

BILL ANALYSIS

H.B. 3314
By: Gonzales
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Section 137, Texas Probate Code, contains a procedure to allow the collection of small estates by use of an affidavit that is subsequently approved by a probate court, which is commonly known as a small estate affidavit. This procedure was designed as a cost-efficient method of transferring estates of poorer Texans without the necessity of opening an estate administration, conducting a hearing, and producing witnesses or other evidence in court to establish an heir's right to the property. Until 1993, small estate affidavits could not be used to transfer title to real property. In 1993, at the request of the late Senator Truan, the Texas Legislature attempted to change the statute to allow small estate affidavits to be used to transfer real property that was a homestead of a decedent to another homesteader of the real property. Senator Truan indicated in committee hearings that the reason for this change was to allow a person who had a trailer on a small lot to pass title to the surviving spouse without going through the determination of heirship process.

The resulting legislation lacked clarity, as it mentions a decedent's homestead can be transferred but fails to clearly state that it is limited to transferring the property to another homesteader, despite Senator Truan's stated intent. Now people who have no homestead interest in the property are demanding that probate judges approve affidavits transferring title to non-homestead property. Section 137 currently contains several restrictions on qualification as a "small estate," one of which is that the only real property that may be transferred is the decedent's homestead. The purpose of the bill is to curb allegations that lawyers were abusing the procedure to transfer title to million-dollar homesteads to a decedent's heirs without applying for a determination of heirship or administration.

H.B. 3314 clarifies that a small estate affidavit can be used only to transfer a decedent's homestead to a person that would otherwise be entitled to a probate homestead.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 3314 amends the Texas Probate Code to provide that, on an affidavit that meets certain requirements, a title to a decedent's homestead that is the only real property in the decedent's estate may be transferred only to a distributee who occupied the property as the distributee's principal residence on the date of the decedent's death and who is otherwise entitled to the property.

EFFECTIVE DATE

September 1, 2009.