

S. LEE AKERS, CLERK & MASTER ELEVENTH JUDICIAL DISTRICT OF TENNESSEE		This document is for general informational purposes only, is not a substitute for qualified legal advice, and should in no way be relied upon or construed as legal advice. If you want specific information on legal issues or wish to address specific factual situations, you should seek advice from your lawyer.
THE SMALL ESTATES ACT T.C.A. §§ 30-4-101—105.		
This chapter is cumulative to existing law in the administration of decedent's estates and is intended to provide an optional and alternative method for the administration of small estates. 30-4-105.		
SMALL ESTATE	One with PERSONALTY value of \$50,000 or less. 30-4-102(5). Can be TESTATE or INTESTATE .	
PERSONALTY	PERSONALTY, or interest therein, owned by Decedent. Includes insurance on Decedent's life payable to the estate. Does not include personalty held jointly with right of survivorship or insurance on Decedent's life payable to beneficiaries other than the estate. 30-4-102(4).	
AFFIANT	PERSON executing the AFFIDAVIT . ¹ 30-4-102(3).	
COURT	Probate court in the Tennessee county where Decedent had <i>legal residence on date of death</i> . 30-4-102(2).	
PERSON	Includes individual, partnership, firm, business trust, corporation or other legal entity. 30-4-102(3).	
TIME	45 days after Decedent's death if no estate has been commenced. 30-4-103(1)(A).	
	Upon motion of any of Decedent's competent, adult legatees/devisees/heirs/next-of-kin, ² or on its own motion for good cause, COURT may reduce the 45-day period. 30-4-103(1)(C). ³	
WHO MAY FILE ⁴	Any competent, adult beneficiary/heir/personal representative/next-of-kin ² /creditor. 30-4-103(1)(A). ⁵	
	Any competent adult not a beneficiary/heir/personal representative/next-of-kin ² may be appointed if all competent, adult beneficiary/heir/personal representative/next-of-kin consent in writing to appointment of such PERSON . The consent of any executor who has renounced appointment is not required for COURT to appoint AFFIANT . 30-4-103(D).	
AFFIDAVIT Must contain these facts:	Whether Decedent left a Will , if so, original shall be deposited with the Clerk for safekeeping and the \$5 fee paid as required by 32-1-112. 30-4-103(3). A copy of the original will be filed to support the AFFIDAVIT . ⁶ 30-4-103(1)(A)(i).	
	List of unpaid debts , to include name/address of each creditor and amount due. 30-4-103(1)(A)(ii).	
	Itemized Property description with the value of all Decedent's PROPERTY . 30-4-103(1)(A)(iii).	
	Names/addresses of all PERSONS known to have any of Decedent's PROPERTY . 30-4-103(1)(A)(iii).	
	Schedule of all insurance on Decedent's life payable to Decedent's estate; 30-4-103(1)(A)(iii).	
BOND REQUIRED	Name/age/address/relationship of each person entitled to receive any of Decedent's PROPERTY . 30-4-103(1)(A)(iv).	
	Disclosure that AFFIANT evidences by signature that, subject to penalty for perjury, the AFFIDAVIT is not false/misleading and that AFFIANT is mindful of all duties imposed upon AFFIANT . 30-4-103(1)(B).	
A SMALL ESTATE MAY BE ADMINISTERED IN THE FOLLOWING MANNER:		
ADMINISTRATION BY PROBATE CLERK		
Clerk not liable for good faith services to AFFIANT in completing the affidavit based upon information furnished by AFFIANT . 30-4-103(1)(B).		
Clerk charges fee for processing a small estate pursuant to 8-21-401 and 32-1-112. 30-4-103(3).		
Clerk files and assigns a number to the original AFFIDAVIT and indexes it as other estates are indexed. Clerk delivers to AFFIANT as many certified copies of the AFFIDAVIT as are requested. An Affidavit may be amended if the aggregate amount does not exceed the statutory limitation. 30-4-103(2).		
If required, Clerk sends the NONRESIDENT APPOINTMENT OF AGENT FOR SERVICE OF PROCESS that appoints the Tennessee Secretary of State as AFFIANT 's agent for service of process. 35-50-107.		
ADMINISTRATION BY AFFIANT ⁸		
TAKE POSSESSION OF DECEDENT'S PROPERTY	AFFIANT must furnish a certified copy of the AFFIDAVIT to all PERSONS indebted to Decedent or holding Decedent's property, (including registrar/transfer agent of any stock, bonds, notes or other evidence of ownership, indebtedness, property or right belonging to Decedent). Upon receipt of the AFFIDAVIT , and upon AFFIANT 's demand, those persons must pay/transfer/deliver to AFFIANT all such indebtedness owing by and other property in possession of or subject to registration and/or transfer by those persons. 30-4-104(a).	
	After receiving a certified copy of the AFFIDAVIT , if PERSON holding any of Decedent's property refuses to pay/transfer/deliver the property to or at Affiant's direction, such PROPERTY may be recovered or compelled in an action brought in any court of competent jurisdiction for such purpose upon proof of the facts required to be stated in the AFFIDAVIT . Costs of such proceeding will be adjudged against PERSON wrongfully refusing to pay, transfer or deliver the PROPERTY . 30-4-104(e).	
	Every PERSON making payment, transfer or delivery of Decedent's PROPERTY to AFFIANT are released and discharged from all further liability to the estate and its creditors to the same extent as if such payment, transfer or delivery were made to the duly appointed, qualified and acting personal representative of Decedent, and PERSON making such payment, transfer or delivery shall not be required to see to the application thereof or to inquire into the truth or completeness of any statement in the AFFIDAVIT . 30-4-104(b).	
TAXES	AFFIANT must file returns and pay tax on PROPERTY in Decedent's estate, pursuant to title 67, chap. 8, parts 3-5. 30-4-104(d).	
DISTRIBUTION OF DECEDENT'S	Decedent's PROPERTY must be distributed as provided by a will, or if none, to Decedent's heirs by law. AFFIANT and the recipient of PROPERTY from the AFFIANT are liable, (to the extent of the value of the PROPERTY so received), to unpaid	

