

# Affidavits and Declarations (Probate) Research Guide

## Overview

This research guide includes information and resources on affidavits and declarations related to probate law. Both affidavits and declarations are types of sworn statements. An affidavit is “a voluntary declaration of facts written down and sworn to by a declarant, usually before an officer authorized to administer oaths,” like a notary. A declaration is “a formal statement, proclamation, or announcement, especially one embodied in an instrument.” (*Black Law Dictionary, 11<sup>th</sup> ed.*) The resources listed below are not exhaustive and may not include the most up-to-date information. It is for information purposes only and should not be construed as legal advice or act as the substitute for legal counsel.

## Statutes and Codes

Texas Statutes Online [www.statutes.capitol.texas.gov](http://www.statutes.capitol.texas.gov)

Civil Practice and Remedies Code

- §37.005 Declarations Relating to Trust or Estate  
<https://statutes.capitol.texas.gov/Docs/CP/htm/CP.37.htm#37.005>
- Ch. 132 Unsworn Declarations  
<https://statutes.capitol.texas.gov/Docs/CP/htm/CP.132.htm>
- Ch. 137 Declaration for Mental Health Treatment  
<https://statutes.capitol.texas.gov/Docs/CP/htm/CP.137.htm>

Texas Estates Code

- Ch. 201 §201.053 Effect of Reliance on Affidavit of Heirship  
<https://statutes.capitol.texas.gov/Docs/ES/htm/ES.201.htm#201.053>

- Ch. 205 Small Estate Affidavit  
<https://statutes.capitol.texas.gov/Docs/ES/htm/ES.205.htm>

Texas Health & Safety Code

- Ch. 166 Advance Directives  
<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.166.htm>

Texas Property Code

- §12.019 Affidavit of Authority to Transfer  
<https://statutes.capitol.texas.gov/Docs/PR/htm/PR.12.htm#12.019>

## Secondary Resources in Print

**Texas Probate Forms & Procedures REF KFT 1344. T4B7**

- Ch. 2 Probate Options & Considerations
  - §2:14 Affidavit of Heirship
  - §2:16 Small Estate Affidavit
- Ch. 6 Temporary Administration
  - §6:11 Verification and Affidavit
  - §6:17 Notice to Heirs
  - Form 6-1 Application to Appoint Temporary Administrator
  - Form 6-6.1 Affidavit Regarding Notice Pursuant to Tex Est C § 452.006 (c)
- Ch. 7 Independent Administration
  - §7:11 No Self-Proving Affidavit
  - §7:30-7:32 Hearing – Evidence and Documents Needed for the Hearing
  - §7:63 Secured Creditors
  - §7:80 Original Inventory, Appraisal, and List of Claims, of Affidavit in Lieu of Inventory
  - Form 7-8 to 7-13 Affidavits of Proof
  - Form 7-29-1 Affidavit Regarding Notice Pursuant to §308.053

- Form 7-36.1 Affidavit in Lieu of Inventory, Appraisal, and List of Claims
- Ch. 9 Muniment of Title
  - §9:31 Muniment of Title; Compliance Affidavit
  - Form 9-8 Affidavit of Compliance With a muniment of Title Probate
- Ch. 10 Determination of Heirship
  - §10:11 Supporting Affidavit
  - §10:22 Witness Affidavits
  - §10:40 Reasons for Using an Affidavit of Heirship
  - §10:41 Disadvantages of an affidavit of Heirship
  - §10:43 Preparing an Affidavit of Heirship
  - Form 10-3 Proof of Death and other Facts (Interested Witness)
  - Form 10-4 Proof of Death and Other Facts (Disinterested Witness)
  - Form 10-6 Affidavit of Heirship
- Ch. 11 Miscellaneous Procedures
  - Form 11-1 Small Estate Affidavit
  - Form 11-2 Order Approving Small Estate Affidavit
  - Form 11-5.1 Affidavit of Surviving Spouse
- Ch. 13 Foreign Wills
  - §13:13 Obtaining Letters Testamentary
  - Form 13-4 Affidavit of Proof of Death and Other Facts (Foreign Will)

#### **Texas Probate System REF KFT 1342 .S7**

- Forms
  - Form 26 Affidavit as to Decedent's Docimile
  - Form 37 Affidavit Regarding Debts and Taxes
  - Form 82 Small Estate Affidavit and Order
  - Form 97 Affidavit Regarding Fulfillment of Will Admitted to Probate as Muniment Of Title
  - Form 98 Personal Representative's Affidavit of Compliance with Notice of Appointment of Temporary Administrator
  - Form 101 Affidavit of Notice of Probate
  - Form 103 Affidavit in Lieu of Inventory, Appraisal, and List of Claims

