

CAUSE NO. \_\_\_\_\_

**GUIDE FOR AN INDEPENDENT EXECUTOR  
IN TARRANT COUNTY PROBATE COURT TWO**

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**JUDGE BROOKE ALLEN**

Probate Court Two, Tarrant County, Texas  
100 West Weatherford, Room 150  
Fort Worth, Texas 76196  
817.884.415

**Associate Judge Lynn Kelly**, Rm. 220A  
817.884.2794

Steve Fields, Court Administrator  
[sfields@tarrantcounty.com](mailto:sfields@tarrantcounty.com)  
817.884.1049

**WARNINGS**

As independent executor, you have a fiduciary duty to treat all beneficiaries and creditors fairly. By law, throughout the entire process, you must be represented by an attorney who is licensed to practice law in Texas. **You should consult your attorney before taking any action as independent executor.** Your attorney MUST prepare and sign anything that is filed with the Court. This guide does not replace the advice of your attorney. Finally, please note that failure to file an inventory within 90 days of the day you qualify as executor will result in a fine of **UP TO \$1,000.00.** (see p. 4)

**BASICS**

As independent executor, you must:

- gather or collect the assets of the estate;
- notify the beneficiaries of the estate;
- notify the creditors of the decedent;
- file an inventory with the Court;
- file an affidavit or certificate that beneficiaries have been notified;
- pay the debts of the decedent;
- pay your attorney's fees and other administrative expenses; and
- distribute the remaining assets to the beneficiaries.

## **QUALIFYING TO SERVE**

Within 20 days of the date the Court signs an Order Admitting the Will to Probate and Appointing Independent Executor (305.003), you must:

- file an Oath signed and sworn to in Court or before a notary;
- file a Bond unless the appointing Order waives Bond;
- file an Appointment of Resident Agent if you do not reside in TEXAS.

The Court's approval of the last of the required documents establishes your "Qualification Date", from which the time on your duties starts to run.

## **LETTERS TESTAMENTARY**

On or after your Qualification Date, you are entitled to obtain Letters Testamentary (306.001) from the Probate Clerk by calling 817-884-2840 or visiting the clerk's office between the hours of 8 a.m. and 5 p.m. in Room 233 on the west end of the 2<sup>nd</sup> Floor of the Historic County Courthouse at 100 West Weatherford in Fort Worth. Contact the clerk for the fee for these letters. Letters Testamentary establish your authority to serve as independent executor of the estate. Banks, brokers, real estate agents, etc., will often ask you for an original of your Letters Testamentary that has been certified within the past 60 days. Some third parties will also want a certified copy of the Will. Letters Testamentary and certified copies of Wills can be obtained from the clerk for a fee.

## **NOTIFYING CREDITORS**

- **General Published Notice.** **Within one month** of your Qualification Date you must publish a notice to creditors in a newspaper in the county (Commercial Recorder at 817.926.5351).
- The notice is to include your Qualification Date, the address to which claims should be presented, and an instruction that claims either be addressed: (a) in care of the executor; (b) in care of the attorney; or (c) in care of the "representative, estate of \_\_\_\_\_." (308.051)
- **Proof of Publication.** A copy of the printed notice, together with the affidavit of the publisher shall be filed with the Clerk (308.052).

- **Comptroller's Notice.** If the decedent remitted or should have remitted taxes administered by the comptroller of public accounts, you should send notice as above to the comptroller by certified mail (308.051).
- **Notice to Secured Creditors.** **Within 2 months** of your Qualification Date, you must provide notice by certified mail, return receipt requested, to all creditors known to have a claim for money against the estate that is secured by real or personal property of the estate. The contents of this notice are the same as mentioned above and proof of the service of this notice should also be filed with the Clerk (308.053).
- **Permissive Notice to Unsecured Creditors.** **At any time before the estate is closed,** you may provide notice by certified mail, return receipt requested, to an unsecured creditor having a claim for money against the estate expressly stating that the creditor must present a claim within 4 months after the date of the receipt of the notice or the claim is barred. The notice must include the items listed General Published Notice mentioned above (308.054).
- **Penalty for Failure to Notify Creditors.** If you fail to provide the notices required above, other than the permissive notice, you and the sureties on your bond, are personally liable for any damage which any person suffers by reason of such neglect, unless it appears that such person had notice otherwise (308.056).

