

SMALL ESTATE AFFIDAVIT INSTRUCTIONS

This form is provided to you as a courtesy from the Clerk and Master's Office for Montgomery County. Please be aware that this Office cannot give you legal advice. We will assist you with procedural information and clarification regarding the form, but this is the only assistance that Clerks can give you. You are encouraged to consult with an attorney or research the law if you have legal questions.

FILING FEE: \$145.50 (No Will)
 \$150.50 (With a Will)

FORMS REQUIRED:

Small Estate Affidavit (attached)
Oath of Affiant (attached)
Consent to Serve Without Bond Form (attached)
Original Will (if decedent left a Will)
Copy of decedent's Death Certificate

* We accept credit card, debit card, cash, money order and cashier's check payable to "Clerk and Master".

* There is a 3% processing fee for credit card and \$2.00 processing fee for debit card.

If you are filing a Small Estate Affidavit, you are seeking authority to collect property owned by a deceased person and you are affirming to the Court that you will pay the decedent's bills and distribute the property to the heirs or beneficiaries. Before filing this Small Estate Affidavit, please check with whoever is holding the decedent's property (e.g. bank, insurance company, etc.) to make sure that they will accept a Small Estate Affidavit in order to release the property. Once you file this Small Estate Affidavit, you cannot obtain a refund of your filing fee if the holder does not release the property to you.

YOU MAY USE THIS FORM IF YOU MEET THE FOLLOWING CONDITIONS:

- ➡ The decedent was a legal resident of Montgomery County at the time of death.
- ➡ There is not another pending administration of the decedent's estate in this Court or another Court.
- ➡ The value the decedent's personal property passing through the affidavit is Fifty Thousand Dollars (\$50,000) or less. **The small estate affidavit does not pass title to real estate.** If the decedent owned real estate, you will need to seek legal advice from an attorney or research the law regarding real estate.
- ➡ More than forty-five (45) days have passed from the decedent's date of death. You may file a written request that this requirement be waived, but you will need to state a reason why you are requesting that it be waived.

IF THE DECEDENT HAD A LAST WILL AND TESTAMENT

- ❖ The original Last Will and Testament must be filed with the Court. The Small Estate Affidavit does **not** admit the Will to probate, but you are affirming to the Court that you will distribute the property in accordance with the Will.
- ❖ If you are named as the Personal Representative in the Will, you may file as the Affiant. If you are not named as the Personal Representative, you must obtain a statement from the person(s) named that states such person(s) declines to serve.

IF THE DECEDENT DID NOT HAVE A LAST WILL AND TESTAMENT

The decedent's property will ultimately be distributed to the person's heirs-at-law. Tennessee law determines who is an heir-at-law under Tennessee Code Annotated §31-2-104.

- A. If the decedent had a spouse and/or children, these individuals are heirs-at-law. If the decedent had a child who predeceased him or her, and the predeceased child had a child or children, then such child or children will inherit their deceased parent's share.
- B. If there are no persons in Item A above, the father and mother of the decedent are heirs-at-law. If only one of those individuals survive, the surviving parent is the sole heir-at-law.
- C. If there are no persons in Item B above, the decedent's siblings, full blooded and half-blooded, are the decedent's heirs-at-law. If the decedent had a sibling or siblings who predeceased him or her and the predeceased sibling had a child or children, then such child or children will inherit their deceased parent's share.
- D. If there are no persons in Item C above, you will need to make an appointment with the Clerk and Master to discuss what additional information is needed to determine heirs-at-law.

LISTING PROPERTY OWNED BY THE DECEDENT

- ❖ When listing the property owned by the decedent, please give as much information as you have. If you are listing a vehicle, the Montgomery County Clerk's office requires that the VIN be listed on the Small Estate Affidavit. Banks or financial institutions may require that the account number be listed as well.

BOND REQUIREMENT

You are required to post a bond in order to be the Affiant. A bond can be obtained from an insurance company of your choosing who agrees to act as a surety. The amount of the bond is the total value of personal property listed on the Small Estate Affidavit. Bond can be waived if:

- ➡ All of the heirs-at-law or beneficiaries sign a waiver for you to serve as Affiant; or
- ➡ You are named as the Personal Representative under the Will and the Will specifically waives bond.

FILING REQUIREMENTS

Once you have completed the Small Estate Affidavit, obtained waivers regarding bond or have secured a bond, you can file the Small Estate Affidavit at the Clerk and Master's Office. You must have the following items to file:

- ✔ The Small Estate Affidavit signed by you and notarized. There are notary publics at our office but please call ahead to ensure that a notary public will be present when you come to the office if your document is not already notarized.
- ✔ The filing fee is \$145.50 if the decedent did not have a Will and \$150.50 if the decedent had a Will. We accept payment in cash, money order and cashier's check payable to "Clerk and Master". A credit card may be used with a three percent (3%) processing fee or a debit card with a \$2.00 charge. Payment must be made at the time of filing.
- ✔ A copy of the decedent's death certificate.
- ✔ The decedent's original Will if he or she had a Will.

*****IMPORTANT*****

Once we receive your filing:

- ⚠ It will be reviewed by the Clerk and Master before issuance.
- ⚠ You should receive a response within three (3) business days regarding whether the Small Estate was issued or whether any additional information or documentation is needed.
- ⚠ **If additional information or documentation is needed, you may schedule an appointment with the Clerk and Master.**

⚠ ⚠ **Please be aware that you are signing the Small Estate Affidavit under penalty of perjury and that the information you provide is your sworn testimony to the Court.**

**In the Chancery Court of Montgomery County, Tennessee
Clerk and Master's Office**

**SMALL ESTATE AFFIDAVIT
T.C.A. § 30-4-101, et seq.**

DOCKET NUMBER: _____

ESTATE OF: _____

Your Affiant, _____, would respectfully show unto the Court as follows:

That the Deceased, age _____, died on the _____ day of _____ 20_____, in _____ County, State of Tennessee, and that his/her last residence was:

The Decedent left no Will.