- Form 104 Affidavit of Service of Citation (Heirship)
- Form 113 Affidavit of Service of Citation (Final Account)
- Form 135 Attorney's Fee Affidavit
- Form 143 Affidavit of [Inability / Unwillingness] to Serve as Executor
- Form 145 Affidavit of Refusal to Serve as Administrator
- Form 146 Affidavit of Heirship

#### **Texas Guardianship Manual REF KFT 1306 .T49**

- Ch. 2 Temporary Guardianship and Other Emergency Relief
  - Form 2-8 Temporary Guardian's Affidavit
- Ch. 3 Alternatives to Guardianship and Pre-Guardianship Planning
  - Form 3-11 Declaration of Appointment of Guardian for my Children in Even of Death or Incapacity
  - Form 3-12 Declaration for Mental Health Treatment
- Ch. 4 Creating Guardianships
  - Form 4-17 Guardian's Bond and Affidavit Sureties
- Ch. 6 Guardians and Attorneys Ad Litem
  - Form 6-12 Affidavit of Failure to Give Security for Costs
- Ch. 7 Inventory, Safekeeping and Creditors
  - Form 7-10 Publisher's Affidavit
- Ch. 8 Administration §8.54 Guardian's Account Affidavit
- Ch. 12 Public Benefits
  - Form 12-1 Trust Declaration

## CLE Materials

#### **Building Blocks of Wills, Estates, and Probate KFT 1340 .S7B8**

- 2022 Ch. 1.1 – Basic Estate Planning
  - Declaration of Guardian for Children, p. 22
  - Declaration of Guardian for Oneself, p. 22
- 2022 Ch. 2.2 Elder Law Planning and Issue Spotting

- Appendix IV Qualified Income Trust Document (Trust Declaration)
- 2022 Ch. 4 Probate Procedures and Alternatives 2022
  - Affidavit of Compliance, p. 4
  - Small Estate Affidavit, p. 20
  - Affidavit or Certificate, p. 33
  - Appendix C-2: Affidavit of Waiver of Citation and Objection (Probate After 4 Years), p. 44
  - Appendix F-3: Affidavit of Notice by Personal Representative, p. 58
  - Appendix G: Affidavit in Lieu of Inventory and Appraisal, p. 60
  - Appendix J: Small Estate Affidavit, p. 72-77
- 2022 Ch. 5 Estate Administration: Dependent and Independent Administration Guide
  - Affidavit of Personal Representative, p. 19
  - Affidavit in Lieu of Inventory, p. 19
  - Exhibit C: Affidavit in Lieu of Inventory and List of Claims, p. 72

Affidavit of Heirship for a Motor Vehicle (TXDMV)  
[https://www.txdmv.gov/sites/default/files/form\\_files/VTR-262.pdf](https://www.txdmv.gov/sites/default/files/form_files/VTR-262.pdf)

Affidavit of Death Form (Texas Transfer Toolkit)  
[https://texaslawhelp.org/sites/default/files/2022-05/death affidavit from all-forms-2021-3.pdf](https://texaslawhelp.org/sites/default/files/2022-05/death%20affidavit%20from%20all-forms-2021-3.pdf)

Unsworn Declarations (Texas Law Help)  
<https://texaslawhelp.org/article/unsworn-declaration-information-instructions-and-forms>

General Affidavits (Texas Law Help)  
<https://texaslawhelp.org/article/general-affidavit>

### Advanced Real Estate Drafting Course KFT 1312 .A75S7

- 2022 Ch. 1 Authority Issues in Residential Real Estate Transactions
  - Form C – Affidavit of Location of Execution of Statutory Durable Power of Attorney, p. 19
  - Form F – Affidavit of Facts Concerning the Identity of Heirs

## Legal Assistance

**Legal Lines – Ask Attorneys simple legal questions (free service)**

- Tarrant County LegalLine Sign-up  
<https://www.tarrantbar.org/>
- Dallas County LegalLine Sign-up  
<https://www.dallasbar.org/index.cfm?pg=legalline>

**Tarrant County Bar Association Lawyer Referral Service:** 817-336-4101 (\$20 for the first 30 minutes)

## Online Resources

How to Draft and Affidavit of Heirship (Texas Law Help)  
<https://texaslawhelp.org/article/how-to-draft-an-affidavit-of-heirship>

I want to use a Small Estate Affidavit to probate an estate (Texas Law Help)  
<https://texaslawhelp.org/toolkit/i-want-use-small-estate-affidavit-probate-estate-0>

Small Estate Affidavits (Texas Law Help)  
<https://texaslawhelp.org/article/small-estate-affidavits>

