

## CHAPTER 594

## H.B. No. 245

## AN ACT

relating to the transfer of homestead property in certain small estates.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 137, Texas Probate Code, is amended to read as follows:

Sec. 137. COLLECTION OF SMALL ESTATES UPON AFFIDAVIT. (a) The distributees of an estate shall be entitled thereto, to the extent that the assets, exclusive of homestead and exempt property, exceed the known liabilities of said estate, without awaiting the appointment of a personal representative when:

(1) [(a)] No petition for the appointment of a personal representative is pending or has been granted; and

(2) [(b)] Thirty days have elapsed since the death of the decedent; and

(3) [(c)] The value of the entire assets of the estate, not including homestead and exempt property, does not exceed \$50,000; and

(4) [(d)] There is filed with the clerk of the court having jurisdiction and venue an affidavit sworn to by two disinterested witnesses and by such distributees as have legal capacity, and, if the facts warrant, by the natural guardian or next of kin of any minor or incompetent who is also a distributee, which affidavit shall be examined by the judge of the court having jurisdiction and venue; the judge may find, in his discretion, that the affidavit conforms to the terms of this section; if the judge approves the affidavit, the affidavit is to be recorded as an official public record under Chapter 194, Local Government Code, or if the county has not adopted a microfilm or microphotographic process under Chapter 194, Local Government Code, the affidavit must be recorded in "Small Estates" records by the clerk, showing the existence of the foregoing conditions, including a list of the assets and liabilities of the estate, the names and addresses of the distributees, and their right to receive the money or property of the estate, or to have such evidences of money, property or other rights of the estate as found to exist transferred to them, being heirs, devisees, or assignees, and listing all assets and known liabilities of the estates; and

(5) [(e)] A copy of such affidavit, certified to by said clerk, is furnished by the distributees of the estate to the person or persons owing money to the estate, having custody or possession of property of the estate, or acting as registrar, fiduciary or transfer agent of or for evidences of interest, indebtedness, property or other right belonging to said estate.

(b) This section does not affect the disposition of property under the terms of a will or other testamentary document nor, *except as provided by Subsection (c) of this section*, does it transfer title to real property.

(c) *Title to a homestead that is the only real property in a decedent's estate may be transferred on an affidavit that meets the requirements of this section. An affidavit that is used to transfer title to a homestead under this section must be recorded in the deed records of a county in which the homestead is located. A purchaser for value may rely on a recorded affidavit under this section. A bona fide purchaser for value without actual or constructive notice of an heir who is not disclosed in a recorded affidavit under this section*

*acquires title to a homestead free of the interests of the undisclosed heir, but the bona fide purchaser remains subject to a claim a creditor of the decedent has as provided by law. A person has constructive notice of the rights of an heir who is not disclosed in a recorded affidavit under this section if an affidavit, judgment of heirship, or title transaction in the chain of title in the deed records states that the heir of the decedent who is not disclosed in the affidavit is an heir of the decedent. An heir who is not disclosed in a recorded affidavit under this section may recover from an heir who receives consideration in a transfer to a bona fide purchaser for value of title to a homestead passing under the affidavit.*

(d) ~~The [Henceforth the]~~ county clerk of every county that has not adopted a microfilm or microphotographic process under Chapter 194, Local Government Code, ~~[in this state]~~ shall provide and keep in his office an appropriate book labeled "Small Estates," with accurate index, in which he shall record every such affidavit so filed, upon being paid his legal recording fee, said index to show the name of decedent and reference to land, if any, involved.

SECTION 2. This Act takes effect September 1, 1993, and applies only to the distribution of the estate of a decedent who dies on or after the effective date of this Act. The distribution of the estate of a decedent who dies before the effective date of this Act is covered by the law in effect when the decedent died, and the former law is continued in effect for that purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 30, 1993, by a non-record vote; the House concurred in Senate amendments on May 27, 1993: Yeas 137, Nays 0, 1 present, not voting; passed by the Senate, with amendments, on May 22, 1993: Yeas 31, Nays 0.

Approved June 13, 1993.

Effective Sept. 1, 1993.