SMALL ESTATE AFFIDAVIT CHECKLIST

Texas Estates 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 an 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 the 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. Death Certificate. Tom Green County Courts require a death certificate to be filed with all probate applications, including SEAs. An easily readable copy is fine, just be sure to cross out the social security number.
- 7. County of Residence. An SEA should be filed in the County where the Decedent resided.
- 8. 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 assests are community or separate property
- h. Exempt property as defined by Texas Estate Code Chapter 353.051 and Texas Property Code Chapter 42
- 9. 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 this section blank.
- 10.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.

11. LIST ALL HEIRS.

- 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.
- 12. Sworn by two disinterested witnesses two disinterested witnesses must each sign and swear to the affidavit before a notary.
- 13. 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.

	CAUSE	NO			
ESTATE OF		§	COUNTY COURT AT LAW		
		§	OE		
		§ §	OF		
DEC	EASED	§ §	TOM GREEN COUNTY, TEXAS		
	SMA	ALL ESTATE A	AFFIDAVIT		
		on their oath, die	butees of this estate and two disinterested d swear of affirm to the accuracy of the as Estates Code.		
1.	Decedent,		, died on the day of		
			County, Texas.		
2.	More than 30 days have elapse	More than 30 days have elapsed since Decedent's death.			
3.	Decedent was a resident of and domiciled at (Address, City, County, State)				
	at the time of Decedent's deat supporting venue in Tom Gree		n Green County, affidavit must include fact.		
4.	Decedent died without a will.				
5.	No administration is pending onecessary.	or has been grai	nted in Decedent's estate and none appears		
6.	•		Decedent, not including homestead and		
7.		of the estate of	Decedent, not including homestead and		
8	Medicaid – mark (X) on the appropriate statement:				
0.	The Decedent did not apply for or receive Medicaid benefits on or after March 1.				
	2005 or	appry for or rec	ive Medicaid benefits on of after March 1,		
	Decedent did apply for and the Medicaid Estate Reco	very Program c	edicaid benefits on or after March 1, 2005 laim is listed as a liability or we Medicaid benefits on or after March 1,		
	2005, but there is no Medicaid	•			
	· · · · · · · · · · · · · · · · · · ·	_			

9. ALL assets of the Decedent's estate and their values are listed here.

Description of Assets	Account/ Identification number (last 4 digits)	Indicate Community or Separate Property	Exempt Property (yes or no)	Value
Example: Wells Fargo	1234	Community	No	\$4,000.00

 Chapter 205 of the Texas Estates Code does not affect the disposition of property 						
under the terms of a Will or other testamentary document, nor does it transfer title						
to real property other than the Decedent's homestead.						
11. ALL known liabilities of the Decedent's estate are listed here						
Description of Liabilities and Debts	Account/	Indicate	Balance Due			
r. r	Identification	Community or				
	Number	Separate				
	(last 4 digits)	Property				
Example: Capital One Credit Card	4321	Separate	\$4,000.00			

10. The legal description of Decedent's homestead is:

Physical Address_____

Lot_____Block____

12. That the names, addresses, and telephone numbers of all distributees, and their right to receive money or property or to have such evidences of money, property, or other right, to the extent that the assets, exclusive of homestead and exempt property, exceed the known liabilities of the estate are as follows:

Names, addresses, and phone numbers of distributees (Inheritors)	Capacity in which claim is made	Portion of which e	entitled
Example: Jane Doe, 2005 Separate Way, San Angelo,	Daughter	Community	Separate
Texas 76901 (325) 123-4567		share	share

Affidavits and signatures of ALL Distributee(s):

(as needed, include additional signature pages for all distributees) Every signature page for a distributee must include the box below

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

- a. The foregoing Affidavit was completed by persons who have actual knowledge of the stated facts
- b. All of the facts stated in the foregoing Affidavit are true and complete; and
- c. Each of us has legal capacity

We pray that this Affidavit be filed in the records of the Tom Green County Clerk; that the same be approved by the Court; and that the Clerk issue certified copies of the 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 "each 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 TEXAS § COUNTY OF TOM GREEN §	
	, Deceased. I swear or affirm that I have affidavit and that the facts contained in the Affidavit are true and complete to
Distributee's printed name	Distributee's signature
SWORN TO AND SUBSCRIBED before me by, 20	(name of Distributee), a Distributee, on
(seal)	Notary Public, State of
STATE OF TEXAS § COUNTY OF TOM GREEN §	
	, Deceased. I swear or affirm that I have affidavit and that the facts contained in the Affidavit are true and complete to
Distributee's printed name	Distributee's signature
SWORN TO AND SUBSCRIBED before me by this the day of, 20	(name of Distributee), a Distributee, on
(seal)	Notary Public, State of

HEIRSHIP AFFIDAVIT

To be filled out and signed by two <u>disinterested</u> witnesses.

