

## Do I Need Probate for a Small Estate?

Whether dealing with the death of a loved one, or planning for your own, the legal process of handling an estate can often be a daunting and confusing task, especially if the estate is small. A common question many people in Texas ask is whether they need to go through probate for a small estate. The short answer is: not always, but it depends on the circumstances. Even small estates can sometimes require probate, but there are alternatives to simplify the process.



### What is Probate?

Probate is the legal process of administering a deceased person's estate, which includes validating a will (if one exists), paying off debts and taxes, and distributing assets to heirs or beneficiaries. In Texas, probate can sometimes be necessary even for small estates, particularly when there is no clear way to transfer ownership of certain assets without a court's involvement.

### When is Probate Required for Small Estates?

Texas law does not have a fixed monetary threshold to determine whether probate is required. Instead, probate is necessary when certain **conditions** are met, regardless of the estate's size. Some common situations that may require probate include:

#### 1. The Deceased Owned Real Property

If the decedent owned real estate (other than a homestead), probate is usually necessary to legally transfer the property to the heirs. Real property includes land, homes, and sometimes even mineral rights in Texas, and transferring this property

requires clear title. Without probate, the legal ownership of the property may remain clouded, causing issues in the future..

## 2. The Decedent Had Non-Transferable Assets

Even in small estates, probate may be necessary if the deceased owned assets that cannot be transferred by other means. For example, bank accounts without a designated beneficiary or investments not covered by a payable-on-death (POD) designation might require probate to determine who will inherit them.

## 3. The Estate Has Debts

If the estate has significant debts, it might need to go through probate so that creditors can be paid. In Texas, probate helps ensure that creditors are satisfied before assets are distributed to heirs. Even with small estates, probate can serve as a way to protect heirs from future claims if the decedent left unpaid bills.

## 4. Unresolved Legal Matters

Sometimes, probate is necessary to settle disputes over the estate or to create authority for the estate to move forward with a dispute. For example, if there is no valid will or if the heirs cannot agree on how to divide assets, a probate court may be required to make decisions. Or, if the decedent died because of another's negligence, probate may be required for appointing a representative to prosecute that claim.

# Alternatives to Probate for Small Estates

Fortunately, for small estates in Texas, there are several alternatives to the full probate process, which can save time, legal fees, and stress. Several of these alternatives work best when the estate is uncomplicated and there is no significant dispute among heirs or creditors. Let's explore some of the most common alternatives:

## 1. Small Estate Affidavit

Texas law provides a streamlined process for estates valued at less than \$75,000 (excluding homestead and exempt property) called the **Small Estate Affidavit**. This process allows heirs to collect and distribute property without going through formal probate. To qualify, the following must apply:

- The decedent did not leave a valid will.
- The estate consists mostly of personal property (no real estate other than the homestead).
- The total estate value (excluding exempt property and homestead) is less than \$75,000.
- The estate's debts can be paid using the property left behind.
- The person receiving the homestead is either the spouse or was already homesteading with the decedent when they died.

To use this option, the heirs must file a Small Estate Affidavit with the local probate court, listing the assets, debts, and the names of those who will inherit under Texas intestacy laws. Once approved, the heirs can collect the assets.

## 2. Affidavit of Heirship

An **Affidavit of Heirship** is another way to avoid probate for small estates, particularly if the estate includes real estate (such as a family homestead). The affidavit is a legal document signed by disinterested witnesses who attest to the decedent's family and heirship status. It serves to transfer ownership of real property from the deceased to their heirs without formal probate. This method is commonly used to clear title for property and works best when all heirs agree on the distribution.

However, an Affidavit of Heirship is not binding like a court order, so some financial institutions may refuse to recognize it as valid authority to transfer bank accounts or other assets. It is most useful for transferring title to real estate.

### 3. Muniment of Title

In cases where the decedent left a will but there is no need for full probate administration, Texas offers a process called **Muniment of Title**. This is a simplified form of probate that allows the court to recognize the will as valid without appointing an executor or requiring a full administration of the estate. In essence, the will becomes part of the county record and acts as a legal transfer of the interests in the will.

Muniment of Title works best when the estate has no debts and the primary asset being transferred by the will is a piece of property. It does transfer other assets contained in the will, but only those specifically listed.

This process can save a bit of time and money versus a formal probate and works well when all heirs agree on the distribution.

### 4. Using a Trust

One of the most effective ways to avoid probate—even in the presence of complications or disputes—is by setting up a **living trust**. Trusts offer a comprehensive probate-free solution for transferring assets upon death, and they provide significant benefits, even for small estates.

When a person creates a living trust, they transfer ownership of their assets to the trust while they are alive. After they pass away, the trustee, who can be a family member, friend, or professional, manages and distributes the assets according to the instructions in the trust without the need for probate.

This allows the loved ones several key benefits other than merely skipping probate. First, the trust creates a seamless distribution allowing the beneficiaries to receive their inheritance without waiting months, or even years. Second, the trust gives the decedent and those left behind more privacy, control, and

flexibility. It is very hard to dispute or complicate the decedent's wishes. And, finally, the trust is a low-maintenance tool for simplifying the process for your loved ones. This simplification can often be an invaluable gift for grieving family members saving them the stress and expense of using a more formal process.

## The Bottom Line on Probate

For small estates, probate may not always be necessary, but it depends on the assets involved and the specific circumstances. If the estate includes real property, debts, or non-transferable assets, probate may still be required. However, Texas offers several alternatives, such as the Small Estate Affidavit, Affidavit of Heirship, Muniment of Title, and Trusts, which can provide simpler, faster ways to settle an estate without the need for a full probate process.

Each option comes with specific requirements and limitations, so consulting with a Texas probate attorney is recommended to ensure that the estate is handled correctly and efficiently. As an experienced estate planning attorney, I am here to assist you in navigating these choices so that you can do what is best for your family. A primary focus of my firm is ensuring that our clients make purposeful choices of how and when their property passes to loved ones. If you need clarity, call me at 281-425-1300 to schedule your planning session today, so you can experience the peace of knowing your loved ones are protected.

—By Marc Pinney