

GUIDE FOR A TEXAS INDEPENDENT EXECUTOR

Question:

What do you do when a loved one dies and you're named as Executor in the Will?

Answer: Call Geer & Associates, P.C. We will advise and guide you through this difficult time.

Below are some general guidelines that will help you understand the duties of an independent executor. These guidelines should never replace the advice and guidance of your attorney. It's important to heed the advice of your attorney and be diligent in doing the things your attorney asks of you.

The **Administration** of an estate is an essential and important process. Specifically:

1. It clears title to real property and vehicles.
2. It settles legitimate debts and wipes out others.
3. It establishes a new tax basis for the property in the estate as well as for the community property interest of a surviving spouse.
4. It permits distribution of property to the decedent's heirs with clear title.

An **Executor** is the person named in a Will and appointed by the court to carry out the desires of the decedent. As executor, you'll make sure the wishes expressed in the Will are carried out and you will administer the decedent's estate. The primary duties of the executor are:

1. Gathering the assets of the person who died;
2. Paying his or her debts; and
3. Distributing the remaining assets to those entitled to receive them according to the terms of the Will.

An "**Independent**" **Executor** is a person who is granted authority to carry out the necessary duties *without* the need for court approval of those acts. If you were not granted this authority, you would need court approval prior to doing just about anything related to the estate. Once the court appoints you as an independent executor, the court will not oversee your actions.

When you come in to see your attorney, be sure to bring the original Will and a copy of the death certificate of the person who passed away. Your attorney will file an **Application** with the court to admit the Will to probate. There will be a court fee associated with this filing. After filing the Application, your attorney will attempt to obtain **Waivers of Notice** from all the beneficiaries named in the Will.

Your attorney will go to a **Probate Hearing** on your behalf. At the hearing, the judge presiding at court will sign an **Order** admitting the Will to probate and appointing you independent executor. After the hearing, you will sign an **Oath** saying you will carry out the duties assigned to you.

After you are appointed as independent executor, your attorney will order **Letters Testamentary** from the court. Letters Testamentary is a document issued by the court that proves you have authority to act as executor. Brokers and banks that hold accounts in the name of the decedent will usually require this document before allowing you to change the accounts and ownership of them into the name of the estate or to the heirs of the estate.

The estate must be given a taxpayer identification number known as an **EIN** from the IRS. Your attorney will be able to obtain this number for you. You can use the EIN to establish bank accounts in the name of the estate so that you may effectively administer the estate. It is also used when filing tax returns for the estate.

As soon as possible after your appointment as independent executor, and obtaining an EIN, you should open an **Estate Bank Account** named, “Estate of [*insert name of decedent*], Deceased, [*insert name of independent executor*], Independent Executor.” This account should be opened with estate funds, using the EIN. Using the Letters Testamentary and copy of the death certificate, you should close the decedent’s accounts and transfer the funds from those accounts into the estate bank account. Certificates of Deposit may be re-registered in the name of the estate without penalty.

Sometimes a decedent’s bank account names a specific beneficiary. This is called a **beneficiary designation** and in that case, the account automatically belongs to that named individual. Assets with a beneficiary designation do not go into the estate account and are not distributed as part of the estate.

All receipts for the estate should be deposited into the estate account, and all payments for estate debts, claims, or expenses should be made against the estate account. A record of any interest earned should be kept for the estate income tax return. This is an important responsibility of yours as the executor.

If your attorney was unable to file Waivers of Notice for all the beneficiaries of the estate, then, within 60 days of the Will being admitted to court, your attorney may need to file a **Notice to Beneficiaries**. This Notice must be sent by certified or registered mail, return receipt requested. After that, your attorney will have you, as the executor, sign an **Affidavit of Notice** with the court within 90 days, confirming that appropriate notice was given or explaining why it was not given.

Your attorney will file a **Notice to Creditors** in a newspaper within 60 days of the Will being admitted to court. Your attorney will arrange to have this document published in a newspaper. If unsecured claims against the estate are not filed within 4 months of the date of the Notice, then they are barred.

Within 90 days after your appointment, an **Inventory, Appraisement, and List of Claims** must be prepared. This document will list and value assets of the estate that are known to you. This document is a “snapshot” of what the decedent owned and its value at the date of decedent’s death. It will include:

1. Real estate;
2. Cash, bank accounts, certificates of deposit;
3. Insurance payable to the estate;
4. Stocks, bonds and other securities;
5. Household goods and personal effects;
6. Vehicles;
7. Miscellaneous property; and
8. List of claims owed to the estate.

Much of this information will be found in the decedent’s files.

After the inventory is prepared, your attorney will have you sign and then will file an **Affidavit in Lieu of Inventory** with the court in which you swear that you've prepared and distributed the Inventory, Appraisal, and List of Claims to the beneficiaries.

If a creditor presents a **Claim** at any time while the estate is open and that claim is not otherwise barred (by statute of limitations, for example), then you must determine if the debt is authentic and just and either allow it or disallow it. If you disallow a claim, the creditor will have to file suit to secure payment. Secured creditors may look only at the collateral or the general assets of the estate for payment.

As an independent executor, you may **pay debts and expenses** and may also **sell the decedent's property** without the approval of the court as long as you consider it fair and reasonable to the estate.

The executor must file **decedent's final income tax return** (Form 1040) covering the period beginning on January 1 and ending on the date of the decedent's death. It must be prepared and filed if the decedent had a certain minimum amount of gross income. This return may be filed jointly with a surviving spouse.

An **income tax return for income of the decedent's estate** (Form 1041) will be required in all years in which the income of the decedent's estate exceeds \$600. The beginning date of the first year is the date of the decedent's death, and it may end on December 31, or at the end of any other month, provided that it does not extend beyond one year from the date of the decedent's death.

For sizeable estates, the executor must file a **U.S. Estate Tax Return**. The value of the estate at the date of decedent's death is what determines if this return must be filed.

After the inventory is prepared and all gifts under the Will have been distributed to the beneficiaries, you and your attorney will obtain **Acknowledgments of Receipt of Gifts** from the beneficiaries and file those with the court.

After all known debts and taxes of the decedent and the estate have been paid, and all distributions have been made according to the terms of the Will, your attorney may have you, as executor, sign an **Affidavit Closing Estate** and file it with the court. This document states that all debts and taxes have been paid, the estate assets have been distributed in full, and the estate should be closed. The filing of this affidavit discharges you as Independent Executor. It should not be filed until all assets in the name of the decedent have been transferred. Oftentimes, your attorney will advise against filing this document and to keep the estate open, yet inactive.

Probating a will is a relatively straightforward process in Texas. However, as you can see, there are many steps, deadlines which need to be met, and duties which need to be performed by the executor. Heeding the advice and counsel given by your attorney will help everything run smoothly during this difficult time.