



ESTES LAW OFFICE, P.L.L.C.

Frisco Office (Principal Office)
6160 Warren Parkway
Suite 100
Frisco, Texas 75034
Phone: (972) 418-2919
Facsimile: (903) 487-2277

McKinney Office
105 N. Benge Street
McKinney, Texas 75069
Phone: (972) 418-2919
Facsimile: (903) 487-2277

Jacob C. Estes
jake@esteslawoffice.com

www.esteslawoffice.com

PROBATING A WILL AND OBTAINING LETTERS TESTAMENTARY

A Step-by-Step Overview

This guide has been prepared to help you understand the process of probating a Will and obtaining Letters Testamentary in Texas. Every estate is different, and additional steps may be necessary depending upon the particular circumstances involved. This guide has been prepared for educational purposes only and should not be construed as legal advice.

When a person dies leaving a valid Last Will and Testament, the Will must generally be admitted to probate before the Decedent's affairs can be fully administered. If the Will names an Independent Executor, the Court may appoint that person to administer the estate and issue Letters Testamentary, which serve as evidence of the Executor's authority to act on behalf of the estate.

A traditional probate administration is generally appropriate when there is a need for an Independent Executor to collect estate assets, deal with financial institutions, sell or transfer property, pay debts or taxes, resolve creditor claims, or otherwise administer the estate. Unlike a Muniment of Title proceeding, a full probate administration authorizes the Independent Executor to act on behalf of the estate throughout the administration process.

Although every estate is different, most Independent Administrations follow the same general sequence of events.

Pre-Hearing Procedures

Filing the Probate Application

The probate process begins with the preparation and electronic filing of an Application to Probate Will and for Issuance of Letters Testamentary with the Probate Court in the county where the Decedent resided. At the time the Application is filed, the County Clerk's filing fee must also be paid. Filing fees vary by county but are generally between \$400 and \$500.

A scanned copy of the Last Will and Testament is electronically filed with the Court, and the original Will must also be filed with the County Clerk. Depending upon the local rules of the Court, a copy of the Decedent's death certificate may also be required.

Preparing for the Probate Hearing

Our office prepares the documents required for the probate hearing, which generally include the Proof of Death and Other Facts, the Oath of Independent Executor, and the Order Probating Will and Authorizing Letters Testamentary.

Once these documents have been prepared, the probate hearing is scheduled with the Court.

Probate Hearing

In many Texas counties, probate hearings are now conducted by Zoom video conference, although some courts continue to require an in-person appearance.

At the hearing, testimony is presented establishing the Decedent's death, the validity of the Will, and the qualifications of the proposed Independent Executor. If the Court is satisfied that all statutory requirements have been met, the Judge will admit the Will to probate, appoint the Independent Executor, and sign the Order authorizing the issuance of Letters Testamentary.

Most uncontested probate hearings last only a few minutes.

Post-Hearing Administration

Letters Testamentary

After the Independent Executor has qualified by taking the required oath (and filing any required bond), certified Letters Testamentary may be obtained from the County Clerk.

Financial institutions, title companies, brokerage firms, insurance companies, and other third parties frequently require certified copies of the Letters Testamentary before allowing the Independent Executor to conduct business on behalf of the estate.

Employer Identification Number (EIN)

If necessary, our office will obtain an Employer Identification Number (EIN) for the estate from the Internal Revenue Service. The EIN is generally required before opening an estate checking account and may also be required for certain tax filings.

Estate Bank Account

When appropriate, the Independent Executor should establish an estate checking account in the name of the estate. Estate funds should always be maintained separately from the Executor's personal

funds, and complete financial records should be maintained throughout the administration.

Notice to Creditors

Texas law requires that notice of the Independent Executor's appointment be published one time in a newspaper of general circulation within the county where the probate proceeding is pending.

Our office prepares the Notice to Creditors, coordinates publication, and files the Affidavit of Publication with the Court.

In addition, Texas law requires that notice be provided to secured creditors. Depending upon the circumstances of the estate, notice may also be appropriate for certain unsecured creditors. Our office will advise you regarding these requirements and prepare the necessary notices.

Notice to Beneficiaries

Texas law requires that beneficiaries named in the Will receive notice that the Will has been admitted to probate.

Our office prepares these notices, provides copies of the Will and the Court's Order as required, and prepares and files the Independent Executor's Affidavit of Notice pursuant to Texas Estates Code § 308.002 after the required notices have been completed.

Inventory of the Estate

Within the time required by the Texas Estates Code, the estate must generally file either an Inventory, Appraisal and List of Claims or, when permitted by law, an Affidavit in Lieu of Inventory.

To prepare these documents, we will work with the Independent Executor to identify all assets owned by the Decedent as of the date of death and determine their approximate values.

Administration of the Estate

Throughout the administration, the Independent Executor is responsible for identifying and safeguarding estate assets, collecting funds owed to the estate, paying valid debts and administration expenses, maintaining accurate financial records, and carrying out the provisions of the Decedent's Will.

Before paying any creditor claim or making distributions to beneficiaries, the Independent Executor should consult with our office to ensure the estate has been properly administered.

Distribution of Estate Assets

Once the estate's debts, expenses, taxes, and other obligations have been satisfied, the remaining estate assets may be distributed to the beneficiaries named in the Will.

At the time of final distribution, our office will generally prepare Final Receipt and Release documents for the beneficiaries to acknowledge receipt of their inheritance and assist in bringing the administration to an orderly conclusion.

Final Thoughts

Serving as an Independent Executor is an important fiduciary responsibility, but you will not be expected to administer the estate alone. Our office will guide you through each stage of the probate process - from preparing the initial probate application through the final distribution of the estate - and will prepare the legal documents necessary to comply with the Texas Estates Code.

If you have questions regarding the probate process or your responsibilities as Independent Executor, we encourage you to contact our office before taking any significant action on behalf of the estate.