

THE LEGAL ASSISTANCE OFFICES OF
III CORPS, 1ST CAVALRY DIVISION, 4TH INFANTRY DIVISION (MECHANIZED)
FORT HOOD, TEXAS 76544

SMALL ESTATE AFFIDAVIT

I. INTRODUCTION - Of the many forms of estate administration in Texas, a few are very simple and normally do not require a court appearance. One such type is entitled a *Small Estate Affidavit*. Your Legal Assistance Attorney believes that this form of probate may be the best for you. In that light, here is some basic background information.

For those who qualify, the filing of the appropriate affidavit can result in a great savings of time and money. No administration is necessary, and the property may be distributed quickly. Approval of this affidavit by the probate judge is generally routine and, in most cases, is done without even a court appearance by the estate's representative. (However, the judge may require a hearing if there are questions that need to be resolved.)

II. REQUIREMENTS

A. *Value of estate* - To qualify as a small estate, the decedent's property must not exceed the debts owed by the decedent by more than \$50,000, and the estate must be solvent (assets exceed debts). Not included in this \$50,000 ceiling is the surviving spouse's one-half interest in the community property the couple owned, nor the homestead and certain other exempt property, such as household furnishings.

B. *No will offered* - This procedure can not be used, however, if a petition for probate is pending or has already been granted.

C. *Timing* - Further, 30 days must have already passed, after the death, before the affidavit can be accepted by the court.

III. PROCEDURES - The affidavit must be signed by all the heirs (called distributees) or their guardians if they are minors. Because the will is not being probated the heirs at law must be determined. You should seek a Legal Assistance attorney's help on this. Once the Legal Assistance attorney has completed the affidavit for you, it must be signed by 2 disinterested witnesses, then notarized, and taken to the county clerk's office for filing and presentment to the judge. Once the judge signs the attached order, you should obtain a certified copy for your personal records and use. No further action is necessary by you to update the real estate records in that county, but property located in other counties will require additional filings with the county clerk. Once the affidavit has been approved by the judge, it is recorded in the *Small Estates Records* in the county courthouse. The property may then be distributed and "probate" of the estate is complete.

IV. CONCLUSION - The only drawback to this procedure is that more than the *Small Estate Affidavit* is necessary to transfer title to real estate other than your homestead. Either an *affidavit of heirship* or an *heirship determination* will also be necessary. This is

generally a simple matter. It also does not transfer property located outside the state of Texas. You should discuss such matters with your attorney. It also does not handle matters requiring validation of the will or matters requiring administration of an estate.

Please remember there are many forms of probate in Texas and therefore, only an experienced probate attorney should be sought for advice and analysis in all but the simplest of cases.

FOR ADDITIONAL INFORMATION CONTACT THE LEGAL ASSISTANCE OFFICES ON FORT HOOD: III Corps, Building 1001, Room C224, 287-7901/3199; 1st Cavalry Division, Building 28000, Room 1155, 287-6060; 4th Infantry Division (Mech), Building 410, Room 175, 287-1850.