

Heirship Proceedings

**Presented by
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Table of Contents

I. Proceedings to Declare Heirship: Probate Code § 48 ff.....	1
<i>A. Items to Consider Before Declaring Heirs.....</i>	<i>1</i>
1. County Clerk Will Depository.....	1
2. Copies of Wills.....	1
3. Wills More Than Four Years After Death.....	1
4. Wills with Partial Intestacies.....	1
a. Muniments of Title.....	1
b. Issuance of Letters Testamentary.....	2
c. Combining a will probate with an heirship.....	2
<i>B. Application to Declare Heirship.....</i>	<i>2</i>
1. Statutory Requirements.....	2
2. Affidavit.....	3
3. Chart with information about all heirs, including interest in estate.....	3
4. Common mistakes found in heirship applications: characterization of property.....	3
5. Common mistakes found in heirship applications: describing shares of community property.....	3
<i>C. Citation and notice.....</i>	<i>3</i>
1. Service on or waiver of notice from all non-applicant heirs.....	3
a. Service.....	4
b. Waivers of service.....	4
2. Citation by publication.....	4
3. Posted citation.....	4
<i>D. Appointment of an Attorney ad Litem.....</i>	<i>4</i>
<i>E. Evidence.....</i>	<i>4</i>
1. Proving the heirs.....	4
2. Other necessary proof.....	5
<i>F. Judgment.....</i>	<i>5</i>
Appendix 1: Sample charts for Applications and Judgments.....	6
Appendix 2: Texas Descent and Distribution.....	8
Appendix 3: Sample Heirship Judgments.....	11
<i>Judgment Declaring Heirs and Order of No Administration.....</i>	<i>11</i>
<i>Judgment Declaring Heirship and.....</i>	<i>13</i>
<i>Authorizing Issuance of Letters of Independent Administration.....</i>	<i>13</i>
<i>Judgment Declaring Heirship and.....</i>	<i>15</i>
<i>Authorizing Issuance of Letters of Dependent Administration.....</i>	<i>15</i>
II. Small Estate Affidavit: Probate Code §§ 137-138.....	17
<i>A. Brief description.....</i>	<i>17</i>
<i>B. Uses for technique.....</i>	<i>17</i>
<i>C. Caveats to consider.....</i>	<i>17</i>
<i>D. Additional Requirements for a Small Estate Affidavit.....</i>	<i>18</i>
<i>E. Orders for Small Estate Affidavits.....</i>	<i>18</i>
<i>F. Alternative procedures.....</i>	<i>18</i>
Appendix 3: Small Estate Affidavit Checklist (A handout from Travis County Probate Court No. 1).....	19
Appendix 4: Sample Form – Small Estate Affidavit.....	20
Appendix 5: Sample Form – Order Approving Small Estate Affidavit.....	26

1. Proceedings to Declare Heirship: Probate Code § 48 ff.

The lawful heirs and their shares of the estate must be determined whenever there is a need for an intestate administration. Even when there is no need for administration, proceedings to declare heirship may be necessary to pass title to various assets (for example, if an estate is too large for a Small Estate Affidavit or if the decedent's homestead passes to non-exempt heirs).

A representative, a person claiming part of the estate, or a secured creditor can apply to determine heirship. All unknown heirs, known heirs, and all persons shown by the deed records to own any of the estate property shall be made parties to the proceeding.

A. Items to Consider Before Declaring Heirs

1. County Clerk Will Depository

Probate Code § 71 provides that a person may deposit his or her will with the county clerk during the testator's lifetime in the testator's county of residence. Each clerk shall keep an index of all wills deposited.

Note: Many counties do not have an automatic system to determine if a decedent deposited a will during while alive. County clerks may want to consider instituting systems to check Decedents' names against the clerk's will- depository index. At the very least, the probate judge should inquire whether the applicant's attorney and/or the attorney ad litem have checked with the county clerk to determine if the decedent deposited a will during his or her lifetime.

2. Copies of Wills

When only a copy of decedent's will exists, there is a presumption that the decedent revoked the original will prior to decedent's death. However, it is still possible to probate a copy of a will. See Probate Code § 85. Many attorneys may not be aware that it is possible to probate a copy of a will, or they may be attempting to take advantage of the presumption of revocation. Probate judges should be aware of these issues and should review the copy of the will before proceeding with a determination of heirship. Although the applicant may not be interested in probating a copy of a will, a different devisee under the will may be able to overcome that presumption – or may even have the original will.

Example: Decedent's will leaves \$1 million to the American Red Cross and the remainder to his two children. One or both of the children have a copy of the will, but have applied to have the heirs determined instead. It is understandable that the heirs may not want to exert the effort to overcome the presumption of revocation to have the will admitted to probate, but the

American Red Cross think feel differently. In fact, the American Red Cross may be in possession of the original will or know its location. In this and other situations, a probate judge may – and should – require notice to all devisees under the will to allow them the opportunity to overcome the presumption of revocation. Also, if a charity is a devisee under the will, you may have to join the Texas Attorney General as a party.

Common retort from attorneys: The judge can't require me to notice X. Response: See Probate Code § 33(a), which provides in part "that even though this Code does not expressly provide for citation, or the issuance or return of notice in any probate matter, the court may, in its discretion, require that notice be given, and prescribe the form and manner of service and return thereof." (Emphasis added.)

Cautionary Note: It would be unwise for an attorney to merely parrot the form-book premise that "Decedent died without leaving a lawful will," in the heirship application and gloss over the fact that the applicant has a copy of a will in their possession.

3. Wills More Than Four Years After Death

When more than four years have elapsed between decedent's death and the filing of an application for probate, there are additional notice and proof requirements in order to probate a will. See Probate Code §§ 73 and 128B. Some attorneys may not be able to demonstrate that their clients were not in default for failing to present the will within four years of the testator's death, but another beneficiary may be able to meet that burden. Think of the preceding example with the American Red Cross and the cautionary note. The basic point is that one shouldn't assume that an heirship application is their sole remedy when more than four years have elapsed since the testator's death.

4. Wills with Partial Intestacies

If the decedent left a will that did not dispose of decedent's entire estate (a partial intestacy), judges often debate the best approach to address the situation. Here are some thoughts on how to deal with common situations.

a. Muniments of Title

If the will is being probated as a muniment of title, judge's should require an heirship determination to address the intestacy.

Reason: There is a danger that someone holding title to decedent's property may not understand the scope of the order admitting the will as a muniment of title and may deliver property that should pass via

Heirship Proceedings

intestacy to a named beneficiary under the will rather than the correct heirs-at-law.

b. Issuance of Letters Testamentary

Scenario 1: If the applicant is seeking letters testamentary AND the will clearly appoints an independent executor without the requirement of bond, then the judge can usually allow the attorney to decide whether an heirship determination is necessary to address the intestacy.

