

SMALL ESTATES

TCA 30-4-102 Definitions – Unless the context clearly requires otherwise, the following terms have the meanings ascribed to them:

1. "Affiant" means the person executing the affidavit provided for in TCA 30-4-103;
2. "Court" means the court then exercising probate jurisdiction in the county in which the decedent had legal residence on the date of death;
3. "Person" means an individual, partnership, firm, business trust, corporation or other legal entity, and includes both singular and plural and masculine and feminine, as appropriate;
4. "Property" means personal property, or any interest in personal property, owned by the decedent on the date of death, other than personal property held as tenants by the entirety or jointly with right of survivorship or personal property payable to a beneficiary other than the decedent's estate; and
5. "Small estate" means the estate of a decedent in which the value of the property does not exceed fifty thousand dollars (\$50,000).

Estates less than \$50,000 may be administered under the Small Estate Act. A "small estate" to which the statute applies is one in which the value of the personal property does not exceed fifty thousand dollars. To be excluded in determining the value of personal property for such purpose is that held jointly with right of survivorship and also life insurance proceeds payable other than to the decedent's estate. By definition, real property is also not taken into account in arriving at the \$50,000 limitation.

In most instances, the optional method of informal administration offered by the Small Estate Act should be used only in modest, uncomplicated estates. If the decedent left only a small bank account and no significant debts for example, the Small Estates Act could be useful in collecting assets with the least possible expenses.

The opening of a small estate does not prevent a party from obtaining letters of administration or testamentary or, after the expiration of six months, a creditor from applying to the chancery court for formal administration.

Prior to 1998 there was no method for notice to creditors, however, with respect to the estates, decedents dying after December 31, 1997, the affiant may elect to give notice to creditors under the regular procedure and thus commence the running of the claims statute. (TCA 30-4-103(1)(E))

After the expiration of forty-five days from the date of the decedent's death, provided no petition for appointment of a personal representative of the decedent has been filed in said period of time and the decedent's estate is a small estate within the meaning of this chapter, one or more of the decedent's competent, adult legatees or devisees, if a will was left, or the largest creditor proving his debt on oath, or heirs of kin, if no will was left, shall file with the clerk of the court an affidavit which shall set forth the following facts:

1. That the decedent was a resident of the county.

2. Whether the decedent had a will and if there was a will it is to be filed with the affidavit.
3. A list of unpaid debts, names and addresses of each creditor and the amount owed.
4. A description and value of the decedent's personal property, the names and addresses of all persons known to have possession of such property, and a list of all insurance on the decedent's life if payable to the estate.
5. The name, age, address, and relationship of any and all devisees, legatee, or heir entitled to such property.
6. Whether the affiant elects to give notice to creditors as in the manner required for regular administration (this is at the affiant's discretion).

The form of the affidavit required by this section shall disclose that the affiant evidences by signature that, subject to the penalty for perjury, the affidavit is not false or misleading and that the affiant is mindful of all duties imposed upon the affiant by this chapter. No clerk or assistant shall be liable as a result of services rendered to the affiant in good faith in completing the affidavit based on information furnished by the affiant.

Upon the motion of one or more of the decedent's competent, adult legatees or devisees if a will was left, or his heirs or next of kin if no will was left, or upon its own motion, the court may, in its discretion for good cause shown, reduce the forty-five day period required by this subsection.

The original affidavit is filed with the clerk, assigned a number and indexed. The clerk shall deliver to the affiant as many certified copies of the affidavit as are requested.

The clerk sends a certified copy of the affidavit to the Commissioner of Revenue and if there is a will, a certified copy of the will.

The clerk will charge the cost as listed in TCA 8-21-401. The total cost for a small estate is \$85.00. If the affiant requests that a notice to creditors be published an additional cost of \$105.00 is required.

The affiant shall make bond with two or more sufficient sureties or one corporate surety. The amount of the bond shall equal the value of the decedent's estate to be administered under this chapter.

However, bond shall not be required if the provisions of TCA 30-1-201 would not so require.

Closing the Estate and Discharge of Bond

The affiant and the sureties on his bond may obtain discharge from liability under the bond in either two ways:

1. If, within two years following the filing of the affidavit, no formal probate has been filed, discharge is automatic.
2. The court may enter an order before the two-year period expires if the affiant files with the court, an affidavit that each debt has been paid, a receipt evidencing payment of inheritance tax or a certificate that no tax is due and a release from the Bureau of TennCare, if applicable.

30-4-104. Administration by affiant.

(a) Every person indebted to decedent's estate, or having possession of any property belonging to the estate, or acting as registrar or transfer agent of any shares of stock, bonds, notes or other evidence of ownership, indebtedness, property or right belonging to decedent's estate shall be furnished a copy of the affidavit by the affiant, duly certified to by the clerk of the court, and upon receipt of the copy of affidavit, and upon demand of the affiant, shall pay, transfer and deliver to affiant all indebtedness owing by and other property in possession of or subject to registration and/or transfer by, the person to whom the copy of affidavit has been delivered.

(b) Every person making payment, transfer or delivery of property belonging to a decedent's estate to the affiant pursuant to this chapter shall be released and discharged from all further liability to the estate and its creditors to the same extent as if the payment, transfer or delivery were made to the duly appointed, qualified and acting personal representative of the decedent, and the person making the payment, transfer or delivery shall not be required to see to its application or to inquire into the truth or completeness of any statement in the affidavit.

