

CAUSE NO. _____

**GUIDE FOR DEPENDENT ADMINISTRATOR
IN TARRANT COUNTY PROBATE COURT TWO**

JUDGE BROOKE ALLEN

Probate Court No. Two
Tarrant County, Texas
100 W. Weatherford, Rm. 220A
Fort Worth, Texas 76196
817.884.1415

Associate Judge Lynn Kelly

Room 220A
817.884.8794
Charlotte Hogan-Price, Probate Auditor
chogan-price@tarrantcounty.com
817.884.2718

QUALIFICATION DATE: _____

In order to assist you in successfully performing these duties, the law requires you to retain the services of an attorney throughout the duration of this administration. You may hire and fire attorneys at your discretion. **However, you must be represented by an attorney at all times in this matter.** The attorney's fees will be paid from the estate and must be approved by you and ordered paid by the Court. We have put together the following list as a reference to remind you of deadlines and responsibilities. **DO NOT FILE ANYTHING WITHOUT YOUR ATTORNEY'S SIGNATURE.**

As a general rule, please remember that **YOU MUST HAVE A WRITTEN ORDER SIGNED BY THE JUDGE BEFORE YOU CAN DO ANYTHING WITH THE ASSETS OF THE ESTATE.**

QUALIFYING AS ADMINISTRATOR:

Within **20** days of receiving the Order appointing you as Administrator/Administratrix, you must file both of the following:

1. Oath;
2. Bond (in an amount set by the Judge).

Note: If you fail to file a bond within 20 days of your appointment, you may be removed as Administrator without a hearing.

You have "Qualified" as Administrator/Administratrix once the bond is approved by the Judge. Your Letters of Administration can be picked up in the Probate Clerk's office. Letters of Administration establish your authority to serve as an Administrator/Administratrix of the estate and banks, brokers, real estate agents, insurance companies, etc. will often ask you for an original copy of your Letters before transacting business with the estate. Additional letters may

be ordered by calling the Clerk's office at 817.884.2840 or by visiting the Clerk's office between the hours of 8:00 a.m. and 5:00 p.m. in Room 233 on the west end of the 2nd Floor of the Historic County Courthouse located at 100 W. Weatherford St. in Fort Worth. Upon receiving your Letters, you must take possession of all records and business property. (TEC §351.102)

IMMEDIATELY UPON QUALIFICATION:

1. Obtain a federal tax identification number (called an EIN) from the IRS. This is a number issued by the IRS to identify an "estate" account instead of a social security number which is reserved for "personal" accounts. The EIN number is used on all estate bank accounts. Use Form-SS-4 or go to www.IRS.gov to get the EIN number issued.
2. Set up Estate Account(s). Close all accounts in the Decedent's name and consolidate them into the Estate account(s). Place **all** income and sales proceeds into this account. Do not commingle estate funds with other personal accounts. **DO NOT UNDER ANY CIRCUMSTANCES USE ANY ESTATE FUNDS FOR YOUR OWN PERSONAL EXPENDITURES. FURTHERMORE, THIS MONEY MUST FIRST BE USED TO PAY ALL CLAIMS OF THE ESTATE BEFORE ANY DISTRIBUTIONS CAN BE MADE TO ANY HEIRS.**
3. Fill out a "Change of Address" form at the post office to have all of Decedent's mail forwarded to your address. Make sure a forwarding order is completed for every possible address where the Decedent received mail; this may require more than one forwarding order. It is your responsibility to make sure that you are receiving all bills, bank statements, and other important mail.
4. Please timely notify the Court at 817.884.2718 when you change your address and/or phone number.

NOTICE TO CREDITORS:

1. Publish a *Notice to Creditors* within one month of qualification in a newspaper in the county (Commercial Recorder 817.926.5351). (TEC §308.051)
2. Within two months of qualifying, send specific notices to secured creditors 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. (TEC §308.053)

INVENTORY, APPRAISEMENT & LIST OF CLAIMS:

Within ninety (90) days of qualification, file an *Inventory, Appraisal and List of Claims* to be approved by the Court. (TEC §309.051) If additional assets are later discovered, a Supplemental Inventory can be filed. The Supplemental Inventory need only contain information on the newly discovered or acquired assets. (TEC §309.101) This should not be confused with an Amended Inventory. An Amended Inventory is filed upon the Court's disapproval of the initial Inventory. (TEC §309.054) An Amended Inventory corrects the problems the Court had with the initial Inventory. **Failure to file an Inventory can result in removal as Administrator.** However, your attorney may file for an extension if needed. There is no filing fee for Supplemental Inventories but there will be a filing fee for