This determination is largely fact-specific and varies depending on the "size" of the intestacy. If there is a substantial intestacy, the court should discuss the issue with the attorney in advance of a hearing.

Here is an example from a recent Travis County case where an heirship determination was required: The (self-help) will devised 2/3 of the condo to X and 30% of the condo to Y. The "residuary clause" of the will left 60% of the residue to X and 10% to Y. (The author of this section of the paper went to high school in Oklahoma, but even I know $60 + 10$ does not equal 100.) Although X & Y were family members, they were not the Decedent's heirs-at-law. Decedent was separated, but not divorced from, his wife at death and the will was written after the separation. The will did not include the wife as a devisee. Decedent also had a son, who was a contingent beneficiary under the will. The judge required the applicant to complete an heirship determination in conjunction with the will probate in order to (1) clear title to the real property, and (2) have the proper consents to create an independent administration.

Scenario 2: If the applicant is seeking letters testamentary (or administration), BUT the will does NOT provide for an independent administration or waive the bonding requirement, then the judge should at least require evidence concerning the identity of the heirs although not necessarily a complete heirship proceeding.

Reason: To create an independent administration pursuant to Probate Code § 145, all distributees of the estate must agree on the advisability of an independent administration and provide their consent. When there is a partial intestacy, the conservative approach is to consider the heirs-at-law to be distributees for purposes of § 145. Even if the judge doesn't require a formal heirship application, it would be prudent to have the attorney present the same level of proof required for an heirship determination.

c. Combining a will probate with an heirship

If a judge combines a will probate with an heirship order because of a partial intestacy, the order should clarify the situation. Here is some sample language from this type of order in a recent Travis County case:

- **Title of order:** "Order Admitting Will To Probate as a Muniment of Title More Than Four Years After Death and Judgment Declaring Heirship Due to Partial Intestacy"
- **Two final findings, after findings related to the will probate:** "Decedent's Will did not dispose of her entire estate and left a partial intestacy. The evidence presented and admitted fully and satisfactorily proves the heirship of Decedent as well as the interest and shares of each of the heirs therein to the property passing via intestacy."
- **Declaration language after language in order probating the will:** "The Court further finds and DECLARES that the names and places of residence of the heirs of Decedent and their respective shares and interests in Decedent's real and personal property passing via intestacy are as follows: [followed by intestacy charts as described later in this paper]"

B. Application to Declare Heirship

1. Statutory Requirements

Section 49(a) of the Probate Code outlines who may institute an heirship proceeding and the information that is required in an heirship application:¹

- the name of the decedent,
- the time and place of death,
- the names and residences of the decedent's heirs, (2) the relationship of each heir to the decedent, and (3) the true interest of the applicant and each of the heirs in the estate of the decedent (see further instructions below),
- if the time or place of death or the names or residences of all the heirs are not definitely known to the applicant, all the material facts and circumstances within the knowledge and information of the applicant that might reasonably tend to show the time or place of death or the names or residences of all heirs,
- a statement that all children born to or adopted by the decedent have been listed,
- a statement that each marriage of the decedent has been listed with (1) the date of the marriage, (2) the name of the spouse, and (3) if the marriage was terminated, the date and place of termination, plus (4) any other facts that show whether a spouse has an interest in the property of the decedent (including any common-law spouse),
- whether the decedent died testate and, if so, what disposition has been made of the will,

¹ The application may be combined with an application for administration, if applicable, which obviously would require that the application include additional information.

- a general description of all the real and personal property belonging to the estate of the decedent, and
- an explanation for the omission of any of the foregoing information that is not included in the application.

2. Affidavit

Section 49(b) of the Code requires that the application be supported by each applicant's affidavit verifying the application.

3. Chart with information about all heirs, including interest in estate

As noted above, the Probate Code requires an application to provide information about all the decedent's heirs, including "the true interest" of each of the heirs in the estate of the decedent. TPC § 49(a)(2). To make it easier to verify that all necessary information is included and that the shares are calculated correctly, a Court may want to request that heirship applications use a chart to set out the following required information about the heirs. See samples on pages 6-7.

- Name of each of the decedent's heirs.
- Residence of each of the decedent's heirs. ("Residence" means an actual address, not just the county or city of residence.)
- Relationship of each heir to the decedent. If the deceased had a surviving spouse, the "relationship information" for each surviving child and any other descendant-heir needs to include information about who the other parent is besides the deceased. For decedents dying after 9/1/1993, the distribution of community property differs depending on whether all surviving children and descendants of the deceased spouse are also children or descendants of the surviving spouse. See TPC § 45.
- True interest of each heir, including the applicant, in the estate of the decedent. See TPC §§ 38-47 and charts on pages 8-10. When the decedent leaves a surviving spouse, interests must be indicated for separate personal property, separate real property, and community property. Fractional interests should be indicated by fractions rather than percentages unless percentages add up to exactly 100%. In addition, it is easier to check the math if attorneys finish-out the fractions as needed; for example, "2/9 of the separate personal property" instead of "1/3 of 2/3 of the separate personal property."
- Where minors are involved, it is helpful to include the date of birth of the minor and a designation beside the minor's name. (In the judgment, having this information in the chart makes it easy for others

to know when the minor is old enough to sell property.)

4. Common mistakes found in heirship applications: characterization of property

Absent a declaratory action, the Court should not decide what types of property an heir owned. Consequently, the Court's judgment needs to indicate each heir's interest in every possible type of property. For separate property, statutory shares can differ for personal property and real property. TPC § 38. For community property, statutory shares are identical for personal property and real property. TPC § 45. Therefore, an application for any married decedent should indicate each heir's interest in each type of property for which the shares are different: separate personal property, separate real property, and community property.

5. Common mistakes found in heirship applications: describing shares of community property

Section 45(b) of the Probate Code, which dictates the distribution of the community estate when a decedent had children from a prior marriage, can be misunderstood if read too quickly. That section specifies that "one-half of the community estate is retained by the surviving spouse and the other one-half passes to the children" from a prior marriage. **This language does not mean that the surviving spouse is entitled to one-half of the decedent's share of the community estate.** Each spouse owns a one-half interest in the community estate, and a judgment declaring heirs distributes **only the decedent's share** of the community estate, not the entire community estate. Therefore, in a cell indicating the surviving spouse's share of decedent's community property, the only correct entries are "all" or "none, but retains [his or her] 1/2 interest in the community estate." See sample charts on page 6.

