

SUBJECT: Transfer of title to a decedent's homestead through a small estate affidavit

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Hunter, Hughes, Jackson, Lewis, Martinez, Woolley
2 nays — Branch, Hartnett
3 absent — Alonzo, Leibowitz, Madden

WITNESSES: For — Guy Herman, Statutory Probate Judges of Texas
Against — None

BACKGROUND: Probate Code, sec. 137 allows for the transfer of a decedent's property in estates of \$50,000 or less by filing an affidavit commonly known as a small estate affidavit. In 1993, the 73rd Legislature enacted legislation authorizing the transfer of title to a decedent's homestead property through a small estate affidavit to an heir if the homestead was the only real property in the decedent's estate.

DIGEST: HB 3314 would amend Probate Code, sec. 137 to provide that, in small estates qualified for transfer by small estate affidavit, title to a decedent's homestead property could be transferred only to an heir who occupied the property as principal residence at the date of the decedent's death and who was otherwise entitled to the property.

HB 3314 would apply only to a decedent's estate that was pending on or after the bill's September 1, 2009, effective date.

SUPPORTERS SAY: HB 3314 would clear up long-standing confusion about the intent of the Probate Code with respect to the transfer of homestead property through a small estate affidavit. The 1993 legislation permitting the title transfer of a homestead did not place clear limitations on the transfer of homestead property to heirs who did not use the homestead as a principal residence, despite the stated intent of Sen. Truan, the original author of the legislation. As a result, some decedents have used the small estate affidavit

to transfer title to homestead property worth millions of dollars to far-flung heirs, a clear abuse of the small estate affidavit process.

The primary purpose of the small estate affidavit always has been to provide a cost-efficient alternative to probate for decedents of modest means. It was never the purpose of the affidavit to allow those who could afford the probate process and administration to bypass it altogether. HB 3314 would realign the provisions of the Probate Code with the principles behind the small estate affidavit.

**OPPONENTS
SAY:**

One of the purposes of the small estate affidavit is to facilitate the transfer of a decedent's homestead to an heir when the homestead was the only real property involved in the estate. Limiting this cost-effective alternative to the probate system only to heirs who occupied the homestead at the time of the decedent's death would undermine this purpose and needlessly add complications and expense for heirs.