Inventories and Amended Inventories filed more than 120 days after the Application of Administration is filed. **Therefore, please file your Inventory promptly.**

ALLOWANCE:

If you are a surviving spouse you may be entitled to the following allowances or exemptions:

1. Homestead
2. Exempt Property: Some property is exempt from the payment of debts. This property is to be kept for the use of the surviving spouse or minor children. (TEC §353.051)
3. Allowance in Lieu of Exempt Property: If there is no exempt property, then the Court can grant payment to the surviving spouse in cash or in property. (TEC §353.053)
4. Family Allowance: This allowance is to pay one year's expenses from the date of decedent's death for the support of the surviving spouse and minor children of the deceased. (TEC §353.101)

All allowance requests require the filing of an application and a hearing. Please consult your attorney if you feel you are entitled to an allowance or exemption.

EXPENDING FUNDS:

1. If funds must be spent to maintain property (i.e. storage, yard work, etc.), an Application for Ongoing Expenses must be filed and approved by the Court. **YOU CANNOT EXPEND ANY ESTATE FUNDS WITHOUT PRIOR COURT APPROVAL, unless it is to pay insurance on Estate property for protection against fire, theft or other hazards; taxes; court costs; or bond premiums.** (TEC §351.052) **ALL OTHER EXPENDITURES MADE FROM ESTATE FUNDS MUST BE COURT APPROVED BEFORE SPENDING.**
2. DO NOT PAY CLAIMS AGAINST THE ESTATE unless specifically authorized by Court Order **AND** with the advice of your attorney. If a claim is filed, do not ignore it and do not pay it until you have spoken to your attorney. If you spend funds without proper authority or pay claims out of the legal order (called "priority" and "classification"), you may be personally liable and can be removed as Administrator.
3. In order to pay your attorney with estate funds, **YOUR ATTORNEY MUST FILE AN ITEMIZED APPLICATION FOR PAYMENT OF ATTORNEY FEES SIGNED BY YOU** that must be approved **before** you have authority to pay such fees.
4. **DO NOT UNDER ANY CIRCUMSTANCES EXPEND ESTATE FUNDS ON YOURSELF.** If you want expense reimbursement, an application must be filed and Court approval obtained **BEFORE** reimbursing yourself. To be reimbursed, you **MUST** have a receipt, invoice and/or canceled check to prove the expenditure was for estate benefit.

TAXES:

During the administration of this estate it is your responsibility to make sure that all IRS Tax Returns of the Decedent and the estate are filed, prior to any distributions. The Decedent's "individual" Income Tax Return (Form 1040) must be filed on or before April 15 of the year following the year of the Decedent's death. You may also be required to file an "Estate" Income Tax Return (Form 1041) if more than \$600.00 is earned in each tax period during the administration of this estate. The IRS will hold you personally liable as the personal representative of the estate for any taxes or returns not properly filed and paid. If you have any questions, please consult an accountant or other tax advisor. **DO NOT DISTRIBUTE ALL OF THE FUNDS UNTIL YOU ARE ABSOLUTELY SURE THAT ALL TAXES HAVE BEEN PAID IN FULL.**

INVESTMENTS:

NO investments can be made with Estate funds except as specifically authorized by prior Order of the Probate Court. (Speak with your attorney for details.)

SELLING ANY ESTATE PROPERTY:

Allow ample time to sell any estate property because this can be a time-consuming procedure. Estate property cannot be sold until a two-step process is completed.

1. Obtain authority from the Court **BEFORE** finding a buyer. This is done by filing an *Application for Order of Sale of Real/Personal Property* with court approved *Order for Sale*. This Application must be on file for ten (10) days before the Judge can approve it to allow time for objections to be filed. (TEC Chapter 356)
2. Obtain authority from the Court **BEFORE** completing the sale of any estate property. This is done by filing a *Report of Sale* with court approved *Decree Confirming Sale*. This Report must be on file for five (5) days before the Judge can approve it to allow time for objections to be filed. (TEC §§356.551-556)

YEARLY REQUIREMENTS:

1. File an Annual Account every year within sixty (60) days of your anniversary date (the date you originally qualified as Administrator. This date will appear on your *Letters of Administration*). The accounting should show your beginning balances of estate property, all income received and all expenditures made for the year. Additionally, the accounting must balance out with an attached *Verification of Funds on Deposit* from the bank. **Please make sure that you keep up with every bank statement and canceled check that reflects your Estate's finances.** It will be necessary to have this documentation in order to prepare the Annual Account. Please label each deposit (i.e. rent, sale of car, retirement, etc.). This will help your attorney prepare the proper paperwork. Failure to file an annual account will result in a Show Cause hearing in front of the Judge that could result in your removal as Administrator. (TEC Chapter 359)

