

ESTATES CODE
TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY
SUBTITLE E. INTESTATE SUCCESSION
CHAPTER 205. SMALL ESTATE AFFIDAVIT

Sec. 205.001. ENTITLEMENT TO ESTATE WITHOUT APPOINTMENT OF PERSONAL REPRESENTATIVE. The distributees of the estate of a decedent who dies intestate are entitled to the decedent's estate without waiting for the appointment of a personal representative of the estate to the extent the estate assets, excluding homestead and exempt property, exceed the known liabilities of the estate, excluding any liabilities secured by homestead and exempt property, if:

- (1) 30 days have elapsed since the date of the decedent's death;
- (2) no petition for the appointment of a personal representative is pending or has been granted;
- (3) the value of the estate assets on the date of the affidavit described by Subdivision (4), excluding homestead and exempt property, does not exceed \$75,000;
- (4) an affidavit that meets the requirements of Section 205.002 is filed with the clerk of the court that has jurisdiction and venue of the estate;
- (5) the judge approves the affidavit as provided by Section 205.003; and
- (6) the distributees comply with Section 205.004.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 844 (H.B. 2271), Sec. 12, eff. September 1, 2017.

Sec. 205.002. AFFIDAVIT REQUIREMENTS. (a) An affidavit filed under Section 205.001 must:

- (1) be sworn to by:
 - (A) two disinterested witnesses;
 - (B) each distributee of the estate who has legal capacity; and
 - (C) if warranted by the facts, the natural guardian or next of kin of any minor distributee or the guardian of any other incapacitated distributee;
- (2) show the existence of the conditions prescribed by Sections 205.001(1), (2), and (3); and
- (3) include:
 - (A) a list of all known estate assets and liabilities;
 - (B) the name and address of each distributee; and
 - (C) the relevant family history facts concerning heirship that show each distributee's right to receive estate money or other property or to have any evidence of money, property, or other right of the estate as is determined to exist transferred to the distributee as an heir or assignee.

(b) A list of all known estate assets under Subsection (a)(3)(A) must indicate which assets the applicant claims are exempt.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1106 (H.B. 3136), Sec. 1, eff. September 1, 2015.

Sec. 205.003. EXAMINATION AND APPROVAL OF AFFIDAVIT. The judge shall examine an affidavit filed under Section 205.001. The judge may approve the affidavit if the judge determines that the affidavit conforms to the requirements of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 205.004. COPY OF AFFIDAVIT TO CERTAIN PERSONS. The distributees of the estate shall provide a copy of the affidavit under this chapter, certified by the court clerk, to each person who:

- (1) owes money to the estate;
- (2) has custody or possession of estate property; or
- (3) acts as a registrar, fiduciary, or transfer agent of or for an evidence of interest, indebtedness, property, or other right belonging to the estate.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 205.005. AFFIDAVIT AS LOCAL GOVERNMENT RECORD. (a) If the judge approves an affidavit under Section 205.003, the affidavit shall be maintained as a local government record under Subtitle C, Title 6, Local Government Code.

(b) If the county does not maintain local government records in a manner authorized under Subtitle C, Title 6, Local Government Code, the county clerk shall provide and keep in the clerk's office an appropriate book labeled "Small Estates" in which the clerk shall, on payment of the legal recording fee, record each affidavit filed under this chapter. The small estates book must contain an accurate index that shows the decedent's name and references to any land involved.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 205.006. TITLE TO HOMESTEAD TRANSFERRED UNDER AFFIDAVIT. (a) If a decedent's homestead is the only real property in the decedent's estate, title to the homestead may be transferred under an affidavit that meets the requirements of this chapter. The affidavit used to transfer title to the homestead must be recorded in the deed records of a county in which the homestead is located.

(b) A bona fide purchaser for value may rely on an affidavit recorded under this section. A bona fide purchaser for value without actual or constructive notice of an heir who is not disclosed in the recorded affidavit acquires title to a homestead free of the interests of the undisclosed heir, but remains subject to any claim a creditor of the decedent has by law. A purchaser has constructive notice of an heir who is not disclosed in the recorded affidavit if an affidavit, judgment of heirship, or title transaction in the chain of title in the deed records identifies that heir as the decedent's heir.

(c) An heir who is not disclosed in an affidavit recorded under this section may recover from an heir who receives consideration from a purchaser in a transfer for value of title to a homestead passing under the affidavit.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 205.007. LIABILITY OF CERTAIN PERSONS. (a) A person making a payment, delivery, transfer, or issuance under an affidavit described by this chapter is released to the same extent as if made to a personal representative of the decedent. The person may not be required to:

- (1) see to the application of the affidavit; or
- (2) inquire into the truth of any statement in the affidavit.

(b) The distributees to whom payment, delivery, transfer, or issuance is made are:

- (1) answerable for the payment, delivery, transfer, or issuance to any person having a prior right; and
- (2) accountable to any personal representative appointed after the payment, delivery, transfer, or issuance.

(c) Each person who executed the 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.

(d) If a person to whom the affidavit is delivered refuses to pay, deliver, transfer, or issue property as provided by this section, the property may be recovered in an action brought for that purpose by or on behalf of the distributees entitled to the property on proof of the facts required to be stated in the affidavit.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 205.008. EFFECT OF CHAPTER. (a) This chapter does not affect the disposition of property under a will or other testamentary document.

(b) Except as provided by Section 205.006, this chapter does not transfer title to real property.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 205.009. CONSTRUCTION OF CERTAIN REFERENCES. A reference in this chapter to "homestead" or "exempt property" means only a homestead or other exempt property that would be eligible to be set aside under Section 353.051 if the decedent's estate was being administered.

Added by Acts 2015, 84th Leg., R.S., Ch. 1106 (H.B. 3136), Sec. 2, eff. September 1, 2015.