

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 estate 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 **Applicant** is the person who is named in the court pleadings as the person who is willing and able to serve as Independent Executor on behalf of Decedent's estate.

Executor is the title of the person named in the Will and who is 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 executor has a fiduciary duty to the estate. The primary duties of the executor are:

1. Gathering the assets of the person who died;
2. Paying Decedent's debts, expenses of Decedent's last illness, and probate fees and costs; and
3. Distributing the remaining assets to those entitled to receive them according to the terms of Decedent's 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 use the information you provide to file an **Application to Admit Will to Probate and Issue Letters Testamentary** with the court. 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 and file those Waivers prior to a court hearing.

Your attorney will go to a **Probate Hearing** on your behalf. In some counties, you might need to attend the hearing as well. If there is a technical problem with the Will, such as if it was not notarized or is not “self-proved” or witnessed, or if there is some other technical problem with the Will, the court might require witnesses to attend as well to answer questions intended prove to the court that the handwriting and signature are Decedent’s and that the Will is valid.

At the hearing, the judge presiding at court will sign an **Order** admitting the Will to probate and appointing you independent executor. If you attend the hearing, you will sign an **Oath** swearing that you will do a good job acting as Independent Executor of the Will and of the Estate. If you do not attend the hearing, this document may be filed after the hearing - within 20 days.

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 beneficiaries 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 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 financial account or life insurance policy names a specific beneficiary. This is called a **beneficiary designation** and in that case, the account automatically belongs to that named individual. Any assets with a beneficiary designation do not go into the estate account and are not distributed as part of the estate. Examples of assets that often have a beneficiary designation on them are: life insurance policies, bank accounts, and brokerage accounts. If the Decedent’s estate is particularly complicated, your attorney will suggest you speak to a financial advisor.

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 prior to the hearing, 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 mail, return receipt requested to the beneficiaries named in the Will and include a copy of the will (or summary if it is very long) and a copy of the order appointing you as executor. Once all waivers have been received and/or green cards returned, your attorney will have you sign an **Affidavit of Notice**. This Affidavit must be filed with the court within 90 days of the hearing date, confirming that appropriate notice was given, that waivers were signed, or explaining why notice was not given.

Your attorney will file a **Notice to Creditors** in a newspaper within 60 days of the Estate being admitted to court. Your attorney will arrange to have this document published in a newspaper. If Decedent had debts, you might receive notices of claims filed. If unsecured claims against the estate are not filed within 4 months of the date of the Notice to Creditors, then they are barred. You and the heirs are not personally liable for the debts of Decedent. Payment of any creditors will be strictly from funds in the estate. You will want to discuss debts owed by Decedent with your attorney prior to paying them.

Within 90 days after your appointment, an **Inventory, Appraisement, and List of Claims** (“Inventory”) must be prepared. This document will list and value assets of the estate that are known to you. This document is a “snap shot” of what the Decedent owned and its value as of the date of Decedent’s death, even if you’ve already distributed or disposed of it, we still must account for it. The inventory 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.

If there was a beneficiary designated on an account or if real property passed via rights of survivorship, then we don’t include it on the inventory. However, it’s a good idea to include information on all assets for your attorney to review, noting which have beneficiary designations on them and which do not.

Much of this information will be found in the Decedent’s files. The Inventory is not usually filed with the court **UNLESS**: (1) There are unpaid debts owed by the Estate; and/or (2) not all the heirs-at-law of Decedent received a true and correct copy of the Inventory.

After the Inventory is prepared, and confirmation is received that the heirs have received a copy of the Inventory and confirmation is received that all the debts, if any, have been paid, your attorney will have you sign and then will file an **Affidavit in Lieu of Inventory** with the court. If your attorney determines the Inventory must be filed, then an Order Approving Inventory will also be filed along with the Inventory. The judge will review the Inventory and sign the Order. No additional court hearing is normally necessary for a judge to sign an order approving an inventory.

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. Creditors may look only at the collateral or the 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 independent 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 assets of the estate have been gathered, the inventory has been prepared, and debts have been paid, you will be ready to make distributions to beneficiaries. In conjunction with distribution, you and your attorney will obtain **Acknowledgments of Receipt of Gifts** from the beneficiaries. Acknowledgments are kept in the client file and only filed with the court if your attorney determines it is necessary to do so.

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, because it may not be possible to have Letters Testamentary issued after this Affidavit has been filed. 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 to take, deadlines to meet, and duties which need to be performed by the executor. An attorney is necessary to probate a will and heeding the advice and counsel given by your attorney will help everything run smoothly during this difficult time.

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