C. Citation and notice

The citation or notice required for a proceeding to declare heirship is different from the service required for an administration: *By Clerk*

1. Service on or waiver of notice from all non-applicant heirs

All non-applicant heirs, including minor heirs, must be served with process **unless they have executed valid waivers of notice.** See TPC § 50(a). The code allows service by certified or registered mail, but the Court can require personal service for all heirs that do

Heirship Proceedings

not file a valid waiver. It is okay for some heirs to be served and other heirs to file waivers. Note that TPC § 49(b) requires that all persons shown by the deed records to own any of the estate property also be made parties to the proceeding.

a. Service

As noted above, all non-applicant heirs – including minors – must be served with process unless they have executed valid waivers of notice. Minors aged 12 through 18 must be served; they may not waive service, and no one may waive for them. See TPC §§ 35 & 50(e). For heirs younger than 12 years of age, citation can be on the parent, managing conservator, or guardian. Note that TPC § 33(f)(1) does not permit the use of private process servers for personal service on heirs within the State of Texas (“a citation or notice directed to a person within this State must be served by the sheriff or constable” (emphasis added)).

b. Waivers of service

Adult heirs may waive service. A natural parent or a guardian of a minor younger than 12 years of age may waive service on behalf of the minor in that parent’s or guardian’s capacity as parent or guardian. But no one may waive service on behalf of a minor who is 12 years or older, and a minor is not competent to sign a waiver.

2. Citation by publication

Citation by publication is required in all heirship proceedings. See the last sentence in TPC § 50(b): “To determine whether there are any other heirs, citation shall also be served on unknown heirs by publication in the manner provided by this section.” See also TPC § 33(f)(3). The clerk prepares the citation. In some counties the clerk also secures publication in a local paper and obtains an affidavit of publication executed by the publisher; in other counties, those tasks are the attorney’s responsibility. The original publisher’s affidavit – with the newspaper clipping – should be filed before the hearing.

NOTE: If the decedent lived in another county for a substantial part of his or her life, then citation by publication in that county may be necessary depending on the individual facts of the case.

3. Posted citation

Under TPC § 50(c), citation shall also be posted in the county where proceedings are commenced and where decedent last resided except where there is citation by publication under TPC § 50(b). Probate Code § 33(a) allows the Court to require posting

regardless of what citation by publication has been done.

D. Appointment of an Attorney ad Litem

A Court must appoint an attorney ad litem for all unknown heirs. TPC § 53(c). A Court may appoint an attorney ad litem for any heirs suffering legal disability or for living heirs whose names or whereabouts are unknown. TPC § 53(b).

An attorney ad litem’s presence should be required at the hearing.

Some courts require the applicants to pay an attorney ad litem deposit in conjunction with their filing fees. For example, Travis County currently collects \$375 as a deposit for the work to be performed by an attorney ad litem in an heirship case. Collecting a deposit in advance has some distinct advantages. First, the ad litem who are appointed in your court are relatively assured of receiving some compensation and it saves ad litem attorneys from having to chase down the applicants and/or their attorneys.

E. Evidence

A Court may require all or any part of the evidence admitted in a proceeding to declare heirship to be reduced to writing and subscribed and sworn to by the witnesses following the hearing. TPC § 53(a). A statement of the evidence approved by the Court must be filed with the record where service has been made by publication and not answer has been filed or appearance entered. TRCP § 244. Probate Code § 53(a) presupposes live testimony, and the Court should encourage live testimony. However, if a necessary witness cannot attend the hearing, testimony can be received by depositions on written questions.)

1. Proving the heirs

The Court should make sure that testimony of disinterested witnesses fully proves the identity of decedent’s heirs, including the possibility of common-law marriages, predeceased children and their descendants, or information about parents and predeceased siblings and their descendants when applicable. An ad litem’s participation in the hearing is often helpful.

Sworn affidavits, instruments duly executed and acknowledged, and judgments of a Court of record recorded for five years or more that contain a family history, genealogy, marital status, or identity of heirs may be accepted as prima facie evidence of such facts. TPC § 52.

2. Other necessary proof

The Court also needs to require that testimony prove-up the other required allegations in an application to declare heirship. This testimony is usually provided by the applicant, but it can be presented by anyone with personal knowledge of the facts presented. The following testimony is required for the heirship:

- Name of the decedent, and when and where the decedent died.
- Underlying facts that give the Court jurisdiction and venue. Most of the time this requirement is fulfilled by the decedent being domiciled and having a fixed place of residence in the county.
- Whether the decedent had a lawful will and, if so, what disposition has been made of the will.
- General description of the property belonging to the estate of the decedent. (It can be very general.)
- Whether a necessity exists for administration. Obviously, the testimony should match what the application seeking. If the application requests letters of administration, then the testimony should state a need for administration. If the application seeks determination of heirship only, the testimony should indicate that there is no need for administration.

If the application also requests appointment of an administrator, the following additional testimony is required (see TPC § 88(a) & (d)):

- The application was filed within four years after decedent's death.
- The proposed administrator is entitled to letters and is not disqualified.
- If the request is for independent administration – or without bond, or both – why that is appropriate. See TPC § 145(e) & (p).

F. Judgment

The Court's judgment declaring heirship shall declare the names and residences of the heirs of the decedent and their respective share and interests in the real and personal property of the decedent. TPC § 54. In addition, if the proof "is in any respect deficient, the judgment shall so state." TPC § 54. The order should include a provision discharging the attorney ad litem and taxing his or her "reasonable and necessary" fees as costs, unless there will be a dependent administration with continuing responsibilities for the ad litem. The judgment can be combined with an order for administration, if applicable.

Putting the heirship information in chart form can make it easier to verify that all necessary information is included and that the shares are calculated correctly, as described above in the section on applications. See the

discussion on page 3 above and the samples on pages 6-7.

Heirship judgments proposed by attorneys often include common mistakes discussed above regarding both characterization of property and the description of community-property shares. In addition, be careful that a proposed judgment does not include any findings that would require the Court to make a declaratory judgment (unless, of course, applicants applied for a declaratory judgment and met the posting and evidentiary requirements for that declaratory judgment). Routine heirship orders should not include information such as descriptions of specific items of property, whether the decedent owned separate real property, characterization of property as being separate or community, etc. Many common form-book judgments include an improper finding regarding "the identity and nature of decedent's property as being separate or community."

In late 2008, Travis County began preparing its own judgments in each heirship case in order to achieve consistency and to curb abusive practices by attorneys who attempted to insert additional findings concerning the characterization of significant pieces of property as being separate or community. The court found that many attorneys were attempting to obtain inappropriate findings without presenting the requisite evidence to prove their allegations to the court. The following appendixes include sample judgments developed by Travis County for the most common heirship applications. Feel free to use or adapt them.

Appendix 1: Sample charts for Applications and Judgments

The following samples illustrate the chart form that makes it easier to verify that all necessary information is included and that the shares are calculated correctly. Obviously, the actual chart should vary given the circumstances. These charts are examples only and do not illustrate all – or even most – of the possibilities. See Probate Code sections 38-47 and the illustrations on pages 6-8 of this paper.

Sample 1. Decedent is survived by spouse and by one minor child from a prior marriage.