## **NOTICE TO BENEFICIARIES**

**Within 60 days** of the date of the order admitting the will to probate, you, with the assistance of your attorney, must notify by certified mail, return receipt requested, all persons and entities named as beneficiaries in the Will. The notice must state the name and address of the beneficiary; the decedent's name; that the decedent's will has been admitted to probate; that the beneficiary to whom or for whom the notice is provided is named as a beneficiary in the will; and the independent executor's name and contact information. A copy of the Will and the Order admitting the Will to Probate must be attached to this notice (308.003).

In the alternative, each beneficiary may sign a waiver of this notice which should be filed with the clerk.

### **AFFIDAVIT OR CERTIFICATE OF NOTICE**

**Within 90 days** of the date of the order admitting the will to probate, the independent executor must sign and file a sworn affidavit or a certificate signed by the attorney for the independent executor that states the name and address of each beneficiary notified of the probate by certified mail; the name and address of each beneficiary who filed a waiver of the notice; the name of each beneficiary whose identity or address could not be ascertained despite the independent executor's exercise of reasonable diligence; and any other information necessary to explain the independent executor's inability to provide the notice to or for any beneficiary. The affidavit or certificate may be included as part of the inventory, appraisal and list or claims, or included as part of an application for extension of time to file the inventory, appraisal and list of claims.

### **INVENTORY\***

**Within 90 days** of your Qualification Date, you, with the assistance of your attorney, must file with the Court a sworn inventory, appraisal and list of claims ("Inventory") of the estate. **Failure to file your Inventory timely could result in your removal as independent executor and a fine of up to \$1,000.00 (309.057c). Please ask your attorney to request an extension if you are unable to file your Inventory on time. Do not depend on the court's Show Cause Order as a reminder to file your Inventory.** Your Inventory must be prepared by and **signed by your attorney**, and must:

- List all personal property of the estate wherever it is located with cash and investment account descriptions including the name and address of the bank or brokerage firm and at least the last four numbers of each account;
- List all real property that is located in Texas;
- List all property owned in common with others, including the fraction of the interest owned by the estate;
- Specify what portion of the property, if any, is separate property and what portion of the property, if any, is community property;
- List the fair market value of each item of property as of the decedent's date of death; and

- List all claims that the estate has against other parties including the name and address of the debtor; the nature of the claim; the initial date and the due date of the claim; the amount of the claim and its rate of interest; and whether the claim is separate or community;
- **Do not list the debts of the estate on your Inventory;**
- If your Inventory is not approved, file an amended inventory (309.054).

**\*Affidavit in Lieu of Inventory** – If there are no unpaid debts, except for secured debts, taxes and administration expenses, at the time the Inventory is due, including extensions, an independent executor may file, in lieu of the Inventory, within 90 days of the Qualification Date, unless extended, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries have received a verified, full and detailed inventory (309.056).

## **COLLECTING ASSETS**

An independent executor shall:

- take care of the estate property as a prudent person would take of his or her own property and shall keep real property in good repair (351.101);
- collect all personal property, record books, title papers, and other business papers of the estate (351.102);
- keep estate funds in a separate designated account and not mix estate funds with the executor's private funds;
- use ordinary diligence to collect all claims and debts due the estate and to recover possession of all property of the estate provided there is a reasonable prospect of collecting such claims or recovering such property (351.151);
- Seek court approval prior to entering into a contingency fee contract with an attorney that exceeds 33% of the property to be recovered (351.152).