Note: A disinterested witness is someone who does not inherit from the decedent

Before me, the undersigned authority	, on this day personally appeared _	
		(first disinterested witness)
and	, who being first my me du	ly sworn on oath state:
(second disinterested witness	l	
	I. Witness Information	
I,	, reside at	
(first disinterested wit		(address)
	Cou	nty,
(city)	(county)	(state)
I am personally acquainted with the f	amily history and facts of heirship, deceased, hereinafter ca	
was my(relationship to deced		nt for years.
•	, reside at	
(second disinterested		(address)
(2222111 112211121 222211		(
,	Cour	nty,
(city)	(county)	(state)
I am personally acquainted with the f	amily history and facts of heirship	of
	, deceased, hereinafter ca	lled "Decedent" who
(name of deceased)		
was my	I knew deceder	nt for years.
(relationship to deced	ent)	

II. Decedent Information

Decedent died on	, in	County,
(date of death	(county)	
State of	, without leaving a Will.	
	III. Marital History (mark an X on statement that applies)	
Decedent was married to	on _	
and remained married until decedent	(surviving spouse) 's death and was never divorced.	(date of marriage)
Decedent was never married.		
Decedent was not married at	the time of death but was married to	
	was widowed/divorced on(circle one) (date of te	
	IV. Family History (mark an X on statement that applies)	
Decedent had no children		
Decedent had the following of	children by birth or adoption: (list all chil	dren living or deceased)
Name	Address	Age or Date of Death
		Age or Date

Decedent never adopted any children children.	nor cared for any children in the home other than t	he above	named
Is the surviving spouse the biological	or adoptive parent of all children listed above?	Yes _	No
If any child of Decedent is deceased,	list all children of the deceased child or children.		
Name of Deceased child:		_	
	Children of Deceased Child		
Name	Address		Age or Date of Death
Name of Deceased child:		_	
	Children of Deceased Child		
Name	Address		Age or Date of Death

If decedent was not survived by children or grandchildren, then complete.

Parents of Decedent (list both parents living or deceased)

Name	Address	Age or Date of Death

If decedent was not survived by their parents or only one parent, then complete.

Brother(s) and/or Sister(s) of decedent (list all sibling living or deceased)

Name	Address	Age or Date of Death

If any brother(s) or sister(s)	has predeceased decedent then	complete.

Nomas	of decease	ad brotho	r/gigtor.
Names	OI DECEASE	30 MONDE	r/Cicier

Children of Deceased Brother/Sister

Name	Address	Age or Date of Death
		of Death

The above statements are true and corr	ect.
Executed on	
(date)	
	(Signature of first disinterested witness)
	(Signature of second disinterested witness)
SWORN TO AND SUBSCRIBED bef	fore me, by
	(print name of first disinterested witness)
	certify which witness my hand and seal of office.
(date)	
(seal)	Notary Public in and for the State of Texas
SWORN TO AND SUBSCRIBED bef	Fore me by
	(print name of second disinterested witness)
on , to	certify which witness my hand and seal of office.
(date)	certify which withess my hand and sear of office.
(seal)	Notary Public in and for the State of Texas

CAU	USE NO	
ESTATE OF	§	COUNTY COURT AT LAW
	§ 	OF
	 §	
DECEASED	§	TOM GREEN COUNTY, TEXAS
	ORDER APPRO	OVING
	SMALL ESTATE A	FFIDAVIT
this Estate, the Court finds that to 205 of the Texas Estates code, the qualifies under the provisions of should be approved. It is therefore ORDERED be and is hereby APPROVED.	the Affidavit complies that this Court has juring the Estates Code of the ADJUDGED, AND	mall Estate Affidavit of the Distributee of s with the terms and provisions of Chapter is diction and Venue, that this Estate a Small Estate, and that the Affidavit DECREED that the foregoing Affidavit
Signed this day of		, 20
	Jı	ıdge Presiding