Distributee's Name, Address, and Relationship to Deceased	Share of Separate Personal Property	Share of Separate Real Property	Share of Decedent's Community Property
Jill Doe Surviving Spouse 1234 Fake Street Austin, Texas 78700	1/3	Life estate in 1/3 of all separate real property	NONE, but retains her 1/2 interest in the community estate
Jane Doe Minor: DOB = 04/16/2001 Daughter from previous marriage 5678 Fake Street Austin, Texas 78700	2/3	ALL, subject to the surviving spouse's 1/3 life estate	ALL

Sample 2. Decedent is survived by spouse and by two adult children from that marriage.

Distributee's Name, Address, and Relationship to Deceased	Share of Separate Personal Property	Share of Separate Real Property	Share of Decedent's Community Property
John Doe Surviving Spouse [address]	1/3	Life estate in 1/3 of all separate real property	ALL
Debbie Doe Jones (b. 1948) Daughter of deceased & John Doe [address]	1/3	1/2, subject to the surviving spouse's 1/3 life estate	NONE
John Doe, Jr. (b. 1952) Son of deceased & John Doe [address]	1/3	1/2, subject to the surviving spouse's 1/3 life estate	NONE

Sample 3. Decedent is survived by spouse and both parents, but is not survived by any child or other descendant.

Distributee's Name, Address, and Relationship to Deceased	Share of Separate Personal Property	Share of Separate Real Property	Share of Decedent's Community Property
John Doe Surviving Spouse [address]	ALL	1/2	ALL
Elizabeth Jones Mother of deceased [address]	NONE	1/4	NONE
Joseph Jones Father of deceased [address]	NONE	1/4	NONE

Sample 4. Unmarried decedent is survived by one child. Decedent was predeceased by a second child, whose two children are still living. One is a minor.

Distributee's Name, Address, and Relationship to Deceased	Share of All Property
Debbie Doe Jones (b. 1948) Daughter of deceased [address]	1/2
Jane Doe (b. 1981) Granddaughter (child of John Doe*) [address]	1/4
George Doe Minor: DOB = 04/16/1995 Grandson (child of John Doe*) [address]	1/4

*Additional information about John Doe, the predeceased child, needs to be set out elsewhere in the Application and Judgment.

Sample 5. Unmarried decedent is survived by no child or descendant and by no parent, but is survived by two siblings.

Distributee's Name, Address, and Relationship to Deceased	Share of All Property
Debbie Doe Jones (b. 1948) Sister [address]	1/2
David Doe (b. 1949) Brother [address]	1/2

Heirship Proceedings

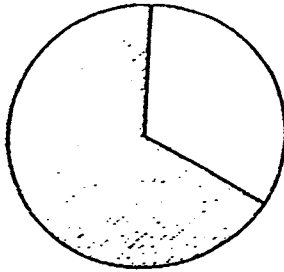
Appendix 2: Texas Descent and Distribution²

The Legal Effect of Not Having a Will (for decedents dying after 9/1/1993)

Adapted from the excellent charts of the late Judge Russell Austin, Harris County Probate Court No. 1

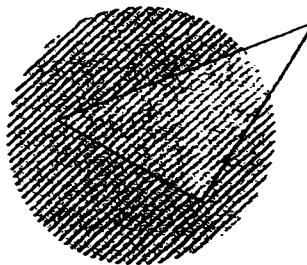
1. Married Person with Child[ren] or Other Descendants

A. Decedent's separate personal property (all that is not real property) (TPC § 38(b)(1))




- 1/3 to surviving spouse
- Children take 2/3 equally

B. Decedent's separate real property (TPC § 38(b)(1))



- Surviving spouse gets 1/3 life estate
- Children take all equally, subject to surviving spouse's 1/3 life estate

All separate real property will be owned outright by decedent's child[ren] or other descendants when surviving spouse dies.

<p>C. Decedent's share of community property when all surviving children and descendants of deceased are also children or descendants of surviving spouse. (TPC § 45(a)(2))</p> <p>All to surviving spouse</p>	<p>C. Decedent's share of community property when there are children or other descendants from outside of the existing marriage on the date of decedent's death (or if decedent died before September 1, 1993). (TPC § 45(b))</p>  <ul style="list-style-type: none">All to children, who take equallySurviving spouse takes none, but retains own share
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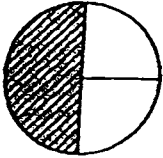
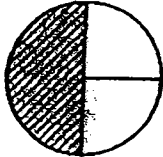
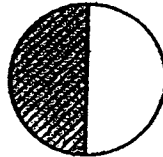
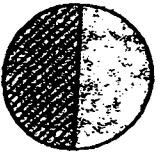

² The charts in this handout illustrate the general rules of descent and distribution under Texas law. In addition to the statutory references noted throughout, see § 43 of the Texas Probate Code, Determination of Per Capita and Per Stirpes Distribution, as well as the following sections: § 40, Inheritance By and From an Adopted Child; § 41, Matters Affecting and Not Affecting the Right to Inherit; § 42, Inheritance Rights of Children; § 44, Advancements; and § 47, Requirement of Survival by 120 Hours.

2. Married Person with No Child or Descendant

A. Decedent's separate personal property (all that is not real property) (TPC § 38(b)(1))

All to surviving spouse

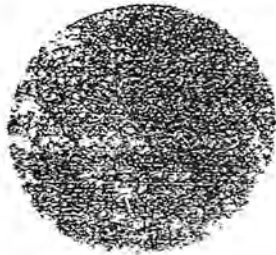
B. Decedent's separate real property (TPC § 38(b)(2))

<p>If decedent is survived by both mother and father. TPC § 38(b)(2) & (a)(2).</p>  <ul style="list-style-type: none"> <input type="checkbox"/> 1/4 to father <input type="checkbox"/> 1/4 to mother <input checked="" type="checkbox"/> 1/2 to surviving spouse 	<p>If decedent is survived (1) by mother <u>or</u> father <u>and</u> (2) by sibling(s) or their descendants. TPC § 38(b)(2) & (a)(2).</p>  <ul style="list-style-type: none"> <input type="checkbox"/> 1/4 to surviving parent <input type="checkbox"/> 1/4 to siblings, etc. <input checked="" type="checkbox"/> 1/2 to surviving spouse 	<p>If decedent is survived by mother <u>or</u> father, but is not survived by any sibling(s) or their descendants. TPC § 38(b)(2) & (a)(2).</p>  <ul style="list-style-type: none"> <input type="checkbox"/> 1/2 to surviving parent <input checked="" type="checkbox"/> 1/2 to surviving spouse
<p>If decedent is survived by neither parent, but is survived by sibling(s) or their descendants. TPC § 38(b)(2) & (a)(3).</p>  <ul style="list-style-type: none"> <input type="checkbox"/> 1/2 to siblings, etc. <input checked="" type="checkbox"/> 1/2 to surviving spouse 	<p>If decedent is survived by no parent, no sibling, and no descendant of a sibling. TPC § 38(b)(2).</p>  <ul style="list-style-type: none"> <input checked="" type="checkbox"/> All to surviving spouse 	

