The real property was decedent's homestead property, *and*
 - The real property will be inherited only by person(s) homesteading with the decedent at the time decedent died—decedent's surviving spouse or minor children who resided on property with decedent, or
- you can't locate an heir or if heirs refuse to sign the SEA (or have someone who has legal authority sign for them), or
- a petition for appointment of a personal representative is pending or has been granted, or
- an administration is needed.

Other Options?

If the decedent died without a valid will, but the estate cannot be probated using a Small Estate Affidavit, you may consider asking the court for a **determination of heirship** (<https://texaslawhelp.org/article/applications-determine-heirship>) [1]. TexasLawHelp.org does NOT have forms and instructions for a determination of heirship. If the decedent died with a valid will, you will need to consider different probate procedures.

Note: When calculating the value of debts and assets, do not consider any mortgages or debts secured by exempt property as debts, and do not consider homestead and exempt property as assets.

Step 1: Meet the legal requirements.

You cannot ask the Court to probate an estate using a Small Estate Affidavit if:

- the decedent died with a will;
- the decedent's total assets were more than \$75,000 (not including homestead and exempt property);
- the amount of debts are greater than the amount of assets (do not consider any mortgages or debts secured by exempt property as debts and do not consider homestead and exempt property as assets); or
- the decedent owned real property unless both of the following are true:
 - The real property was decedent's homestead property, and
 - The real property will be inherited only by person(s) homesteading with the decedent at the time decedent died—decedent's surviving spouse and/or minor child(ren) who resided on property with decedent, or
- you can't locate an heir or if heirs refuse to sign the SEA (or have someone who has legal authority sign for them), or
- a petition for appointment of a personal representative is pending or has been granted, or
- an administration is needed.

If you meet the legal requirements, use these instructions to ask the court to approve a Small Estate Affidavit (called SEA for short). The legal requirements of qualifying to file an SEA can be confusing. Talk with a lawyer if you have any questions about whether you meet the legal requirements to file an SEA.

Step 2: Determine where to file the Small Estate Affidavit.

You must file the Small Estate Affidavit in the right county. Generally, you can file the affidavit in the county where the decedent lived (had a domicile or fixed place of residence) at the time of death.

Important: Talk with a lawyer if, at the time of the decedent's death, the decedent did not live in the county where you want to turn in the affidavit. The court might not approve an affidavit for a decedent who did not have a fixed residence in the county where the affidavit is filed.

After you determine the county where you should file the affidavit, call that county's county or district court clerk and ask the clerk which court in that county handles probate cases.

Note: Ask the court where you will file the affidavit if there are any local rules or procedures you need to know about that apply to your case. For example, some courts require you to use their own forms. Other courts have additional forms required by local rule. Talk to an attorney who practices in the county where you want to file the affidavit.

Step 3: Fill out the Small Estate Affidavit.

Fill out the **Small Estate Affidavit** (<https://texaslawhelp.org/form/small-estate-affidavit>) [2]. Carefully follow the **instructions** (<https://texaslawhelp.org/article/information-needed-small-estate-affidavit>) [3], which are **here** (<https://texaslawhelp.org/article/information-needed-small-estate-affidavit>) [3].

Do not fill out the forms until **30 days after the decedent's death**. This waiting period is required by law and will help make sure you have all of the bills and do not have to re-do the forms.

IMPORTANT: Fill out this form completely in blue or black ink according to the **instructions** (<https://texaslawhelp.org/article/information-needed-small-estate-affidavit>) [3].

Do not leave any blanks. If needed, include extra pages to provide additional information. Read the FAQs: Small Estate Affidavits for more information.

Note: If you are in Travis County, you must use the SEA form from the Travis County Probate Court's website instead. Get the Travis County form **here** (<https://www.traviscountytexas.gov/probate/probate>) [4].

Important: The SEA must be completed by persons who have *actual* knowledge of all stated facts.

Step 4: Fill out these additional starting forms.

Fill out these additional **starting** forms.

- **Civil Case Information Sheet** (<https://texaslawhelp.org/form/civil-case-information-sheet>) [5]

Note: If you are turning your court forms into the **Travis County Probate Court** (<https://www.traviscountytexas.gov/probate>) [6], also fill out this additional starting form: **Supplementary Probate Case Information Sheet** (<https://www.traviscountytexas.gov/probate/new-cover-sheet>) [7].

