

FREQUENTLY ASKED QUESTIONS

General Questions

When is a resident agent form required?

- If the applicant/executor/administrator lives out of the state of Texas, he/she must designate a resident agent in Texas
- You do not need this designation for a muniment of title application.

When can I file an application for probate without an attorney/pro se?

- Attorney representation is recommended for all legal matters, however, a person can probate a will without an attorney if the application to probate the will as muniment of title only and all beneficiaries must be co-applicants.

When is re-posting on an amended application necessary?

- Any material change in the application requires re-posting. Examples: Name of Applicant or Decedent has changed, Type of Application and relief has changed, any other material fact

Uncontested Probate of Will Docket

Which documents must be signed at the hearing?

- Proof of Death and Other Facts: Must be testified to in open court by person with personal knowledge and signed in front of the clerk by the person who gave testimony.

Which documents may be signed after the hearing?

- Oath: Oath of Executor/Administrator may be taken after giving testimony on the 8th floor at the probate clerk's office, OR you may also have it signed, notarized and e-filed after the hearing (will not be able to order letters until oath is on file). The oath must be signed and notarized **after** the prove-up.

Does the proposed executor/administrator have to attend the prove-up hearing? No, the person applying to be appointed executor/administrator of an estate does not have to be present at the hearing. The attorney may give the required **testimony if he/she has personal knowledge of the facts to be sworn to, in this case, the attorney will sign the proof of death and other facts**

Self-Proved Will

Who needs to attend the hearing? If the will is indeed self-proved (please verify with the court), the attorney may be the only person who needs to attend the hearing, but only if the attorney has personal knowledge of the testimony he/she is giving.

Not Self-Proved Will

Who needs to attend the hearing?

- Two disinterested witnesses who have personal knowledge and can testify as to the decedent's handwriting/signature OR
- One subscribing witness to the will

Holographic Will Not Self-Proved/ Attested

- Need two disinterested witnesses to prove up handwriting and signature of will

Application to Probate Will Not Produced In Court/Copy of Will- 256.156 and Sec. 258.002.

- Requires 2 disinterested witnesses to testify at hearing (as if not self-proved) OR
- One subscribing witness

CITATION ON APPLICATION FOR PROBATE OF WILL NOT PRODUCED IN COURT.

(a) On the filing of an application for the probate of a written will that cannot be produced in court, the clerk shall issue a citation to all parties interested in the estate. The citation must:

- (1) contain substantially the statements made in the application for probate;
- (2) identify the court that will act on the application; and
- (3) state the time and place of the court's action on the application.

(b) The citation required by Subsection (a) shall be served on the testator's heirs by personal service if the heirs are residents of this state and their addresses are known.

(c) Service of the citation required by Subsection (a) may be made by publication if:

- (1) the heirs are not residents of this state;
- (2) the names or addresses of the heirs are unknown; or
- (3) the heirs are transient persons.

Sec. 256.054. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WILL IS PRODUCED. In addition to the requirements for an application under Section [256.052](#), if an applicant for the probate of a will cannot produce the will in court, the application must state:

- (1) the reason the will cannot be produced;
- (2) the contents of the will, as far as known; and
- (3) the name and address, if known, whether the person is an adult or minor, and

the relationship to the testator, if any, of:

- (A) each devisee;
- (B) each person who would inherit as an heir of the testator in the

absence of a valid will; and

(C) in the case of partial intestacy, each heir of the testator.

Additional Requirements:

- (1) the cause of the nonproduction of a will not produced in court must be proved, which must be sufficient to satisfy the court that the will cannot by any reasonable diligence be produced; and
- (2) the contents of the will must be substantially proved by the testimony of a credible witness who has read either the original or a copy of the will, has heard the will read, or can identify a copy of the will.

Application to Probate Will with Will annexed

- If the will does not name an executor, or the named executor is not able to serve, you need to file consents from beneficiaries consenting to appointment of administrator with will annexed and to the independent administration, if applicable

Probate of Will as Muniment of Title- Required documents for hearing

- Oath of No Debts, Proof of Death/Testimony of Witnesses, Proposed Order (include Medicaid benefits and no unpaid debts provisions)

What are the additional requirements for application to probate will when it has been longer than 4 years after Decedent's death and the date of the filing of the application?

