



## Harris County Probate Courts

### **SMALL ESTATE AFFIDAVIT or AFFIDAVIT OF DISTRIBUTEES – SMALL ESTATE**

TPC §137 provides a method for distribution of the estate of a decedent who dies intestate, provided the value of the assets of the estate, not including homestead and exempt property, does not exceed \$50,000. A form for Affidavit of Distributees – Small Estate (herein called “Small Estate Affidavit” or “Affidavit”), along with an Heirship Affidavit, is provided on the Harris County Clerk’s website. Below are some points to ponder when deciding if a Small Estate Affidavit will accomplish your purpose, along with some things to consider when completing the form or drafting your own Small Estate Affidavit. **Harris County Probate Courts do not require a hearing for approval of a Small Estate Affidavit.**

- 1. Is there a will?**

TPC §137. Collection of Small Estates Upon Affidavit is not for use when there is a will. There should be language in the Affidavit that specifically states that the Decedent died without leaving a will.
- 2. Is there real property?**

If the estate consists of real property, only the homestead will be transferred by a Small Estate Affidavit.
- 3. Have you listed all of decedent’s property?**

A specific description of all of decedent’s property should be listed. If decedent was married on date of death, each asset should be categorized as separate or community.
- 4. Have you listed all of decedent’s liabilities?**
- 5. Is the total value of the estate under \$50,000, exclusive of homestead and exempt property?**

In calculating the total value of the estate, do not subtract the total of the liabilities from the total value of the estate.
- 6. In addition to listing the name, address, and phone number of each distributee, have you provided the decedent’s marital and family history to corroborate the distributees listed? If you are using the form provided by the Harris County Clerk’s office, have you filled in all sections? If any section does not apply, write N/A in that section.**

The form provided on the County Clerk’s website is a two part form. The Affidavit of Distributees contains a chart for listing all distributees. There is a separate Heirship Affidavit for describing the decedent’s marital and family history. The Heirship Affidavit should be signed by two disinterested parties and should corroborate the information provided in the Affidavit of Distributees.
- 7. Have all distributees signed the Small Estate Affidavit?**

If you are preparing the two part form from the County Clerk’s website, all distributees listed must sign and swear to the truth of the Small Estate Affidavit. The Heirship Affidavit need only be signed

and sworn by the disinterested parties. All signatures must be in the presence of a Notary Public.

8. **The Affidavit should be filed with the County Clerk of the county of decedent's residence, along with an Order for the Judge to sign approving it as conforming with the requirements of TPC §137. There is no hearing required.**