C. Decedent's share of community property (TPC § 45(a)(1))

All to surviving spouse

3. Unmarried Person with Child[ren] or Other Descendants (TPC § 38(a)(1))



All to children, who take equally

4. Unmarried Person with No Child or Descendant

All property passes depending on who survived the decedent:¹

<p>TPC § 38(a)(2) If decedent is survived by both mother and father.</p> <ul style="list-style-type: none"> <input type="checkbox"/> 1/2 of all property to father <input checked="" type="checkbox"/> 1/2 of all property to mother 	<p>TPC § 38(a)(2) If decedent is survived (1) by mother <u>or</u> father and (2) by sibling(s) or their descendants.</p> <ul style="list-style-type: none"> <input type="checkbox"/> 1/2 to siblings or to descendants of deceased siblings <input checked="" type="checkbox"/> 1/2 to surviving parent
<p>TPC § 38(a)(2). If decedent is survived by mother <u>or</u> father, but is not survived by any sibling(s) or their descendants.</p> <p><input checked="" type="checkbox"/> All to surviving parent</p>	<p>TPC § 38(a)(3). If decedent is survived by neither parent, but is survived by sibling(s) or their descendants.</p> <p>All to siblings or to descendants of deceased siblings</p>

¹ If none of the four situations above applies, see TPC § 38(a)(4).

Appendix 3: Sample Heirship Judgments

Cause No. _____

Estate Of	§	In Probate Court No. 1
Ivan Intestate,	§	
	§	of
Deceased	§	
	§	Travis County, Texas

Judgment Declaring Heirs and Order of No Administration

On this day the Court heard the sworn Application for Determination of Heirship [insert specific name of pleading] filed by Abby Applicant ("Applicant") in the Estate of Ivan Intestate, Deceased ("Decedent").

The Court heard the evidence and reviewed the documents filed in this cause and finds the following:

1. This Court has jurisdiction and venue of the Decedent's Estate, the subject matter, and all persons and parties.
2. Notice and citation have been given in the manner and for the length of time required by law.
3. All parties interested in the Estate of Decedent have been made parties to the Application, have filed written waivers of service of citation, have appeared and answered, or have been duly and legally served with citation as required by law.
4. The Court has appointed an Attorney ad Litem to appear and answer and to represent Decedent's unknown heirs, known heirs suffering a legal disability, and known heirs whose whereabouts are unknown ("Defendants"), and the Attorney ad Litem did so appear and filed an answer for Defendants.
5. The evidence presented and admitted fully and satisfactorily proves that Decedent died intestate and fully and satisfactorily proves the heirship of Decedent as well as the interest and shares of each of the heirs.
6. Decedent is dead, and four years have not elapsed since the date of Decedent's death.
7. No necessity exists for the administration of this estate, and none will be ordered.
8. No interested person has applied for the appointment of appraisers, and none are deemed necessary by the Court.

Heirship Proceedings

The Court finds and **DECLARES** that the names and places of residence of the heirs of Decedent and their respective shares and interests in the real and personal property of the Decedent are as follows:
[insert appropriate heirship chart showing fractions – see Appendix 1]

The Court further finds and it is therefore **ORDERED** that no administration is necessary. Pursuant to Texas Probate Code § 55(c), this order shall constitute an authorization to all persons owing any money to the Estate of the Decedent, or having custody of any property of such estate, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the Estate, and to persons purchasing from or otherwise dealing with the heirs as determined in this judgment, to pay, deliver, or transfer such property or evidence of property rights to such heirs, or to purchase property from such heirs, without liability to any creditor of the Estate or other person.

The Attorney ad Litem appointed by the Court, Larry Lawyer, shall be paid a reasonable and necessary fee of \$ _____ to be taxed as costs and to be paid from funds held on deposit with the County Clerk for such purpose, with any balance due to be paid by the Applicant within 30 days of the date of this order. The Attorney ad Litem is discharged from further responsibility in this case.

Signed on _____, 2010.

JUDGE PRESIDING

_____, Applicant's Attorney
SBOT 12345678

Approved as to form only:

_____, Attorney ad Litem
SBOT 87654321

Cause No. C-1-PB-_____

Estate Of	§	In Probate Court No. 1
	§	
Ivan Intestate,	§	of
	§	
Deceased	§	Travis County, Texas

Judgment Declaring Heirship and Authorizing Issuance of Letters of Independent Administration

On this day the Court considered the sworn Combined Application for Independent Administration and Determination of Heirship [insert specific name of pleading] filed by Abby Applicant (“Applicant”) in the Estate of Ivan Intestate, Deceased (“Decedent”).

The Court heard the evidence and reviewed the documents filed in this cause and finds the following:

1. This Court has jurisdiction and venue of the Decedent’s Estate, the subject matter, and all persons and parties.
2. Notice and citation have been given in the manner and for the length of time required by law.
3. All parties interested in the Estate of Decedent have been made parties to the Application, have filed written waivers of service of citation, have appeared and answered, or have been duly and legally served with citation as required by law.
4. The Court has appointed an Attorney ad Litem to appear and answer and to represent Decedent’s unknown heirs, known heirs suffering a legal disability, and known heirs whose whereabouts are unknown (“Defendants”), and the Attorney ad Litem did so appear and filed an answer for Defendants.
5. The evidence presented and admitted fully and satisfactorily proves that Decedent died intestate and fully and satisfactorily proves the heirship of Decedent as well as the interest and shares of each of the heirs.
6. Decedent is dead, and four years have not elapsed since the date of Decedent’s death.
7. There is a necessity for administration of this Estate.
8. No interested person has applied for the appointment of appraisers, and none are deemed necessary by the Court.

The Court further finds by clear and convincing evidence that that all of Decedent’s heirs have been determined and that all heirs have agreed on the advisability of an independent administration and have collectively designated Abby Applicant to serve as Independent Administrator without the requirement of bond. The Court further finds that Abby Applicant is qualified and not disqualified from serving as Independent Administrator and is entitled to receive Letters of Independent Administration.

Heirship Proceedings

It is therefore **ORDERED** that no bond or other security is required and that upon the taking and filing of the oath required by law, Letters of Independent Administration shall issue to Abby Applicant, who is appointed Independent Administrator of Decedent's estate. No other action shall be had in this Court other than the return of an Inventory, Appraisement, and List of Claims as required by law.

The Court further finds and **DECLARES** that the names and places of residence of the heirs of Decedent and their respective shares and interests in the real and personal property of the Decedent are as follows: [insert appropriate heirship chart showing fractions - see Appendix 1]

The Attorney ad Litem appointed by the Court, Larry Lawyer, shall be paid a reasonable and necessary fee of \$_____ to be taxed as costs and to be paid from funds held on deposit with the County Clerk for such purpose, with any balance due to be paid by the Applicant within 30 days of the date of this order. The Attorney ad Litem is discharged from further responsibility in this case.

