CAUSE NO. PR-_____

COURT INSTRUCTIONS
DEPENDENT ADMINISTRATOR

As a duly-appointed Administrator, 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. Fiduciary Responsibility: (EC 351.101 & 351.102)

As an administrator, 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.

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 and your bond surety may be held **liable** for any breach of your fiduciary duties. The requirements of the Probate Code are clear regarding your responsibilities.

It will be necessary for you to have an attorney to represent you in all of your dealings on behalf of the estate. It is advisable to have counsel who is well-acquainted with probate administration, as the process is complicated and highly technical.

B. Qualify as Administrator: Within **twenty (20) days** of receiving the order appointing you as administrator (EC 305.002):

1. Take and file an oath (EC 305.003);
2. File the required bond, (EC 305.004, 305.101), and
3. Obtain Letters of Administration from the probate clerk's office (EC 306).

C. Limited Power of Administrator to Act Without Court Authority (EC 351.052) Without prior authorization by the court, the administrator may only: 1. Purchase liability and property insurance; 2.Pay taxes, court costs, & bond premiums; 3.Release liens upon final payment; 4.Vote stocks; 5.Pay calls and assessments; (§234(b)). **Any other actions** by the administrator must be with **prior approval** of the court or be **ratified** by the court. You and your bond surety can be held liable for failure to get court approval before taking action or spending estate money. If in doubt, ask your attorney.

D. Take Possession of all Property of the Estate - Immediately upon receiving Letters of Administration, 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 Obtain permission to sell perishable personal property (EC 356.051) after the Inventory has been filed and approved;
4. Insurance Proceeds or other Employee Benefits 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 Decedent's name and send written notice to credit reporting agencies of the Decedent's death.

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

1. Spending Money - Obtain a written order of this Court authorizing any expenditure of Estate funds **before** any such expenditure is made.
2. Expenditures for Support – Determine whether any ongoing business of the Decedent must be managed. (EC 351E)
3. Sales and Leases - Obtain a written order of this Court before attempting to sell, lease, transfer or otherwise dispose of any non-cash asset of the Estate; (EC 356.001)

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.

7. Loans, Sales Under certain circumstances, the court may authorize an administrator to mortgage or pledge estate property as security on a loan: (EC 351F) or sale of estate property (EC 356)

F. Filing an Inventory Within **90 days** after qualification, the administrator must file a sworn inventory, appraisement and list of claims due the estate of the ward. (EC 309B)

G. 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 353)

H. Notice to Creditors

1. Within **one month** after qualification, the administrator (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, the administrator must give notice by certified or registered mail, return receipt requested, to all secured creditors (EC 308.053) and any general claimants if the guardian has actual knowledge of the debt or claim.

3. Permissive Notice: The administrator may also give permissive notice to unsecured creditors with claims for money, requiring them to present their claims within four months of the receipt of the notice or be barred from pursuing the claims. (EC 308.054)

I. Taxes and Bond Premiums

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

2. It is crucial that bond premiums be timely paid. Failure to do so unnecessarily exposes the estate assets to jeopardy and subjects the administrator to removal.

3. The administrator is required to swear annually that all taxes and bond premiums have been paid or explain fully any delinquency.

J. Accountings

1. Maintain an accurate record of all expenditures and receipts of Estate funds;

2. Upon each anniversary of your qualification, file an Annual Account in the form prescribed by the Court. (EC 359.001)

3. File your Account for Final Settlement when the Estate is ready to be closed.(EC 362.001)

4. Failure to properly account may be grounds for removal and the imposition of a personal fine not to exceed Five Hundred Dollars ($500.00)

K. Determination of Heirship If assets are distributable from the Estate and there is no Last Will and Testament to determine the disposition of assets, you must file an application to determine the heirs of the decedent. (EC 202.001, 202.002)

L. Distribution and Closing Upon payment of all known debts, or at appropriate times in the administration of the estate, distribution of estate assets may be made to those persons entitled to receive the same, upon application and order of the court. (EC 360.001, 360.002) When there is no further need for administration, the estate may be closed upon approval of the account for final settlement and final distribution of remaining assets.

M. Discharge and Release It is important that the administrator secure an order discharging the administrator and releasing the bond surety upon closing the estate.

N. Address Changes - Notify the Court **at once** if your address changes. Failure to do so is a cause for your removal. (EC 361.051)

O. Attorney's Fees - Attorney's fees and expenses may be paid upon application and order, as any other expenditure, subject to the guidelines of the court for billing procedures

P. Questions? Consult with your attorney (not the Court) on any matter regarding the administration of this estate that you do not understand.

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

I acknowledge receipt of a copy of these instructions:

_____
Dependent Administrator

Printed Name:_____

Date: _____