

BILL ANALYSIS

Senate Research Center

H.B. 3314
By: Gonzales (Hinojosa)
Jurisprudence
5/15/2009
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Section 137 (Collection of Small Estates Upon Affidavit), 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-effective 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 Senator Carlos 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 authorizes the transfer of a decedent's homestead but fails to clearly state that it is limited to transferring the property to another homesteader. 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 are 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 amends current law relating to the transfer of title to a decedent's homestead through a small estate affidavit.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 137(c), Texas Probate Code, to authorize the title to a decedent's homestead that is the only real property in the decedent's estate to be transferred on an affidavit that meets the requirements of this section only to a distributee who is the decedent's child or who occupied the property as the distributee's principal residence on the date of the decedent's death, provided that the distributee is otherwise entitled to the property.

SECTION 2. Makes application of Section 137(c), Texas Probate Code, as amended by this Act, prospective.

SECTION 3. Effective date: September 1, 2009.