- You must adhere to Texas Estates Code 258.051- The application must include all heirs at law. You must send the application and notice to all heirs, including a statement that the estate would pass to the heirs if the will is not admitted. You then need to file the return of service for all heirs.
- You must state in application the reason why the applicant is not in default for failure to probate will within 4 years.
- 258.052: if cannot ascertain address of heirs (after 4 years app), must appoint AAL to represent their interests

Deposition on Written Questions

Sec. 51.203. SERVICE OF NOTICE OF INTENTION TO TAKE DEPOSITIONS IN CERTAIN MATTERS. (a) If a will is to be probated, or in another probate matter in which there is no opposing party or attorney of record on whom to serve notice and copies of interrogatories, service may be made by:

* posting notice of the intention to take depositions for a period of 10 days as provided by Section [51.053](#) governing a posting of notice.

(b) When notice by posting under Subsection (a) is filed with the county clerk, a copy of the interrogatories must also be filed.

- (c) At the expiration of the 10-day period prescribed by Subsection (a):
- (1) the depositions for which the notice was posted may be taken; and
 - (2) the judge may file cross-interrogatories if no person appears.

Appointing a Successor Executor/Administrator

Do I need to set this for oral hearing or by submission?

- If the successor executor is named in the will, and the application is not contested, you do not need to set oral hearing and it may be heard by submission
- If a co-administrator/executor passes away, section 240 provides for succession of surviving co-administrator without court order, however if want to re-issue letters to just name the surviving administrator must file motion and court will hear it by submission

Is posting of Successor Application necessary?

- No posting is necessary if the will provides for the successor to be appointed, however need to file an affidavit signed by successor attached to the application that states they are not disqualified from serving as such.
- Upon Resignation/ Death of First Executor

When do I need to re-post for an amended application?

- Applicant or Appointee is different
- Name of the Decedent is different
- Type of administration is different- if posted as independent and amending to dependent, do not need to re-post
- Any *material change* in your amended application

Requirements when sole executor appointed seeks to serve as co-administrator with successor appointee

- Need limited partial renunciation to serve as sole in favor of serving as co-administrator for so long as co is able and willing to serve

Requirements if first named executor does not want to or is not able to serve:

- If the first listed executor does not want to or cannot serve, must file notarized declination to serve
- If the first listed executor will not or cannot sign declination, must serve first executor with application, declination and file return of service

Uncontested Heirships

Who needs to attend the hearing?

- Two disinterested witnesses with personal knowledge
- Applicant
- Attorney of Record and
- Attorney Ad Litem

Do the two disinterested witnesses have to attend the hearing?

- If one or both witnesses live in another state, are elderly or have some other serious issue with attending the hearing, you may file a deposition on written questions covering the necessary testimony, the deposition on written questions must comply with code 51.203.
- However, the court prefers live testimony, so this will only be approved if there in fact is no other persons that can testify to the necessary facts

Necessary Language in Order (if applicable) that is often left out:

- This Court has jurisdiction and venue over this estate- reason why.
- No state, governmental agency of the state or charitable organization is named by the Will as a devisee.
- That four years have not elapsed since the date of Decedent's death.
- That there are no unpaid debts owing by this Estate, exclusive of any debt secured by liens on real estate.
- Decedent did not apply for or receive Medicaid benefits on or after March 1, 2005.

Dependent Administration

When will the Court require a dependent administrator vs. an independent?

- If the Decedent had minor children and separate property in the estate, the court will not grant an independent administration.

Can I apply for a dependent administration without an heirship/probate of will application?

- Typically, this court does not set hearings on dependent administrations without an heirship application having been filed unless there exists an urgent matter (such as a foreclosure proceeding having been filed) which provides a necessity for immediate appointment of an administrator.
- Be sure to include any facts that support an urgent need to appoint an administrator in your application.
- If you obtain court approval to move forward on the administration without completing the heirship you will need to notice all known heirs of the hearing on the administration.

Independent Administration

When will the court grant an independent administration in an heirship?

- When there are no minor children heirs, and all determined heirs/ beneficiaries have signed waivers and consents to the independent administration

Judgment Determining Heirs

- If Heir predeceased decedent- list descendants of that heir
- If Heir dies after decedent, but before heirship completed- list that heir's "estate" as heir