

**COURT INSTRUCTIONS
INDEPENDENT EXECUTOR
INDEPENDENT ADMINISTRATOR**

As the duly-appointed Personal Representative of a Decedent's Estate under a Will, you are hereby advised by the Court that you **must** do the following: (All section references are to the Texas Probate Code unless otherwise indicated.)

A. Necessity of Legal Representation

It will be necessary for you to have an attorney to represent you in all of your dealings on behalf of the estate. You should never attempt to handle the affairs of an estate without the guidance of your attorney. It is advisable to have counsel who is well-acquainted with probate administration, as the process is complicated and highly technical.

B. Fiduciary Responsibility: (EC 351)

As the Personal Representative of the Estate, you are a **fiduciary**, a position of the highest trust and responsibility with respect to the estate of the decedent, keeping all affairs confidential; maintaining accurate and complete financial records and ensuring that all dealings undertaken on behalf of the estate, such as the purchase, sale or transfer of estate funds or property, whether real or personal, are properly completed. It is your responsibility to act on behalf of all persons with rights in the estate. That includes not only the distributees under the will, but also the creditors of the estate.

Avoid **conflicts of interest** (and potential removal and personal liability) by: 1) **not** commingling your personal funds with the funds of the estate; 2) **not** borrowing money from or lending money to the estate; 3) **not** selling or encumbering real or personal property, or any interest therein, to yourself, a relative, friend or business acquaintance.

As a fiduciary, you may be held **liable** for any breach of your fiduciary duties. The requirements of the Probate Code are clear regarding your responsibilities.

C. Qualify as Executor/Administrator: Within twenty (20) days of receiving the order appointing you should (EC 305.002):

1. Take and file an oath (if not taken at the hearing) (EC 305.003);
2. File the bond (if required), (EC 305.004). Generally a bond is not required for an Independent Executor/Administrator. In the event either the Will or the Court requires a bond, the court must approve the bond no later than 20 days from the date of the order appointing you; and
3. Obtain Letters Testamentary or Letters of Independent Administration from the County Clerk's Office (940-627-1648) (EC 306).

D. Power of Independent Personal Representative to Act - In general, an independent personal representative has the power to perform any act necessary for the full and complete settlement of the estate that he or she might do under court order and authority if the estate were dependent. If the Will under which you are operating does not include a specific power to sell real property, or if you an independent administrator created under EC 401 where there is no will, obtain a written order of this Court before attempting to sell, transfer or otherwise dispose of any real property in the estate.

E. Take Possession of all Property of the Estate - Immediately upon receiving Letters, collect and take possession of all personal property and business records of the Estate. (EC 351.102) This may include, as necessary:

1. **Security** Change the locks on real property;
2. **Storage** Place all the non-perishable personal property in insured storage;

3. **Perishable Property** Sell perishable personal property, preferably after the Inventory has been filed and approved;

4. **Insurance Proceeds or other Employee Benefit** payable to the Estate and subject to administration.

5. **Accounts and Investments** Set up appropriate accounts for the Estate funds. (All Estate funds must be deposited in insured accounts in the name of the Estate. Retain in a checking account only such funds reasonably necessary for the current business of winding up the Estate. All other funds should be invested in insured, interest-bearing accounts. Determine whether you will need a tax identification number for the estate.

6. **Cancel Credit Cards** issued in the name of the Decedent and send written notice to credit reporting agencies of the Decedent's death.

F. Manage the Property of the Estate as a "prudent person would manage one's own property." (EC 351.101)

1. **Spending Money** - Maintain thorough written records of any expenditure of Estate funds.

2. **Expenditures for Support** – Determine whether any ongoing business of the Decedent must be managed. (EC 351.202)

3. **Sales and Leases** - If necessary, obtain a written order of this Court before attempting to sell, transfer or otherwise dispose of any real estate of the Estate.

4. **Insurance** - Obtain adequate property insurance on all non-cash assets.

5. **Collect** all debts, rentals, or claims due to the Decedent, and, if necessary, with court permission, litigate on behalf of the Estate;

6. **Creditor's Claims** must be very carefully handled. Consult your attorney. Your improper approval of a claim or your failure to timely act on a claim can result in your personal liability.

G. Notice to Beneficiaries: Within **60 days** of the date the will is probated, you must give a statutorily required notice to the beneficiaries named in the will if the decedent died on or after September 1, 2007.

Some of what is required depends on the date of decedent's death:

If the decedent died before September 1, 2011:

- The notices must be sent to all beneficiaries named in the will, regardless of the size of the bequest.
- Each notice must include – in addition to other requirements outlined in the statute – a copy of the will admitted to probate and a copy of the order admitting the will to probate.

If the decedent died on or after September 1, 2011:

- You are not required to send notice to certain beneficiaries such as (1) a beneficiary who has received all gifts under the will within 60 days after the will is admitted to probate or (2) a beneficiary who is entitled to receive aggregate gifts with an estimated value of \$2,000 or less.
- Each notice must include – in addition to other requirements outlined in the statute – either (1) a copy of the will admitted to probate and a copy of the order admitting the will to probate or (2) a summary of the gifts to the beneficiary under the will along with the name of the court that admitted the will to probate, the docket number assigned to the estate, the date the will was admitted to probate, and, if different, the date the court appointed the personal representative.

