

Inherited Homesteads and Increased Access to the Texas Homestead Exemption Under Senate Bill 1943

Information for Appraisal Districts and Tax Assessors

SUMMER 2020



These materials provide important information about new changes in the Texas Property Tax Code impacting appraisal districts' and tax assessors' treatment of inherited homesteads, which are referred to in the Tax Code now as heir properties. Texas Senate Bill 1943, which was adopted in 2019, reformed the law in several ways to improve heir property owners' access to the homestead exemption.

Background

Before learning about these reforms, it's helpful to first understand the context for this legislation. When Senate Bill 1943 was filed in the Texas Legislature, many heir property owners faced two key barriers to accessing the homestead exemption: (1) proof of ownership requirements in the homestead exemption application process were unclear and too stringent; and (2) heirs were unable to access the full homestead exemption when the residence was co-owned.

BARRIER #1:

Proof of ownership requirements unclear and too stringent

As to the first barrier, many heir property owners have been unable to complete the application requirements for a homestead exemption because they acquired their homes via "intestacy." Intestacy is how ownership of the home passes when a homeowner dies without a will or transfer on death deed. In that case, upon their death, the legal title to the home passes automatically to the homeowner's children or other relatives under what's called the laws of "intestate succession." These "intestacy" laws determine who inherits the home and other assets, with the deceased person's spouse and children

typically first in line to inherit the home. These relatives automatically become the new owners, without any legal paper trail documenting the new ownership interest.

So how does an appraisal district respond to the lack of legal paper trail when a homeowner is living in a home they inherited via intestacy and applies for a homestead exemption? How does the homeowner prove they are the owner?

At the time Senate Bill 1943 was filed, the homestead exemption application requirements were unclear for homeowners who had inherited their homes via intestacy. As a result, appraisal district practices varied widely across the state, with many imposing very high hurdles for heirs in the application process. For example, many appraisal districts instructed heir property owners to seek legal counsel or required them to prepare and record an affidavit of heirship in the real property records, which also typically requires an attorney. Many heir property owners were unable to meet these requirements and ended up without a homestead exemption on their home.

Rigorous proof of ownership requirements for homeowners who have inherited their homes via intestacy has had an especially negative impact on African-American and Hispanic homeowners, given the widespread lack of wills among these two demographic groups. Among those ages 55 and older, 82% of Hispanic residents and 80% of Black residents do not have a valid will in place, in contrast to 39% of White residents. You can see these impacts throughout Texas. For example, in Dallas County, the vast majority of heir property owners reside in neighborhoods with concentrations of African-American and Hispanic residents. These residents either have no homestead exemption or only a partial exemption on their homes.

BARRIER #2:

Inability to access the full homestead exemption

A second barrier that many heir property owners have faced is exclusion from the full benefits of the residence homestead exemption. Prior to the adoption of Senate Bill 1943, a Texas resident who inherited their home with other relatives was eligible for only a percentage of the homestead exemption, in proportion to their ownership interest in the property. For example, if a Texas resident inherited his home together with his two siblings, he was eligible for only 1/3 of the homestead exemption—even if the home was his only residence, he was paying all the property taxes on the home, and the siblings lived elsewhere.

Many appraisal districts and tax assessors would split up other homestead tax exemption benefits in a similar manner—although practices varied across the state. For example, in some counties, elderly heir property owners with a co-ownership interest received only a partial freeze on school district taxes or a partial homestead assessment cap. The 10% assessment cap was also applied differently to heir property owners, depending on what part of the state they lived in.

Overview of Senate Bill 1943

Texas Senate Bill 1943 opened up access to the homestead exemption for heir property owners in two ways:

- First, the Property Tax Code now provides **clear and accessible application requirements** that make it easier for heir property owners to qualify for the homestead exemption.
- Second, the Property Tax Code now provides heir property owners with a **100% of the homestead exemption** on their primary residence homestead, rather than a percentage exemption based on their ownership interest.

Under the Property Tax Code, an **heir property owner** is defined as someone who (1) claims their real property as their residence homestead and (2) acquired their property by will, transfer on death deed, or intestacy, regardless of whether their ownership interest is recorded in the county's real property records. See Tex. Tax Code, Section 1.04(20)-(21).

1 | Senate Bill 1943 creates clear and accessible application requirements for heir property owners

To qualify for a homestead exemption, an heir property owner must designate on the homestead application form that they are an heir property owner. The Comptroller's homestead exemption application form, Form 50-114, includes a question for this on page one of the form.

SECTION 3: Property Information

Date you acquired this property _____ Date you began occupying this property as your principal residence _____

Physical Address (i.e. street address, not P.O. Box), City, County, ZIP Code _____

Legal Description (if known) _____

Is the applicant identified on deed or other recorded instrument?

Yes _____
Court record/filing number on recorded deed or other recorded instrument

No If no, required documentation must be provided. (see important information)

Is the property for which this application is submitted an heir property (see Important Information)? Yes No

Do other heir property owners occupy the property? Yes (affidavits required) No

The heir property owner is also required to submit the following documentation to the appraisal district when applying for a homestead exemption:

- an affidavit establishing the applicant's ownership interest in the property;
- a copy of the prior property owner's death certificate;
- a copy of the property's most recent utility bill; and

- a citation of any court record relating to the applicant’s ownership of the property (such as a probated will), if available.

See Tex. Tax Code, Section 11.43(o). A simple affidavit in the homestead exemption application meets the affidavit requirement. **Appraisal districts can no longer require heir property owners to provide a copy of a deed or affidavit of heirship recorded in the real property records.** See Tex. Tax Code Section 11.43(o-1).

