

A GUIDE FOR THE TEXAS INDEPENDENT EXECUTOR

**PROVIDED BY
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CAUSE NO. _____

INTRODUCTION:

You have been appointed by this Court to a position of great trust and confidence. It is a position that carries with it a considerable amount of responsibility. Your duties as independent executor are not easy, however, you will find them less difficult if you listen to and follow the advice of your attorney. You should contact your attorney at any time you have questions concerning the handling of this estate. You should never attempt to handle the affairs of this estate without the guidance of your attorney. The following guide has been prepared by my office as a supplement to the information given to you by your attorney. It is only a supplement and not a substitute for his advice.

ADMINISTRATION:

The administration of an estate involves (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 them under the terms of the Will.

YOUR QUALIFICATIONS:

You have been appointed to act on behalf of this estate. However, you are not qualified to act for this estate until you have taken the oath of office and filed any required bond. Your oath, if not taken at the hearing, should be taken no later than 20 days from the date of the order making your appointment. Generally a bond is not required for an Independent Executor named in a Will. In the event a bond is required by the Will or the Court, it should be approved by the Court no later than 20 days from the date of the Order making your appointment. Your bond, if required, will have to be executed by an authorized corporate surety and the amount will be that as specified in the order making the appointment..

LETTERS TESTAMENTARY:

Once you have taken the oath and executed the bond, if one is required, you may order your letters testamentary. These "letters" will serve as evidence of your appointment

when dealing with third persons concerning the affairs of the estate. These “letters” may be ordered from the County Clerk’s office by telephoning, (361) 575-1478. There is a charge of \$2.00 for issuance of each letter.

NOTICE OF BENEFICIARIES:

Not later than 60 days after the date of the order admitting the will to probate, you must give notice by registered or certified mail, return receipt requested, to each beneficiary named in the will whose identity and address are known to you or who through reasonable diligence can be ascertained.

Not later than 90 days after the date of the order admitting the will to probate you shall file a sworn affidavit or a certificate signed by your attorney stating the name and address of the beneficiary who was given notice or who filed a waiver of notice, and the name of each beneficiary whose identity or address could not be ascertained despite your exercise of reasonable diligence and any other information necessary to explain your inability to give notice to or for any beneficiary required under Section 128A of the Probate Code.

You may download forms for this notice and your certificate from the County Courts at Law website at http://www.vctx.org/departments/county_court/ccatlaw.htm

You may be removed by the court for your failure to timely file the affidavit or certificate.

NOTICE OF CREDITORS:

Within 30 days after you have qualified (taken the oath and given any required bond) you must publish your notice to creditors in a newspaper printed in this county advising all creditors of your appointment. Within two months after your qualification, you must mail a registered or certified letter, return receipt requested, to each secured creditor of the estate. A secured creditor is one who holds a claim secured by a deed of trust, mortgage or other lien upon property. Proof of the above two notices must be filed among the papers of the estate. You may also want to send permissive notice to other creditors of the estate, your attorney should advise you accordingly.

You may download a form for this notice from the County Courts at Law website at http://www.vctx.org/departments/county_court/ccatlaw.htm

INVENTORY:

Within 90 days after your qualification, you must submit a complete inventory of the estate to the Court and attach thereto a list of claims owing to the estate. This must be verified by a sworn affidavit. If the order making your original appointment specifies appraisers for the estate, then they must also sign a sworn affidavit to be attached to the inventory. The inventory must contain a complete list of all the real estate located within

the State of Texas and a list of all personal property, regardless of where it is located. In compiling the inventory, you must distinguish between separate and community property belonging to the estate. Your attorney will advise you as to the legal meaning of these two property classifications. If at any time during the pendency of this estate you discover additional property, you must file a supplemental inventory reflecting the newly acquired assets.

There is a sample form at the County Courts at Law website at http://www.vctx.org/departments/county_court/ccatlaw.htm

TAXES:

For sizeable estates, U.S. Estate Tax Return, Form 706, must be filed by the Executor. The value of the gross estate at the date of the decedent's death governs the liability for filing the U.S. Estate Tax Return. (Please see Exhibit "A") Like the Texas Inheritance Tax Return, the return is due nine months after the date of the decedent's death, unless an extension of time for filing has been granted. Consult your attorney to determine the size of the gross estate, and your obligations to either taxing authority.

Both the state inheritance tax and the federal estate tax must be paid before any estate may be closed.

YOUR POWERS AND DUTIES:

Upon qualification, it is your duty to take possession of all property belonging to the decedent. Any cash that you receive should be maintained in a bank account separate from your personal funds. You should never co-mingle property belonging to the estate with your personal assets. You must use ordinary diligence in the collection of all claims and debts owed to the estate. If necessary, you may employ an attorney to recover property belonging to the decedent. Your powers to administer the estate are set out in the Will, if applicable, and the Texas Probate Code. Generally, all powers afforded to a dependent administrator under the Texas Probate Code are also available to an Independent Executor without the necessity of court approval, including the sale of real estate under Probate Code Section 341. This Court will not ratify or approve an Independent Executor's actions.

CLAIMS:

Claims of creditors against the estate may be presented to you at any time while the estate remains open. You may allow any claim which you believe to be a just debt of the estate and is properly presented to you and authenticated, provided such claim is not barred by an applicable statute of limitation. Once a claim is presented to you, you should either allow or disallow it. If it is rejected, the creditor will have to file suit to secure payment of the claim.

CLOSING THE ESTATE:

After you have gathered the assets of the estate, paid the debts and taxes, and determined who is entitled to the remaining property, you are ready to close the estate. You should begin the procedure to close the estate only upon the advice of your attorney. You may then deliver the assets of the estate to the beneficiaries who are entitled to receive the property under the Will. This concludes your responsibility as the Independent Executor of this estate.

ADD THE EXHIBIT A PAGE AND MAKE COPIES