Signed on _____, 2010.

JUDGE PRESIDING

_____, Applicant's Attorney
SBOT 12345678

Approved as to form only:

_____, Attorney ad Litem
SBOT 87654321

Cause No. _____

Estate Of	§	In Probate Court No. 1
	§	
Ivan Intestate,	§	of
	§	
Deceased	§	Travis County, Texas

Judgment Declaring Heirship and Authorizing Issuance of Letters of Dependent Administration

On this day the Court considered the sworn Application to Determine Heirship and for Issuance of Letters of Dependent Administration [insert specific name of pleading] filed by Abby Applicant (“Applicant”) in the Estate of Ivan Intestate, Deceased (“Decedent”).

The Court heard the evidence and reviewed the documents filed in this cause and finds the following:

1. This Court has jurisdiction and venue of the Decedent’s Estate, the subject matter, and all persons and parties.
2. Notice and citation have been given in the manner and for the length of time required by law.
3. All parties interested in the Estate of Decedent have been made parties to the Application, have filed written waivers of service of citation, have appeared and answered, or have been duly and legally served with citation as required by law.
4. The Court has appointed an Attorney ad Litem to appear and answer and to represent Decedent’s unknown heirs, known heirs suffering a legal disability, and known heirs whose whereabouts are unknown (“Defendants”), and the Attorney ad Litem did so appear and filed an answer for Defendants.
5. The evidence presented and admitted fully and satisfactorily proves that Decedent died intestate and fully and satisfactorily proves the heirship of Decedent as well as the interest and shares of each of the heirs.
6. Decedent is dead, and four years have not elapsed since the date of Decedent’s death.
7. There is a necessity for administration of this Estate.
8. Abby Applicant is qualified and not disqualified by law to act as Dependent Administrator and to receive Letters of Administration.
9. No interested person has applied for the appointment of appraisers, and none are deemed necessary by the Court.

Heirship Proceedings

The Court further finds and **DECLARES** that the names and places of residence of the heirs of Decedent and their respective shares and interests in the real and personal property of the Decedent are as follows: [insert appropriate heirship chart showing fractions – see Appendix 1]

It is further **ORDERED** that a bond in the sum of \$ _____ shall be required, payable and conditioned as required by law, and that upon taking and filing of the Oath required by law, Letters of Administration shall issue to Abby Applicant, who is appointed as Dependent Administrator of this Estate.

The Attorney ad Litem appointed by the Court, Larry Lawyer, shall be paid a reasonable and necessary fee of \$ _____ to be taxed as costs and to be paid from funds held on deposit with the County Clerk for such purpose, with any balance due to be paid from funds held in the registry of the Court.

Signed on _____, 2010.

JUDGE PRESIDING

_____, Applicant's Attorney
SBOT 12345678

Approved as to form only:

_____, Attorney ad Litem
SBOT 87654321

II. Small Estate Affidavit: Probate Code §§ 137-138

A. *Brief description*

A Small Estate Affidavit, when approved by the Court, adjudicates the identity of a decedent's heirs and their respective shares of the decedent's property. The Small Estate Affidavit is filed with the Probate Clerk and reviewed by the Court, but is approved without any hearing. The best practice is to require citation by posting. The Affidavit is effective only where the assets of the estate, exclusive of homestead and exempt property, exceed the known liabilities of the estate, exclusive of liabilities secured by homestead and exempt property. Additionally, the estate's non-exempt assets (including cash) cannot exceed \$50,000. TPC § 137(a). There is, however, no limit on the value of exempt assets that pass by Small Estate Affidavit. Exempt assets are those that are exempt from forced execution under Chapter 42 of the Texas Property Code and that pass by will or intestacy to decedent's surviving spouse, minor child, or unmarried child who lived in decedent's home. TPC § 271. Exempt assets include home furnishings, farm animals, and other property in the possession of the decedent at death, as well as decedent's pension benefits and IRAs. Insurance benefits are also exempt under Tex. Ins. Code § 1108.051.

B. *Uses for technique*

The Small Estate Affidavit is most often used for estates with small bank accounts, homestead real property, and few debts. Since all of the distributees must sign the Affidavit, this technique does not work where family members cannot cooperate in the execution of the document and the subsequent payment of debts and distribution of assets.

C. *Caveats to consider*

1. It's important to understand the significant limitations of a Small Estate Affidavit. It cannot be used for an insolvent estate (one where the debts exceed the value of the non-exempt assets) or where the decedent died testate, unless the decedent's will is patently invalid. Moreover, "decedent's homestead" is the only real property that can be transferred by Affidavit. While this phrase could be interpreted as passing title by Small Estate Affidavit to any property decedent considered his "homestead," the legislative history belies this broad interpretation. Until 1993, no real property could pass by Small Estate Affidavit. In that year, legislators broadened the statute to include

"homestead" real property to give a simple and inexpensive procedure to obtain title to homestead property to the surviving spouse, minor child, or unmarried adult child who had shared the homestead of the decedent and who still lived there, and who could claim it as homestead free of almost all debts of the decedent. No legislator anticipated the use of the Small Estate Affidavit to pass title to the decedent's homestead to his or her siblings, married adult children, or to collateral relatives who would take that property subject to all creditors' claims. Use of the Small Estate Affidavit in such situations deprives creditors of statutory notices afforded by the procedures to determine heirship and for administration.

2. The receipt of property by minors under a Small Estate Affidavit poses a special problem. Banks or other transfer agents may be leery of paying account proceeds or other funds to a minor heir who has no guardian of the estate. One solution is to draft the order to require the transfer agent to deposit the money into an interest-bearing account in the registry of the Court for the benefit of the minor under TPC § 887. The order that approves the Affidavit and transfers the minor's property into the registry should contain the minor's birth date and Social Security number.

3. While the distributees may designate the assets of the estate as "separate" or "community" in the Small Estate Affidavit, the Probate Court cannot adjudicate the nature of that property in its order approving the Affidavit. Characterization of property as community or separate can result only from a declaratory judgment proceeding, coupled with an heirship proceeding under T.P.C § 48. However, if the distributees describe in detail the source of the funds or property in the Affidavit, and provide the dates of any marriages or divorces, the separate or community nature of the property will be readily apparent to those holding decedent's property. For example, the Affidavit could identify the source of funds in a bank account as derived from decedent's salary during marriage. Similarly, the distributees could designate a community homestead by the description, "purchased 5/1/84 with community funds during the marriage of decedent and surviving spouse." Conversely, heirs could identify separate, inherited property in the Affidavit, for example, "as devised to decedent by will of Jane Doe, admitted to probate, Cause No. 11111, Probate Court No. 1 of Travis County."