For the affidavit requirement, the Comptroller has incorporated a simple affidavit into Form 50-114-A, whereby the heir property owner swears before a notary that he or she is the owner of the property identified in the homestead exemption application.

AFFIDAVIT FOR APPLICANT CLAIMING AN OWNERSHIP INTEREST OF PROPERTY, INCLUDING HEIR PROPERTY
For Purpose of Residence Homestead Exemption Application Only

STATE OF TEXAS
COUNTY OF _____

Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

"My name is _____ and I am applying for a residence homestead exemption. I am over 18 years of age; I am fully competent to make this affidavit; I have personal knowledge of the facts in this affidavit; and all of the facts in it are true and correct. I am an owner of the real property identified in this application. I acquired the ownership of the real property identified on this application by will, transfer on death deed or intestacy; and I am not identified as an owner on a deed or other appropriate instrument recorded in the real property records of the county where the property identified in this application is located.

Further, Affiant sayeth not:"

Signature of Affiant _____

SUBSCRIBED AND SWORN TO before me this, the _____ day of _____, _____

Notary Public in and for the State of Texas
My Commission expires: _____

In addition to these proof of ownership requirements, an heir property owner must still submit the other documentation required in the residence homestead application, such as a copy of the applicant’s driver’s license or state-issued personal i.d. certification matching the property’s address.

Only one heir property owner can submit a homestead exemption application for the property. If multiple heirs occupy the property as their principal residence, those not claiming the exemption must provide an affidavit that authorizes the submission of the application. See Tex. Tax Code, Section 11.43(o-2). The Comptroller has created a simple affidavit to meet this statutory requirement, which is included in Form 50-114-A.

AFFIDAVIT FOR OWNER OTHER THAN THE APPLICANT THAT OCCUPIES HEIR PROPERTY AS PRINCIPAL RESIDENCE
For Purpose of Residence Homestead Exemption Application Only

STATE OF TEXAS
COUNTY OF _____

Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

"My name is _____ . I am over 18 years of age; I am fully competent to make this affidavit. I have personal knowledge of the facts in this affidavit; and all of the facts in it are true and correct. I am an owner of the real property identified in the application of _____ and I occupy the property as my principal residence; I authorize _____ to submit the residence homestead exemption application.

Further, Affiant sayeth not:"

Signature of Affiant _____

SUBSCRIBED AND SWORN TO before me this, the _____ day of _____, _____

Notary Public in and for the State of Texas
My Commission expires: _____

2 | Senate Bill 1943 provides heir property owners with 100% access to the homestead exemption

Heir property owners can now access 100% of the homestead exemption and related tax protections on their homestead, even when there are co-owners of the property. The homestead exemption and other property tax protections are no longer applied proportionately based on the heir property owner's ownership interest.

Under the Property Tax Code, an heir property owner receiving the homestead exemption is now considered to be the sole owner of the property for purposes of applying:

- Residence homestead exemptions, including senior, disability, and disabled veterans exemptions (Section 11.41 of the Tax Code);
- Tax freezes on disabled and elderly homesteads (Sections 11.26 and 11.261 of the Tax Code); and
- Tax deferrals (Sections 33.06 and 33.065 of the Tax Code).

In order to qualify for 100% of the exemption, heir property owners who are currently receiving a partial homestead exemption must submit an updated exemption application with the appraisal district designating the property as heir property. As discussed above, the Comptroller's homestead exemption form has included a question for this on page one of the form.

Because an heir property owner is considered to be the sole owner of their property for purposes of the homestead exemption, any co-owners of the property who live elsewhere are still eligible to receive a homestead exemption on their principal residence. See Tex. Property Code, Section 11.13(h). In other words, the co-owners are not penalized for also having an ownership interest in the heir property since that is not their principal residence.

Conclusion:

Increasing Access for Heir Property Owners

Senate Bill 1943 made it easier for Texas homeowners with inherited homesteads—also known as heir property owners—to access the homestead exemption by creating clear and accessible application requirements and by extending 100% of the homestead exemption to them. Despite these changes, navigating the homestead exemption application process can still be a daunting process for heir property owners. In addition, many heir property owners who already have a homestead exemption are unaware of their new rights to qualify for a 100% exemption by submitting an updated homestead exemption application.

There are several actions that appraisal districts across the state can take to help make sure that eligible heir property owners can access the homestead exemption, including:

- 1. Educate frontline staff.** Appraisal districts can make sure frontline staff and other staff who interface with homeowners are familiar with the new legal provisions governing homestead exemptions for heir property owners. In a recent survey we conducted of appraisal districts in Texas, most are providing inaccurate instructions regarding the application requirements for heir property owners seeking a homestead exemption. For example, many appraisal districts are still requiring heir property owners to seek legal counsel or provide a recorded deed or affidavit of heirship, which is now barred by the Property Tax Code.
- 2. Include accessible links to the affidavits required for heir property owners.** Some appraisal district websites do not include a link to the affidavits that heir property owners must complete to apply for a homestead tax exemption, or the links are very hard to find. Ideally, a link to the affidavits would be included in the exemption application or else an easy-to-find spot on the district's website.
- 3. Support outreach and community education.** Many heir property owners are unaware of the changes in the law that allow them to access 100% of the homestead exemption. Appraisal districts can help these owners by supporting targeted outreach and community education to communities with high concentrations of heir property ownership.