(c) If the decedent left a will, the decedent's property shall be distributed as provided in the will, and if the decedent left no will it shall go to the decedent's heirs as provided by law in case of other intestacies, and both the affiant and the person to whom payment, transfer or delivery of any property is made by the affiant shall be and remain liable, to the extent of the value of the property so received, to unpaid creditors of the decedent and to every other person having a prior claim against the decedent's estate or prior right to any of the decedent's property, and also shall be accountable to any personal representative of the decedent thereafter appointed.

(d) For a decedent dying before January 1, 2016, the affiant shall file returns and pay the tax on property in the decedent's estate, as required by title 67, chapter 8, parts 3-5, as now or hereafter amended, revised or recodified.

(e) If any person having possession of any of the decedent's property, upon receipt of a copy of the affidavit certified by the clerk, refuses to pay, transfer or deliver the property to or at the direction of the affiant, the property may be recovered or transfer and delivery of the property compelled in an action brought in any court of competent jurisdiction for that purpose upon proof of the facts required to be stated in the affidavit, and costs of the proceeding shall be adjudged against a person wrongfully refusing to pay, transfer or deliver the property.

The filing of such statement along with the order to close the estate, shall relieve the Personal Representative to file a detailed statement or accounting and that the Personal Representative shall be excused from any further duties as Personal Representative of the estate and be discharged from bond (if applicable).

**AFFIDAVIT FOR SMALL ESTATE
PROBATE COURT OF JEFFERSON COUNTY, TENNESSEE**

In the Matter of the Estate of _____
Name of Deceased

The deceased, age _____, died on the _____ day of _____ 20_____, in
_____ County, State of Tennessee. His/Her last residence
was _____.

_____ The decedent left no will.

_____ The decedent left a will and the will is attached to this petition as Exhibit "A".

The decedent died owing the following creditors.

Creditor	Address	Amount
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

(If more creditors exist attach a separate list)

The decedent died owning the following property (list all personal property and who now has possession).

Item	Value	Location & Possession
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____

Total Value \$ _____

(If additional property exists, attach a separate list)

The decedent owned the following policies of insurance made payable to his/her estate.

Policy Number	Face Value	Insurance Company
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____

(If additional policies exist attach a separate list)

The following are the names and addresses of all heirs of the deceased and/or devisees and legatees under his/her will:

Name	Address	Age	Relationship
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(If additional heirs exist attach a separate list)

_____ Bond must be posted. The total value of the property subject to the Small Estate Procedure for which bond must be posted is \$_____.

_____ Bond is excused for the following reason.

_____ Paragraph _____ of the decedent's Will excuses affiant from making bond.

_____ Affiant is the sole beneficiary of the decedent's estate.

_____ Each person who is a beneficiary of the decedent's estate is an adult and each has consented to waive the affiant's bond as evidenced by each beneficiary's signed, acknowledged Agreement to Waive bond attached as a collective exhibit.

_____ Affiant is a bank excused from bond by TCA 45-2-1005.

Affiant Certification

Your affiant is willing to collect and preserve all assets of the estate, pay all creditors and distribute the remainder in accordance with the terms of the will or according to the laws of descent and distribution of the State of Tennessee and will file a tax return and pay tax on decedent's property, as required by Chapter 16, Title 30, Tennessee Code Annotated. Further, the affiant evidences by signature that, subject to the penalty for perjury, the affiant is not false or misleading and that affiant is mindful of all duties imposed upon the affiant by this chapter. No clerk or assistant shall be liable as a result of services rendered to affiant in good faith in completing the affidavit based upon information furnished by affiant.

_____ Your affiant requests that notice to creditors be issued pursuant to TCA 30-2-306 to 30-2-321.

_____ Your affiant request that no notice to creditors be issued pursuant to TCA 30-2-306 to 30-2-321.

This _____ day of _____, 20_____

Affiant Signature

STATE OF TENNESSEE
JEFFERSON COUNTY

Personally appeared before me, _____ County Clerk/Deputy Clerk of the said court, the said _____, and after being duly sworn, deposes and says, that the facts averred in the above affidavit are true to the best of (his/her) knowledge, information, and belief.

Affiant

Address

Sworn to and subscribed before me, this _____ day of _____, 20_____.

County Clerk

By: _____
Deputy Clerk

CERTIFICATE

I, County Clerk for the Probate Court of Jefferson County, certify that this is a court of record; that this is a true, full, and correct copy of the Small Estate Affidavit filed in this Court; that his Affidavit is still in full force and effects as of this date; and that the original of the Affidavit is on file in the office of the County Clerk for Jefferson County, Tennessee.

Witness my hand and seal, this _____ day of _____, 20_____.

County Clerk

By: _____

Deputy Clerk

SMALL ESTATE AFFIDAVIT

I _____ do hereby consent to allow
(heir)
_____ to serve as the personal representative of a
(representative)
Small Estate for _____, deceased.
(decendent)

The above decedent was related to be by being my _____.
(relationship)

I also give consent that _____ serve
(representative)
without the requirement of a bond to perform their duties.

Signed this the _____ day of _____, 20_____.

Before me _____ a notary public.

Notary Public

My Commission Expires _____.

(seal)