## **SELLING ASSETS**

Your power to sell assets of the estate should be addressed in the Will. You should not sell any estate assets without first consulting your attorney.

If the Will does not specifically permit you power to sell estate real property and such sale becomes necessary, your attorney must apply to sell real property under Court order (356.251). This is a multi-step procedure that

requires posted notice for specified periods of time thus allowing beneficiaries the right to object to such sale. Therefore, you should not enter into any contracts to sell real property without consulting your attorney and obtaining court permission if necessary.

## **CLAIMS**

Please consult your attorney when you receive a claim or a claim is filed with the Clerk by a creditor. Here are some general rules about claims:

- **Presentment.** Claims of creditors against the estate may be presented to you at any time before the estate is closed if the claim is not barred by the permissive notice mentioned above or by the general statute of limitations. Claims may be secured or unsecured by estate assets.
- **Action on Claims.** Once you receive a claim or if a claim is filed with the Clerk, you should immediately contact your attorney because certain deadlines may apply for dealing with the claim. Under certain circumstances, if a creditor files suit on a just claim that has been rejected, the court may find you personally liable for the cost of the suit, and you may be removed as executor for failure to have properly acted on the claim.
- **Barred Claims.** Claims that are barred by the general statute of limitations should be rejected. Claims of creditors to whom you sent the permissive notice described above are barred if they are not presented or filed within four months from the date the creditor received the notice. These late claims should also be rejected.
- **Payment of Claims.** If the estate is insolvent, claims should not be paid until the estate has been open at least six months because claims have a certain priority of payment. You should consult your attorney prior to paying any claims.

## **TAXES**

You must consult with your attorney as to whether you must file any income tax, state inheritance tax, or federal estate tax returns. You may need to file income tax returns for both the decedent and the estate.

Upon application from your attorney, the court will normally grant an extension of the Inventory filing date until the date the Federal Estate Tax is due. All necessary tax returns must be filed prior to closing the estate. You are also responsible for paying, out of estate funds, all real property taxes due on estate property.

### **COMPENSATION**

As independent executor, your compensation is dictated by the provisions of the decedent's will. If the decedent's will is silent on this issue, the law provides that you are entitled to five percent (5%) of the receipts and disbursements, with exceptions (352.002). Please consult your attorney as to the amount of compensation you are entitled. The court does not approve the compensation of an independent executor unless it is contested by a beneficiary or creditor.

### **CLOSING THE ESTATE**

The estate should generally remain open at least six months from your Qualification Date. Once you have collected the assets of the estate, notified any creditors of the estate, filed the Inventory or Affidavit in Lieu of Inventory, and paid all legitimate claims, you should consult your attorney about distributing the remaining assets to the beneficiaries as directed in the Will. Your attorney may want to prepare receipts to be signed by the beneficiaries stating that they have received their share of property from the estate. These receipts may then be filed with the Clerk and attached to a Closing Report or a Notice of Closing of the Estate (405.004). If you were required to file a Bond, the Closing Report (**but not a Notice of Closing of the Estate**) will operate to release the sureties on your Bond, and a certified copy should be sent to your bonding company. Once the Closing Report or Notice of Closing Estate is filed, persons having claims against the estate must deal directly with the beneficiaries. Many independent executors choose not to close the estate, in the event more estate assets are located in the future. However, some independent executors choose to file a Closing Report or Notice of Closing Estate to begin the running of the general statute of limitations. Please consult your attorney as to what document, if any, should be filed in your case.

## **ATTORNEY ISSUES**

As independent executor, you are free to hire the attorney of your choice. Your attorney represents you as independent executor and does not represent the “estate.” However, you have a fiduciary duty to treat all legitimate creditors and estate beneficiaries fairly, and your attorney should remind you of that duty. The court does not review or approve attorney’s fees in an independent administration. The court cannot resolve complaints that you may have against your attorney. For those purposes, you may contact the State Bar of Texas at 1.800.932.1900.