

## **Affidavit of Heirship**

**Warning:** Not recommended except in exceptional circumstances. See discussion below.

### **Required Documentation**

1. An Affidavit of Heirship executed by two or more disinterested individuals with personal knowledge of the family history.
2. Death Certificate.

### **Discussion**

The procedure to determine heirship in the Probate Court is found in Chapter 3 of the Probate Code. Because Tex. Pr. Code §52 (Vernon Supp. 1992) provides that any recorded instrument concerning the family history, genealogy, marital status or identity of the heirs of the decedent may be received in a proceeding to declare heirship if it has been on file of record for five years, it has been the practice to prepare affidavits, whether in the form required by the application specified in Tex. Pr. Code §49 (Vernon Supp. 1992), or otherwise. Exposure to one situation in which an unknown heir appears who was not, for whatever reason, named in the affidavit, will quickly make one wary of accepting these documents. Sympathy concerning costs must be counterbalanced with risks to the Co-op and a policy developed concerning acceptance of these instruments.

This is one area on which it is essential to develop a policy because Cooperative personnel will be pressured by the presenters to release the funds based upon stories for needs of the money and the expense of probate, with which they are sympathetic. The best defense in this area is a policy which is followed, with reasons for any exception to the policy rigorously documented.

We recommend that language be placed in the Affidavit of Heirship to the effect that it is made under penalty of perjury, which might scare some people off from making false statements.

We would recommend a policy be adopted by the Cooperative to accept Affidavits of Heirship in situations where one of the managers of the Cooperative knows the family history of the heirs and can personally verify that accuracy of the Affidavit of Heirship and in situations where the amount