The Decedent left a Will and the Will has been deposited with the Clerk of this Court, and a copy has been filed to support this Affidavit.

The Decedent left the following unpaid debts at the time of his/her death:

<u>CREDITOR</u>	<u>ADDRESS</u>	<u>AMOUNT</u>

(IF OTHER DEBTS, ATTACH A SEPARATE SHEET)

The Decedent died owning the following property (list all personal property which includes cash, bank accounts, notes receivable, automobiles, stocks and bonds and life insurance payable to the estate, mechanical equipment, household furnishings, etc.)

Do Not List Jointly Owned Property

<u>ITEM</u>	<u>LOCATION/POSSESSION</u>	<u>BANK ACCOUNT#</u> (if applicable)	<u>VALUE</u>

(IF OTHER PERSONAL PROPERTY, ATTACH SEPARATE SHEET)

TOTAL PERSONAL ESTATE: \$ _____

HEIRS AT LAW

If there is NOT a Will, list heirs at law

<u>NAME</u>	<u>MAILING ADDRESS</u>	<u>RELATIONSHIP TO DECEDENT</u>	<u>CURRENT STATUS</u>
			<input type="checkbox"/> UNDER 18 <input type="checkbox"/> NOW DECEASED
			<input type="checkbox"/> UNDER 18 <input type="checkbox"/> NOW DECEASED
			<input type="checkbox"/> UNDER 18 <input type="checkbox"/> NOW DECEASED
			<input type="checkbox"/> UNDER 18 <input type="checkbox"/> NOW DECEASED
			<input type="checkbox"/> UNDER 18 <input type="checkbox"/> NOW DECEASED
			<input type="checkbox"/> UNDER 18 <input type="checkbox"/> NOW DECEASED
			<input type="checkbox"/> UNDER 18 <input type="checkbox"/> NOW DECEASED

(IF MORE LINES ARE NEEDED FOR YOUR LIST, PLEASE ATTACH A SEPARATE SHEET)

BENEFICIARIES OF THE WILL

If there IS a Will, list those names that were left property in the Will

<u>NAME</u>	<u>MAILING ADDRESS</u>	<u>RELATIONSHIP TO DECEDENT</u>	<u>CURRENT STATUS</u>
			<input type="checkbox"/> UNDER 18 <input type="checkbox"/> NOW DECEASED
			<input type="checkbox"/> UNDER 18 <input type="checkbox"/> NOW DECEASED
			<input type="checkbox"/> UNDER 18 <input type="checkbox"/> NOW DECEASED
			<input type="checkbox"/> UNDER 18 <input type="checkbox"/> NOW DECEASED
			<input type="checkbox"/> UNDER 18 <input type="checkbox"/> NOW DECEASED
			<input type="checkbox"/> UNDER 18 <input type="checkbox"/> NOW DECEASED

(IF MORE LINES ARE NEEDED FOR YOUR LIST, PLEASE ATTACH A SEPARATE SHEET)

OATH

I AFFIRM THAT EVERYTHING ON THIS AFFIDAVIT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND I UNDERSTAND I MAY BE SUBJECT TO THE PENALTY OF PERJURY FOR A FALSE OR MISLEADING AFFIDAVIT. I AM WILLING TO COLLECT AND PRESERVE ALL ASSETS, PAY ALL CREDITORS, AND DISTRIBUTE AS PROVIDED BY THE WILL, OR, IF THERE IS NO WILL, BY THE LAWS OF DESCENT AND DISRIBUTION PURSUANT TO T.C.A. § 30-04-101, et seq.

YOUR SIGNATURE	X	PHONE #
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**STATE OF TENNESSEE
COUNTY OF MONTGOMERY**

Personally appeared before me, Notary Public/Deputy Clerk, the said

_____ ,
after being sworn, deposes and says, subject to the penalty of perjury, that the Affidavit is not false or misleading and that the Affiant is mindful of all duties imposed upon her or him.

SWORN AND SUBSCRIBED BEFORE ME, THIS ____ DAY OF _____, 20____.

NOTARY PUBLIC/ DEPUTY CLERK	X	COMMISSION EXPIRES:
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**In the Chancery Court of Montgomery County, Tennessee
Clerk and Master's Office**

CONSENT TO SERVE WITHOUT BOND

IN THE ESTATE OF:

_____ DOCKET NUMBER: _____
Deceased

I, _____, beneficiary of the above-referenced estate, do hereby waive my appointment as the Personal Representative of this estate and consent to the appointment of _____ as the Personal Representative of this estate, as evidenced by my signature below, whether notarized or signed under penalty of perjury, and I further state to the Court that this appointment shall be **without Surety Bond**.

This _____ day of _____, 20 _____.

PRINT NAME: _____

ADDRESS: _____

<p>_____ <i>Signature</i></p> <p>State of: _____ County of: _____</p> <p>Sworn and subscribed before me, this _____ day of _____, 20____.</p> <p>_____ <i>Notary Public/Deputy Clerk</i></p> <p>My Commission Expires: _____</p>	OR	<p>I certify under penalty of perjury that the foregoing is true and correct.</p> <p>_____ <i>Signature</i></p>
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