

A GUIDE FOR THE TEXAS DEPENDENT ADMINISTRATOR

**PROVIDED BY
JUDGES TRAVIS H. ERNST AND DANIEL F. GILLIAM
COUNTY COURTS AT LAW NO. ONE AND NO. TWO
VICTORIA COUNTY, TEXAS
115 N. BRIDGE STREET
VICTORIA, TEXAS 77901**

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 dependent administrator 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. Failure to abide by the laws set out in the Estates Code is cause for your removal from your fiduciary position. Any damage and costs incurred by the estate as a result of these failures will subject you to liability on your bond. The following guide has been prepared by our offices 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 and/or the laws of descent and distribution.

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. Your bond should be approved by the Court no later than 20 days from the date of the Order making your appointment. Your bond 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 OF ADMINISTRATION

Once you have taken the oath and executed the bond, you may order your letters of “Dependent” Administration. 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 TO BENEFICIARIES: (IF WILL ANNEXED)

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 Estates 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 TO 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 Administrator. 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. 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. Separate estate business from your personal business, i.e. **DO NOT** co-mingle funds or conduct your operations in such a manner that estate business gets confused with personal business. Place all estate funds in insured accounts in the name of the estate. Retain in a checking account only such funds as are reasonable necessary to pay the debts of the Decedent and the expenses of administering this estate. Place all additional funds in interest-bearing accounts at the highest interest rate then available. 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. Obtain a written order of the Court authorizing any expenditure of estate funds **before** any such expenditures are made unless the Texas Estates Code expressly authorizes payment without Court order. Obtain a written order of this Court **before** attempting to sell, lease, transfer or otherwise dispose of any non-cash assets of the estate. Maintain an accurate record of all expenditures and receipts of estate funds. This Court will not ratify

or approve a Dependent Administrator's actions taken without Court approval. Preserve, protect and insure, if insurable, all non-cash assets of the estate. You must obtain Court permission to move to another state or be absent from the state for more than three months.

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.

HEIRSHIP DETERMINATION:

If the decedent died intestate, or if the Will did not deliver all assets of the estate to named beneficiaries, the Court will require an heirship determination proceeding to ascertain to whom the decedent's property is to be delivered after the debts have been paid. An heirship determination requires a hearing in open court wherein two disinterested witnesses not inheriting from the estate appear before the Judge and relate the family history of the decedent. The Court also requires the use of a second attorney, known as the Attorney ad Litem, to represent the interest of the unknown heirs. An heirship determination requires citation by publication for unknown heirs before the hearing so the Court will have jurisdiction over all persons interested in the distribution of the property.

An heirship determination proceeding, if required, would have been completed prior to the issuance of any letters of administration. If you later learn of information about the decedent's family history that would alter the Court's findings of who the decedent's heirs are, please immediately consult with your attorney concerning how you should proceed.

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. If the estate is not closed within the first year, then you must file your **ANNUAL ACCOUNT** each year on the anniversary date of your appointment. You should begin the procedure to close the estate only upon the advice of your attorney. Estates should be closed within three (3) years of qualification. File your **FINAL ACCOUNTING** when the estate is ready to be closed and seek an order of the Court authorizing the distribution of the estate in accordance with the Court's orders or with the terms of the will. You may then deliver the assets of the estate to the beneficiaries who are entitled to receive the property under

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

This concludes your responsibility as the Dependent Administrator of this estate.