Can't afford to pay the filing fee for your case? Fill out this additional **starting form** if you cannot afford to pay the filing fee for your case. After you determine the county where you should file the affidavit, call that county's county or district court clerk to learn the filing fee for your case. Learn more here: **Court Fees and Fee Waivers** (<https://texaslawhelp.org/article/court-fees-fee-waivers>) [8].

Click here for a printable, fill-in-the-blank **Statement of Inability to Afford Payment of Court Costs or an Appeal Bond in Justice Court form** (https://texaslawhelp.org/sites/default/files/tx-pr-pay-112_scot_statement_of_inability_to_pay_court_costs.pdf) [9], or use the link to the **guided form** (<https://texaslawhelp.org/article/court-fees-fee-waivers>) [8] tool to generate a completed form.

Step 5: Make copies for yourself and for the distributees.

Make copies for yourself and for the distributees.

- Make enough copies of the completed Small Estate Affidavit to have a copy for yourself, and all of the distributees.
- Make enough copies of the Statement of Inability to Afford Payment of Court Courts or an Appeal Bond to have a copy for yourself and for all of the distributees if you are asking the court to waive court costs.

- Make a copy of the decedent's **death certificate** and cross out the decedent's social security number. You will need to file (turn in) a copy of the decedent's death certificate with social security number crossed out at the time you turn in your starting forms.
- You do not need a copy of the Civil Case Information Sheet (or the Supplementary Probate Case Information Sheet if you file in Travis County).

Step 6: Fill out your ending forms.

Fill out one of the following ending forms:

- **Order Approving Small Estate Affidavit with Sole Distributee** (<https://texaslawhelp.org/form/order-approving-small-estate-affidavit-with-sole-distributee>) [10]
 - (Fill out this form if the estate has one adult distributee and no minor distributees.)
- **Order Approving Small Estate Affidavit** (<https://texaslawhelp.org/form/order-approving-small-estate-affidavit>) [11]
 - (Fill out this form if the estate has more than one adult distributee and no minor distributees.)
- **Order Approving Small Estate Affidavit and Ordering Property of Minor Heirs Deposited into the Court Registry** (https://texaslawhelp.org/sites/default/files/order_approving_small_estate_affidavit_with_minor_heirs.pdf) [12]
 - (Fill out this form if the estate has any minor distributees.)

You will ask the judge to sign one of the above "order" forms to approve the Small Estate Affidavit.

Fill out:

- the name of the decedent (followed by any "a.k.a.'s" if they were known by multiple names);
- the name of the county where you will file the SEA;
- the names of all adult, non-incapacitated heirs (if applicable); and
- the names of all minor heirs (if applicable).

The rest of the Order will be filled out by the court.

Note: Call the court to learn how you should turn in your proposed Order (an Order is called a "proposed Order" before it is signed by a Judge). (Many courts have local rules that apply to proposed documents. Some courts will want you to email the proposed Order to the court staff *before* it is given to the judge to sign.)

Step 7: Have your forms reviewed (if possible).

Important: These basic instructions are not a substitute for the legal advice and counsel of a lawyer. A lawyer is trained to protect your legal rights. Even if you decide to represent yourself, try to talk to a lawyer about your case before filing anything. You can hire a lawyer just to review your forms. This is called "limited scope representation." You may also be able to talk with a lawyer for free at a legal clinic. If you need help finding a lawyer, you can:

- Contact your local lawyer referral service.
- Use our **Legal Help Finder** (<https://texaslawhelp.org/legal-help/legal-help-finder>) [13] tool to search for legal help in your area.
- Check our **Legal Clinic Calendar** (<https://texaslawhelp.org/legal-clinic-calendar>) [14] to learn if there is an upcoming legal clinic near you.
- Use **Ask a Question** (<https://texaslawhelp.org/ask-question>) [15] to chat online with a lawyer or law student.

Step 8: File (turn in) the court forms after the 30-day waiting period.

Remember, you must **wait 30 days** from the date of the decedent's death to **sign** the court forms. This waiting period helps to make sure you have *all* bills before turning your court forms in.

After the 30-day waiting period has passed, sign and file (turn in) the completed Small Estate Affidavit and additional court forms.

- To file your forms online, go to [E-File Texas \(https://efile.txcourts.gov/ofswweb\)](https://efile.txcourts.gov/ofswweb) [16] and follow the instructions.
- To file your forms in person, turn in your Small Estate Affidavit and additional court forms (and copies) to the clerk's office in the court you determined hears probate matters in the county where the decedent resided at the time of the decedent's death.

Note: Follow any local rules or procedures that might apply to the submission of court documents (such as a local rule requiring a proposed *Order* to be emailed to the court staff).

