

Information & Instructions: Affidavit of heirship

PREVIEW

1. Frequently an Estate may have little or no assets, and in order to avoid probate, the practitioner may consider the use of an affidavit of heirship.
2. An Estate must be administered if there are two or more unpaid creditors.
3. If an administration is not required, the affidavit of heirship may be used when the decedent dies intestate and there are no unpaid bills.
4. This procedure may avoid an administration.
5. The affidavit is filed in the county clerk's office where the decedent lived and in each county where he or she owned real property.
6. The affidavit provides notice to all persons that the decedent is dead, when and where the decedent died, who his or her heirs are, and recites the fact that the decedent died intestate.
7. If a question exists regarding the identity of the decedent's heirs, then an action to determine heirship should be filed.
8. If a decedent dies testate and there are no debts and an administration is unnecessary, a better practice would be to file the will as a muniment of title. This procedure provides better protection to the heirs than an affidavit of heirship.

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Form: Affidavit of heirship

THIS DOCUMENT

State of Texas

County of _____

AFFIDAVIT OF FACTS CONCERNING THE IDENTITY OF HEIRS

AFFIDAVIT OF HEIRSHIP

BEFORE ME, the undersigned notary public, on this day personally appeared [Affiant's name], who after being duly sworn, stated upon his or her oath that I am over the age of 18 years and I have never been convicted of a felony. I am fully competent to give testimony and I state the following:

THANK YOU

1. My name is _____ [insert name of affiant], and I live at _____ [insert address of affiant's residence]. I am personally familiar with the family and marital history of _____ ("Decedent") [insert name of decedent], and I have personal knowledge of the facts stated in this affidavit.

2. I knew decedent from _____ [insert date] until _____ [insert date]

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3. Decedent was born on [insert date of birth] in [birthplace, include the county and state].

4. Decedent died on _____ [insert date of death]. Decedent's place of death was _____ [insert place of death]. At the time of decedent's death, decedent's residence was _____ [insert address of decedent's residence].

5. Decedent married [name] on [Date] [and list all other marriages and divorces, if any].

[Use if applicable: Children born to the decedent through the marriage to [name of spouse] are [child or children]: [list names, birth dates, birthplaces and dates of death, if any].]

OR

[There were no children born to the marriage of decedent and name of spouse].

6. Decedent [was or was never] divorced and had [children born to or adopted by decedent, other than the child or children] named above.

7. Decedent's residence described above was the place of decedent's domicile at the time of death.

8. Decedent's only surviving heirs at law are list names, addresses and relationship to the decedent].

9. Since decedent died without a will, the following property passed outright to the following named heirs pursuant to the Texas laws of intestacy: location, legal description, county of real Estate and [name of heirs and percentage entitled by law].

10. The value of decedent's estate did not exceed the federal estate tax exemption for the year of the decedent's death, therefore no federal or state inheritance tax is due or owing on decedent's estate.

11. All debts of the estate, including the expenses of decedent's funeral and last illness, if any, have been paid except those debts, if any, listed in the Exhibit that is attached to this Affidavit of Heirship.

12. No administration is pending on the decedent's Estate and none was necessary.

13. All of the decedent's debts, including the funeral expenses and expenses of last illness, have been paid.

14. There are no Estate or inheritance taxes due by the Estate of Decedent for either decedent's separate or community property.

15. Attached to this Affidavit of Heirship is the verification of two independent witnesses. Both witnesses knew the decedent and do not have any financial interest in decedent's estate.

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- PREVIEW**
- a. The first witness knew decedent since [Date].
- b. The second witness knew decedent since [Date].

[Include paragraphs 16 & 17 if the Affidavit is being used for the transfer of a specific real estate transaction:

16. Affiant acknowledges that this Affidavit of Heirship is being made to complete the disposition of a real estate transaction. This Affidavit is made concerning title to the following property:

[Legal description]

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a. Affiant acknowledges that other persons may rely upon this Affidavit to determine the Deceased's heirship for other personal and real property ownership interests.

17. Affiant understands and acknowledges that [Title company's name] will issue an owner's title policy and/or mortgagee policy of title insurance to insure the title to the above described property.

a. Title insurance policies will be issued upon the title insurance company. Affiant understands that [Title company's name] and [Underwriter's name] will rely upon and accept as true the representations and statements made in this Affidavit.

THIS DOCUMENT

b. Affiant agrees to indemnify and hold harmless [Title company's name] and [Underwriter's name] for any and all costs, expenses, claims, suits, liability of any kind, damages and attorney's fees that [Title company's name] and the [Underwriter's name] may incur as a result of relying on this Affidavit.

Signed on _____.

[Affiant]

State of Texas

County of _____

Subscribed and sworn to before me on _____ by

_____.

THANK YOU

Signature of Affiant

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Notary's typed or printed name
PREVIEW
My commission expires:

[or Notary's Stamp]

I, [name of notary], the notary public whose signature appears above, certify that I am not an attorney in this case.

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THANK YOU

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