ESTATE	creditors and to every other person with a prior claim against Decedent's estate or prior right to any of Decedent's PROPERTY , and are also accountable to any personal representative of Decedent thereafter appointed. 30-4-104(c).	
BOND DISCHARGE	AFFIANT /sureties may obtain discharge from liability under the bond in 1 of 2 ways: 30-4-103(5).	
	A. COURT may discharge bond after	(i)The tax receipt issued pursuant to § 67-8-420, OR the certificate issued pursuant to 67-8-409(f) AND
	AFFIANT files:	^{2.2} An affidavit that each of Decedent's debts are paid. 30-4-103(5)(A).
	B. AFFIANT and sureties on AFFIANT 's bond may wait until the first anniversary of the filing of the affidavit when the court shall automatically discharge them from liability.	
TENNCARE RELEASE	A TennCare release is not required for Small Estates. ⁹	

¹ Non-resident AFFIANTS are required to file the NONRESIDENT APPOINTMENT OF AGENT FOR SERVICE OF PROCESS that appoints the Tennessee Secretary of State as Affiant's agent for service of process. 35-50-107.

² Not all "next-of-kin" are heirs. See, Akers Chart for Heirs in Tennessee, Form 171P.

³ Since creditors are not listed as a possible movant to reduce time, *the time should not be reduced for creditors unless an exceptional situation exists such as someone leaving the state with the property.* 30-4-103(1)(C)

⁴ While *LETTERS* can be issued in Tennessee to administer the estate of a non-resident decedent when such non resident decedent has property in Tennessee, this does not apply to Small Estates. The Act defines court as *the court then exercising probate jurisdiction in the county in which Decedent had legal residence on the date of death.* 30-4-102(2). [Outside of a probate matter, an heir may be able to use 30-2-103(b) as it applies to anyone who may owe Decedent money. This statute requires a passage of 6 months and amount must be \$10K or less. 45-2-708 is the statute that also authorizes a bank to make disbursement after 30 days.]