4. Because the Court cannot adjudicate the separate or community nature of decedent's property, the Affidavit must list the interests of the distributees in both the decedent's separate and community property, even if the distributees believe all the property to be of one type or the other. To support the characterization of the estate as being solely

Heirship Proceedings

community property, Decedent's adult children may file written statements attached to the Affidavit that confirm their knowledge that the property was purchased or earned during marriage, and, if they are the children of both the surviving spouse and decedent (dying after 1993), that they recognize that they have no interest in the property listed as community property. Or, if the property at issue is separate property, the surviving spouse could acknowledge in writing the separate nature of the property and waive any claim to it as a community asset. Note: these acknowledgements of lack of interest in assets are not disclaimers under TPC § 37A and should not be combined with disclaimers without careful analysis. Improperly used, disclaimers can result in unintended consequences!

5. The distributees under the Small Estate Affidavit are "entitled" to the estate only to "the extent that the assets exceed the liabilities." TPC § 137(a). Failure to pay creditors could result in creditor lawsuits against the individual distributees receiving estate property. TPC § 138. A bank or other entity or person holding funds of the Decedent would be prudent to release funds to the distributees only in an amount sufficient to pay the debts, releasing the remainder upon proof of payment of those debts. Alternatively, a prudent transferor might issue checks directly to the creditors named in Affidavit, releasing the remainder of the funds to the distributees.

6. The natural guardian (parent) or next of kin of a minor can sign the Affidavit on behalf of the minor without appointment of a guardian.

D. Additional Requirements for a Small Estate Affidavit

1. No petition for the appointment of a personal representative can be pending or have been granted.

2. Thirty days must have elapsed since the death of the decedent.

3. The Affidavit must list all of the assets and all of the liabilities of the estate.

4. The Affidavit must describe the family facts sufficiently to show entitlement by the distributees to the decedent's property.

5. The Affidavit must be signed and attested to by **all** of the distributees (or the natural guardian of a minor distributee or the guardian of the person of an incapacitated distributee).

6. The Affidavit must be attested to by two disinterested witnesses who are familiar with the decedent's family history.

7. It is good practice to require that a death certificate be filed with the Affidavit, or at least brought for the Court to examine.

E. Orders for Small Estate Affidavits

Some Courts, like Travis County Probate Court No. 1, prepare their own orders approving Small Estate Affidavits; others require that the distributees submit a proposed order. An order approving a Small Estate Affidavit declares the distributees' right to receive the property of the decedent to the extent that those assets exceed the liabilities of the estate.

F. Alternative procedures

Proceedings to declare heirship under TPC § 48 – coupled with a dependent administration – will be necessary instead of a Small Estate Affidavit if there are minor heirs and non-cash personal property (which can't be placed in the registry of the Court). Proceedings to declare heirship also will be necessary instead of a Small Estate Affidavit if the decedent's homestead passes to non-exempt heirs (those other than the spouse, minor children, or unmarried children living at home) and there is no other necessity for administration. Moreover, if the debts exceed the non-exempt assets, a Small Estate Affidavit is not permissible. Instead, some type of administration will be necessary to classify and pay creditor claims and to take advantage of exempt and family allowance protections against creditors.

Appendix 3: Small Estate Affidavit Checklist (A handout from Travis County Probate Court No. 1)

Section 137 of the Texas Probate Code governs probate by Small Estate Affidavit. The Small Estate Affidavit is a probate method of transferring a decedent's property under certain limited circumstances. The complexity of the Probate Code poses many pitfalls for non-lawyers attempting to comply with the Small Estate Affidavit requirements. An attorney's assistance in drafting a Small Estate Affidavit may prevent the denial of an Affidavit where it would have been an appropriate probate procedure if the Affidavit had been prepared correctly.

Before filing a Small Estate Affidavit, please review carefully all of the requirements of Section 137 of the Texas Probate Code. The list below highlights a few common errors made by Applicants on such Affidavits, but **this list does not cover every statutory requirement that must be included in the Affidavit.** The Court does not distribute Small Estate Affidavit forms to the public because of the complexity of the requirements of Section 137 and the need for extensive modifications to fit the facts in each case.

Some Small Estate Affidavit traps for the unwary:

1. **Intestacy:** A Small Estate Affidavit cannot be used where decedent left a will. The Affidavit must state that the decedent died intestate (without a will).
2. **Homestead to homestead:** A Small Estate Affidavit cannot transfer title to any real property unless (1) the property was decedent's homestead and (2) the property will be inherited by an heir who was homesteading with the decedent at the date of decedent's death (for example, a surviving spouse or an unmarried child of the decedent who resided on the property with decedent).
3. **Property & liabilities:** The Affidavit must list all of decedent's property (not just some of it), correctly describing the property so that it is clear what property is being transferred by Affidavit. If decedent was married at the time of death, you must state what property was decedent's community property and what was decedent's separate property. The Affidavit also must list all of decedent's debts and other liabilities, including all credit card balances.
4. **Limited estate:** The Affidavit must show that the entire assets of the estate do not exceed \$50,000, not including the homestead and exempt property.
5. **Solvency:** These assets (not including the homestead and exempt property) must exceed the known liabilities, not including liabilities secured by homestead and exempt property.
6. **Family history & inheritance:** The Affidavit must clearly state the decedent's marital and family history in sufficient detail that it is clear who inherits decedent's property and the shares of those heirs under Texas law. If decedent was married at the time of death, the Affidavit must state the shares of each heir in both the separate and the community property. Non-lawyers often do not understand who inherits under Texas law or do not understand what is separate and community property – and therefore often do not provide enough information or the correct information in the Affidavit.
7. **Sworn by all heirs:** Each heir must sign and swear to the Affidavit before a notary. If you do not know where to find an heir, you cannot use the Small Estate Affidavit probate procedure and must file an Application to Determine Heirship.
8. **Sworn by two disinterested witnesses:** Two disinterested witnesses must each sign and swear to the Affidavit before a notary.
9. **Filed in proper county:** The Affidavit must be filed in the county where decedent resided at the time of death or in another appropriate county under Section 6 of the Texas Probate Code.

Appendix 4: Sample Form – Small Estate Affidavit

No. _____

Estate of _____	§ § § § § §	In the _____ Court of _____ County, Texas
Deceased		

Small Estate Affidavit

On the dates written below, the distributees of this estate and two disinterested witnesses personally appeared and, on their oath, did swear or affirm the following facts:

1. Decedent, _____, died **intestate (*without a will*)** on the _____ day of _____, 20____ in _____ County, Texas.
2. Decedent was a resident of and domiciled in _____ [county where Small Estate Affidavit filed] County, Texas, at the time of Decedent’s death [OR provide other facts supporting venue in county where Affidavit filed].
3. No administration is pending or has been granted in Decedent’s estate and none appears necessary.
4. More than 30 days have elapsed since Decedent’s death.
5. The value of the entire assets of the estate of Decedent, not including homestead and exempt property, does not exceed \$50,000.00.
6. The value of the entire assets of the estate of Decedent, not including homestead and exempt property, exceed the known liabilities.