Other requirements apply to all of these decedents: You are not required to give notice to either: (1) beneficiaries who "made an appearance" in the probate proceeding before the will was admitted to probate; or (2) beneficiaries who waived the right to notice *in a waiver that meets the statutory requirements and is filed with the Court*. The requirements of what must be included with that waiver depend on the date of decedent's death; your attorney will advise you about what must be included.

All notices must be sent by registered or certified mail, return receipt requested. Your attorney will advise you about who must receive notice or sign a waiver and about what must be included in the notices or waivers.

Within **90 days**, you must file an affidavit or certificate with the Court that confirms that notice was given or explains why it was not given. (EC 308.004) The Texas Probate Code sets out what must be included in your sworn affidavit or your attorney's certificate. Your attorney will help you decide whether to file an affidavit or a certificate and will advise you about what must be included in whichever one you file. ***The Court strongly prefers that you file the affidavit or certificate separately from any other document.*** However, if you combine the affidavit or certificate with the Inventory of the Affidavit in Lieu of Inventory (see below) or any other filing, the title of the document must include both "Notice to Beneficiaries" as well as a reference to whatever else you have included in the same document.

H. Inventory or Affidavit in Lieu of Inventory: Within **90 days** after your qualification, you must submit to the Court either a complete inventory of the estate or – if allowable – an affidavit in lieu of inventory.

If the decedent died before September 1, 2011, you must file an inventory. The inventory must be a complete inventory of the estate, with an attached list of claims owing to the estate (but not debts owed by the estate). The inventory must contain a list of all the real estate located within the State of Texas and a list of all personal property, regardless of where that property 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. The inventory must be verified by a sworn affidavit. If the order appointing you requires appraisers for the estate, then the appraisers must also sign a sworn affidavit to be attached

to the inventory. You, your attorney, and any co-executor must all sign the inventory, and the attorney must include a signature block with his or her State Bar number. 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.

If the decedent died on or after September 1, 2011, you must file either an inventory as described above or an affidavit in lieu of inventory, if appropriate. You may file an affidavit in lieu of an inventory ***only if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions.***

If you are eligible to file an affidavit in lieu of inventory and choose to do so, the affidavit must:

- State that all debts, except for secured debts, taxes, and administration expenses, are paid.
- State that all beneficiaries have received a verified, full, and detailed inventory – as described above.
- Be filed with the clerk within the 90-day period prescribed time period. EC 309.056(b).

I. Homestead, Exempt Property and Allowances If necessary, the homestead and exempt property must be set aside, or an allowance fixed for the benefit of qualified family members. (EC 102, EC 353)

J. Notice to Creditors

1. Within one month after qualification, you (through an attorney) must publish a notice to creditors in a newspaper of general circulation in the county and file a copy of the notice and the publisher's affidavit. (EC 308.051)

2. Within two months after qualification, you (through an attorney) must give notice by certified or registered mail, return receipt requested, to all secured creditors (EC 308.053)

and any general claimants if you have actual knowledge of the debt or claim.

3. Permissive Notice: You may also (through an attorney) give permissive notice to unsecured creditors with claims for money, requiring them to present their claims *before the 121st day after the receipt of the notice* or be barred from pursuing the claims. (EC 308.054)

K. Taxes and Bond Premiums

1. The personal representative may be held personally liable for failure to pay taxes of the Decedent. This applies to income taxes, property taxes and payroll taxes.

2. For sizeable estates, you as the Independent Administrator with Will Annexed must file U.S. Estate Tax Return, Form 706. 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.

3. If applicable, it is crucial that bond premiums be timely paid. Failure to do so unnecessarily exposes the estate assets to jeopardy and subjects you to removal.

L. Heirship If the will does not completely dispose of all estate assets, it will be necessary for the court to make a determination to whom the assets will be distributed after all debts have been paid. This will require the appointment of a second attorney to represent the interests of possible unknown heirs and a subsequent hearing with testimony of persons familiar with the family history of the Deceased.

M. Distribution and Closing You are ready to close the estate after: (1) you have gathered the assets of the estate, (2) the inventory has been approved, (3) you have paid the debts and taxes, and (4) you have determined who is entitled to the remaining property. 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 distribution concludes your responsibility as the Independent Administrator with Will Annexed of this estate.

N. Period for Administration This is dependent upon the individual estate, but generally, an estate should be administered and closed in not less than six months and not more than fifteen months from the admitting of the will to probate. An interested party may thereafter seek an accounting of the personal representative and, after two years, apply to compel an accounting and distribution of the estate.

O. Questions? Consult with your attorney (not the Court) on any matter regarding the administration of this estate.

**Dana D. Manoushagian, Judge
County Court at Law No. 2
Wise County, Texas**

I acknowledge receipt of a copy of these instructions:

Printed Name: _____

Date: _____