⁵ For heirs, we still apply the preference order of 30-1-106; to breach this order there must be good reason, preferably in writing, e.g., a written waiver to serve by spouse: spouse⇒children⇒parents⇒siblings⇒siblings' issue⇒grandparents⇒grandparents' issue⇒creditor)

⁶ The copy of the original Will will be **Red stamped** to show it has not been probated.

⁷ We require a bond on all small estates. Bond must be equal the value of the estate to be administered. 30-4-103(4). The bond must use the word affiant and not use words like *Personal Representative, Executor, or Administrator*. We require a corporate surety, except that the Court will allow some attorneys to be surety up to \$3,500. On rare occasions we could have two or more individual sureties, provided they are "sufficient" but that is almost impossible to measure. If everything looks secure and there are no debts, I will excuse bond for an estate around \$1000 if T.C.A. § 30-1-201 otherwise would not require a bond. Note also that the rationale behind normally setting a bond is that while § 30-1-201 otherwise would not require a bond excused in a will, the document purporting to be a will has not been probated and therefore is not a will.

⁸ A Small Estate is not court "administered." There are no letters of administration or letters testamentary issued. There can be no estate administration until such letters are issued. T.C.A. § 30-1-101. If the legislature had intended for electives (Exempt Property, Year's Support, Homestead, and Elective Share), to be included in a Small Estate, they would have made specific provision for such.

⁹ T.C.A. 71-5-116(c)(2) states, "*Before any probate estate may be closed pursuant to title 30, ...the personal representative of the estate shall file...a release from...TennCare....*" Thus, the TennCare release requirement, by not specifically excluding Small Estates, would seem to include them. The TennCare request for release, however, is required within 60 days of the issuance of either LETTERS OF ADMINISTRATION or LETTERS TESTAMENTARY. T.C.A. 71-5-116(d)(1)(B). Such letters are not issued in a Small Estate. Therefore there is no triggering requirement for notice to TennCare pursuant to T.C.A. 71-5-116. Technically, a *Probate estate* is a *testate estate*, as *probate* is merely the proving of a will. If a will is attached to a Small Estate Affidavit, the will is not probated. Therefore the Small estate with a will, even technically speaking, is not a "Probate Estate". The words "Probate estate" are used in the TennCare statute, however, as a generic term for estates requiring Letters, as that is historically what "Probate" has become. Small Estates do not have a *Personal Representative*. "AFFIANTS" of small estates are not *personal representatives*. The personal representative of an estate is one who has been issued LETTERS OF ADMINISTRATION or LETTERS TESTAMENTARY. T.C.A. §§ 30-1-101, 30-1-102, and 30-1-111. That has not been done in a Small Estate. The Small Estates Act, itself, recognizes that the AFFIANT is not a *personal representative*: (1) Regarding AFFIANT's duty to take possession of estate property, those persons delivering property to AFFIANT are released and discharged from further liability "...to the same extent as if such... delivery were made to the duly appointed, qualified and acting personal representative of the decedent..." (Emphasis supplied.) T.C.A. § 30-4-104(b); and (2) Regarding AFFIANT's duty to distribute estate property, Decedent's property must be distributed as provided by a will or by law. AFFIANT and the recipient of such property are liable, (to the extent of the value of the property so received), to unpaid creditors and to every other person with a prior claim against Decedent's estate or prior right to any of Decedent's property, and "...shall be accountable to any personal representative of the decedent thereafter appointed." (Emphasis supplied.) T.C.A. § 30-4-104(c). It would seem that T.C.A. 71-5-116(d)(1)(B) would have to be changed to include the Small Estate Affidavit along with letters. Also, if probate clerks were required to administer small estates to aid TennCare potential recovery, then we need to increase the fee for Small Estates.