- a. **NOTE:** It is the goal of this Court to have estates disposed of within two years of their creation. **THEREFORE:** If an Estate is still open requiring the filing of a *second* annual accounting, you must provide for the Court a *detailed* explanation of why the Estate cannot be closed at this time. The explanation should be included in the Second Annual Accounting under the “Other Facts Necessary for a Full Understanding of the Condition of the Estate” section.
_____ (**Administrator’s initials**)_____ (**Attorney’s initials**)

2. Check to make sure your Application for Ongoing Expenses is still adequate. Adjust it if necessary, but do not spend funds in excess of allowances unless authorized by the Court.

PARTIAL AND FULL DISTRIBUTION OF THE ESTATE: (TEC Chapter 360)

1. Partial distribution: After Letters of Administration are issued and the Court approves the Inventory, an Application for Partial Distribution of an Estate can be filed. The Administrator, heirs, legatees or devisees may file for distribution. If partial distribution is not made to all the heirs, a refunding bond will be required unless all parties agree otherwise and file waivers with the Court.
2. Full Distribution: Twelve months after Letters of Administration are issued, the Administrator, heirs, legatees, or devisees may file an Application for Full Distribution of the Estate.
3. Citation: When an application is filed for distribution, you shall personally serve each person entitled to a share of the estate who resides in the state and whose address is known. Citation by Publication will be used when the identity or address is not known, if persons are not a resident of the state or is a resident but is currently absent from the state. Partial distributions will require poster citation issued for all interested parties including known creditors. These citations can be done by the Probate Clerk for a fee.

REPRESENTATION BY ATTORNEY:

1. Make sure that you coordinate with your attorney in all necessary estate requirements. You may hire and fire attorneys at your discretion. **HOWEVER, YOU ARE REQUIRED BY LAW TO BE REPRESENTED BY AN ATTORNEY AT ALL TIMES IN THIS MATTER.** If you have difficulty in any of the above requirements, you should consult your attorney. In the event that you fail to properly satisfy the requirements of the law, you could be removed as Administrator and you and your Surety (Bond Company) will be held **personally liable** for all costs incurred in getting the Administration back on track. **NOTE:** The Court cannot resolve complaints against attorneys. Contact the State Bar at 1.800.204.2222, extension 1790.
2. In the event that you receive a “SHOW CAUSE ORDER” from the Court, **DO NOT DISREGARD IT.** This notice is very important because it indicates that you have not fulfilled your legal duties. Contact your attorney immediately and take the necessary steps to correct this matter. If not properly handled, you could be removed as Administrator and be **PERSONALLY LIABLE** for all costs involved in getting the estate back on track.

MISCELLANEOUS:

1. **Do not sign any contingent fee contracts, accept a settlement, or file any lawsuits without prior Court approval. (TEC §351.152)**
2. Do not settle a Claim on behalf of the Estate without Probate Court approval (i.e. the damage claim is settled in District Court, but must be “approved” by the Probate Court.).
3. Pay your annual Surety Bond premiums promptly. If you do not receive an invoice around your anniversary date, please contact your attorney.
4. File all Income Tax Returns on behalf of the Decedent and the Estate which are necessary. (Consult a tax preparer for specific instructions.)
5. Notify EXPERIAN, P.O. Box 1240, Allen, Texas 75013 (or some other credit reporting agency), in writing, that the Decedent has died. The estate will not be making any loans and does not need any “pre-approved” credit cards. Cancel any existing credit cards or lines of credit in the Decedent’s name.
6. As Administrator, you may be entitled to five percent (5%) of receipts and disbursements of the estate. There are some exceptions. Additionally, the Court must approve the commission BEFORE you are allowed to pay yourself. (TEC §352.002)
7. Social Security funds are not probate assets.
8. Do not disregard any certified mail.

CLOSING ESTATE:

1. Make sure Heirship has been determined.
2. File a Final Account with attached waivers from all heirs. (TEC §362.005)
3. File an Application to Close and Release Bond with attached receipts from all heirs or creditors.

THIS HANDOUT IS NOT INTENDED AS A SUBSTITUTE FOR THE ADVICE OF YOUR ATTORNEY, BUT IS TO BE USED ONLY AS A GUIDE. THIS LIST IS NOT ALL INCLUSIVE.

I have read and discussed the contents of this guide with the Court Auditor on the date stated below.

Administrator

Date

Administrator’s Attorney

Probate Court Auditor