At the clerk's office:

- Turn in your *Small Estate Affidavit* and other court forms (and copies).
- Pay the filing fee (or file your completed Statement of Inability to Afford Payment of Court Costs or an Appeal Bond if you cannot afford the fee). You can call the clerk's office ahead of time to learn the filing fee for your case.
 - The clerk will write your "Cause Number" and "Court Number" at the top of the first page of the *Small Estate Affidavit*.
 - The clerk will "**file stamp**" your copies with the date and time. The clerk will keep the original and return your copies to you. One copy is for you and one copy is for each distributee. You will send a file-stamped copy of the *Small Estate Affidavit* to each distributee by certified mail, return receipt requested.

Step 9: Ask the court staff if a hearing is needed.

Ask the court if its staff will get the *Order* signed by the judge for you. Many SEA applications do not require a hearing. (A hearing is where you go before a judge to get the judge's signature on your *Order*.)

But sometimes the court may require a hearing before an SEA will be approved. If you need a hearing, ask the court staff how to schedule it.

Step 10: Go to the hearing (if applicable).

If a hearing is needed in your case, follow these steps. Otherwise, skip to Step 8.

Read the article: [Tips for the Courtroom](#) for more information about going to Court.

Bring the following with you to court:

- A file-stamped copy of your *Small Estate Affidavit*.
- The original death certificate.
- The *Order* for the judge to sign.

When you get to the courthouse, go to the clerk's office.

- Ask the clerk if you need the court file or docket sheet (list of what has been filed in your case).
- Sit down until the judge calls your case.
- When the judge calls your case, walk to the front of the courtroom and stand in front of the judge's bench. The judge will have you raise your right hand and swear to tell the truth.
- Be ready to explain to the judge why the estate meets the requirements of Chapter 205 of the Texas Estates Code, why no personal representative needs to be appointed, and why the SEA qualifies to be approved.

If the judge agrees, the judge will sign the *Order*.

- After the judge signs the *Order*, take the signed *Order* back to the court clerk's office.
- File (turn in) the signed *Order*. **Your case is NOT final until you do so.**

□ Step 11: Get certified copies of your Order signed by the judge with the Small Estate Affidavit attached.

Pay for certified copies of the *Order* signed by the judge with the *Small Estate Affidavit* attached. The clerk will charge a fee for the certified copies.

- You will need enough copies for:
 - you,
 - each distributee, and for
 - each person who owes money to the estate, has custody or possession of estate property, or acts as a registrar, fiduciary, or transfer agent of or for an evidence of interest, indebtedness, property, or other right belonging to the estate.
 - Send a certified copy of the signed Order with the Small Estate Affidavit attached to each person who owes money to the estate, has custody or possession of estate property, or acts as a registrar, fiduciary, or transfer agent of or for an evidence of interest, indebtedness, property, or other right belonging to the estate. Read the law here: Tex. Estates Code § 205.004.
 - Send a certified copy of the signed Order with the Small Estate Affidavit attached to each distributee. Send it by certified mail, return receipt requested.
- Keep a copy of the signed *Order* for your records.

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Links

- [1] <https://texaslawhelp.org/article/applications-determine-heirship>
- [2] <https://texaslawhelp.org/form/small-estate-affidavit>
- [3] <https://texaslawhelp.org/article/information-needed-small-estate-affidavit>
- [4] <https://www.traviscountytx.gov/probate/probate>
- [5] <https://texaslawhelp.org/form/civil-case-information-sheet>
- [6] <https://www.traviscountytx.gov/probate>
- [7] <https://www.traviscountytx.gov/probate/new-cover-sheet>
- [8] <https://texaslawhelp.org/article/court-fees-fee-waivers>
- [9] https://texaslawhelp.org/sites/default/files/tx-pr-pay-112_scot_statement_of_inability_to_pay_court_costs.pdf
- [10] <https://texaslawhelp.org/form/order-approving-small-estate-affidavit-with-sole-distributee>
- [11] <https://texaslawhelp.org/form/order-approving-small-estate-affidavit>
- [12] https://texaslawhelp.org/sites/default/files/order_approving_small_estate_affidavit_with_minor_heirs.pdf
- [13] <https://texaslawhelp.org/legal-help/legal-help-finder>
- [14] <https://texaslawhelp.org/legal-clinic-calendar>
- [15] <https://texaslawhelp.org/ask-question>
- [16] <https://efile.txcourts.gov/ofswb>