7. The assets of Decedent's estate and their value are as follows:

<u>Asset</u>	<u>Value</u>	<u>Status (see footnote)³</u>
1.		
2.		
3.		

(Continue list as necessary.)

8. The liabilities of the Decedent's estate are as follows:

<u>Creditor</u>	<u>Amount of Liability</u>
1.	
2.	
3.	

(Continue list as necessary.)

9. The names and addresses of each of the distributees of Decedent's estate, being all of the Decedent's heirs at law, and their fractional interest in Decedent's estate are as follows:

<u>Name and address of each distributee</u>	<u>Share of separate personal property</u>	<u>Share of separate real property</u>	<u>Share of decedent's community property (if applicable)</u>

(Continue list as necessary.)

³ If property is claimed as "exempt," "community," or "separate" property, it should be so characterized here, with any characterization supported by facts. To claim real property as decedent's "homestead," its legal description and street address should be listed here, along with an affirmative assertion that it was decedent's homestead. For title to such homestead to pass to decedent's heirs by Small Estate Affidavit, the Affidavit must show that Decedent was survived by his or her spouse, minor heirs, or an unmarried child who lived with Decedent in Decedent's homestead.

10. The following facts regarding Decedent's family history show the distributees' entitlement to Decedent's estate to the extent that the assets, exclusive of homestead and exempt property, exceed the liabilities of Decedent's estate. Check the appropriate box for A and B (and for C and/or D if applicable), and provide requested information.

- A. Decedent was a single person on the date of Decedent's death. **OR**
 Decedent was married to _____ at the time of death.

- B. Decedent had no children by birth or adoption, and Decedent did not take any children into Decedent's home to raise as a child. **OR**
 The following children were born to or adopted by Decedent during Decedent's lifetime:

Child's name	Name of child's other parent	Birth date, if known

(Continue list as necessary.)

- C. None of Decedent's children, either natural born or adopted, predeceased Decedent.

OR

- The following children were born to or adopted by Decedent but predeceased the Decedent and left children and/or grandchildren surviving them:

Name of deceased child	Birth date of deceased child	Names of each surviving child or grandchild of the deceased child	Birth dates of surviving grandchildren

(Continue list as necessary.)

AND/OR

- The following children were born to or adopted by Decedent but predeceased Decedent without leaving any surviving children or grandchildren. (List name and birth date of each deceased child who was not survived by children or grandchildren):

D. If Decedent was NOT survived by a spouse or children or grandchildren, provide the following information:

(1) Check the appropriate box, filling in requested information as needed:

- The Decedent was survived by both parents _____ (mother) and _____ (father). *If so, go directly to page 5.* **OR**
- Decedent was survived by only one parent, _____ **OR**
- Decedent was survived by neither parent.

(2) Provide the following information if an unmarried Decedent with no surviving children or grandchildren was survived by **only one** parent or by **neither** parent. (If survived by both parents, the following information is not needed.)

(a) List all **surviving** brothers and sisters, including half-brothers and half-sisters who were born to *either* of Decedent's parents:

<u>Name of brother or sister</u>	<u>State whether full- or half-sibling</u>	<u>Birth date, if known</u>

(Continue list as necessary.)

(b) If any **deceased** brothers and sisters, including half-brothers and half-sisters who were born to *either* of Decedent's parents, were survived by a child or children, give the following information for each:

<u>Name of deceased brother or sister</u>	<u>Full or half sibling?</u>	<u>Names of each surviving child of the deceased brother or sister (nephews and nieces of Decedent)</u>	<u>Birth dates of surviving nieces & nephews, if known</u>

(Continue list as necessary.)

(c) You will need to fill out a separate page 4a 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 the surviving relatives of Decedent on the separate page 4a. Specify Decedent's family history with respect to each of the survivors. List names, birth dates, and relationship to Decedent.

Wherefore, the undersigned distributees of this Estate pray that the Court approve this Small Estate Affidavit as evidence of their right to inherit the property of Decedent as described above.

DISTRIBUTEES: *(Include signature line and jurat [notary information] for each distributee.)*

SWORN TO AND SUBSCRIBED before me by _____,
a distributee, on this the ____ day of _____, 20 ____.

(SEAL)

Notary Public, State of Texas

SWORN TO AND SUBSCRIBED before me by _____,
a distributee, on this the ____ day of _____, 20 ____.

(SEAL)

Notary Public, State of Texas

SWORN TO AND SUBSCRIBED before me by _____,
a distributee, on this the ____ day of _____, 20 ____.

(SEAL)

Notary Public, State of Texas

SWORN TO AND SUBSCRIBED before me by _____,
a distributee, on this the ____ day of _____, 20 ____.

(SEAL)

Notary Public, State of Texas

I am familiar with the family history of Decedent, and have no interest in Decedent's estate under the laws of descent and distribution. I swear or affirm that the foregoing statements of fact concerning Decedent are true and correct.

Disinterested Witness

SWORN TO AND SUBSCRIBED before me by _____,
a distributee, on this the ____ day of _____, 20 ____.

(SEAL)

Notary Public, State of Texas

I am familiar with the family history of Decedent, and have no interest in Decedent's estate under the laws of descent and distribution. I swear or affirm that the foregoing statements of fact concerning Decedent are true and correct.

Disinterested Witness

SWORN TO AND SUBSCRIBED before me by _____,
a distributee, on this the ____ day of _____, 20 ____.

(SEAL)

Notary Public, State of Texas

Appendix 5: Sample Form – Order Approving Small Estate Affidavit

No. _____

Estate of	§	In the _____ Court
_____ ,	§	of
Deceased	§	_____ County, Texas
	§	

Order Approving Small Estate Affidavit

On this day, the Court considered the Affidavit of the Distributees of the above estate and the Court finds that the Affidavit complies with the terms and provisions of the Texas Probate Code, that this Court has jurisdiction and venue, that this estate qualifies under the provisions of the Probate Code as a Small Estate, and that the Distributees are entitled to the personal property of the decedent to the extent the assets exceed known liabilities, exclusive of homestead and exempt property. Nothing in this Order transfers title to real estate, except as to realty that is homestead, nor affects the disposition of property under a will or other testamentary instrument, nor does the Court make any determination as to the separate or community nature of any property.

It is ORDERED BY THE COURT that the Affidavit is APPROVED AS SET OUT ABOVE. This Order and the Affidavit shall be recorded in the records of the County Clerk, and the Clerk of this Court shall issue certified copies of the Order and Affidavit to all persons entitled thereto.

Signed on _____.

Judge Presiding