

IMPORTANT NOTICE: ONLY LICENSED LAWYERS OR STAFF ACTING UNDER THEIR DIRECTION ARE ELIGIBLE AND AUTHORIZED TO FILE A PROCEEDING TO WHICH THIS CHECKLIST APPLIES

CHECKLIST FOR LAWYERS

UNCONTESTED TESTATE ESTATE – TEX. EST. CODE § 401.002
INDEPENDENT ADMINISTRATION BY AGREEMENT

This checklist is for lawyers to review in preparing documents and preparing for a prove-up to establish an independent administration by agreement. The checklist is used when there is a will for which an application for probate has or will be filed and (1) the will does not name an executor, (2) the named executor(s) is(are) unavailable to serve, whether because of death, inability/incapacity, or declination, and/or (3) the will does not state that the administration is to be independent.

This checklist does not constitute legal advice and is not intended to cover every circumstance. Please note that Chapter 401 of the Tex. Est. Code covers other instances when the need for an independent administration may arise. A particular case may have special circumstances that require special pleadings and actions. This checklist is designed for review in seeing that basic requirements set forth in the Tex. Est. Code are satisfied.

Kindly be advised that no attorney appearing in Probate Court Number Two is required to utilize this or other checklists in order to obtain a setting on any matter or otherwise proceed with the case. The checklists are intended only to be an aid to licensed attorneys and in no way affect an attorney's opportunity to obtain a conference with Court staff regarding Court procedures. In addition, Probate Court Number Two reserves the right to change or modify the items on the checklists for the completion of a matter.

NOTE: PROBATE COURT NUMBER TWO DOES NOT ALLOW INDEPENDENT ADMINISTRATION OF AN ESTATE IN WHICH A MINOR IS A DISTRIBUTE. THIS DOCUMENT APPLIES ONLY TO CASES IN WHICH THERE ARE NO MINORS.

1. Application

Along with the contents required for the prove-up of any will (see Tex. Est. Code § 256.052), application specifies:

_____ Application's heading states that independent administration is sought by agreement in accordance with Tex. Est. Code §§ 401.002(a) or 401.002(b)

_____ In the case of a will that names an Executor, but does not state that the administration is to be independent (Tex. Est. Code §401.002(a)):

- _____ **All** Distributees will agree and consent, or have agreed and consented, to the creation of an Independent Administration (see Tex. Est. Code §§ 401.002 and 401.004 for means of establishing Distributee consent); **and**
- _____ **All** Distributees will agree and consent, or have agreed and consented, to have the Executor named in the will serve as Independent Executor (see Tex. Est. Code §§ 401.002 and 401.004).
- _____ In the case of a will that does not name an Executor or named Executors are deceased, incapacitated, disqualified, or declined to serve (Tex. Est. Code §401.002(b) Appointment of Independent Administrator with Will Annexed)
- _____ **All** Distributees will agree and consent, or have agreed and consented, to the creation of an Independent Administration (see Tex. Est. Code §§ 401.002 and 401.004); **and**
- _____ **All** Distributees will agree, or have agreed, collectively on the designation of a qualified person, firm, or corporation to serve as Independent Administrator (state the name of the designated person. (See Tex. Est. Code §§ 401.002 and 401.004. But see Tex. Est. Code § 254.006 if the will grants authority to an individual to name an administrator.)
- _____ If waiver of bond is requested, **all** Distributees will agree and consent, or have agreed and consented, to waiver of the requirement for the Independent Executor or Independent Administrator to be bonded. (See Tex. Est. Code § 401.005).
- _____ If power of sale is desired and will does not provide for it, **all** Distributees will agree and consent, or have agreed and consented, to Executor or Administrator's having power of sale. (See Tex. Est. Code §§ 401.006 and 254.006(d)).
- _____ In the prayer, desired relief is specified (e.g., admission of will to probate, creation of an independent administration with will annexed, appointment of independent or dependent executor with or without bond, with power of sale)
- _____ Footer is inserted at bottom of each page specifying the title of the pleading and the cause number

2. Qualification of Executor/Administrator

_____ The proper inquiries have been made and the designated Independent Executor/Administrator is qualified to serve (see Tex. Est. Code § 304.003)

3. Citation

_____ **All** Distributees have been served with citation and notice of the Application or waivers have been filed before hearing. (Personal service required for Distributees **or** proper waivers for the issuance of citation have been filed **or** the Distributees have entered an appearance in Court [see Tex. Est. Code § 401.004(b)].)

4. Consents

_____ For **each and every** matter described above in which Distributees agree and consent or desire waiver (e.g., waiver of bond), **each and every** Distributee has signed a **sworn** consent specifying such agreement/consent and the same is on file before hearing. (See Tex. Est. Code §§ 401.002, .004, .005, and .006)

5. Posting

_____ General citation has been posted (see Tex. Est. Code § 303.001)

6. Proposed prove-up documents **(N.B. PROPOSED PROVE-UP DOCUMENTS MUST BE FILED BEFORE A SETTING FOR THE PROVE-UP IS OBTAINED. PROVE-UP DOCUMENTS INCLUDE NOT ONLY THOSE DOCUMENTS LISTED BELOW, BUT ALSO ANY OTHER REQUIRED DOCUMENTS BEFORE WILL CAN BE ADMITTED TO PROBATE, E.G., RETURNS, DESIGNATIONS OF RESIDENT AGENTS [IF APPLICABLE], DECLINATIONS TO SERVE AS EXECUTOR [IF APPLICABLE], WAIVERS, CONSENTS, ANY AGREEMENTS UNDER TEX. EST. CODE CH. 401, ETC.)**

_____ Proposed prove-up documents of the kind listed in the checklist for Uncontested Application for Letters Testamentary with Executor Named in Will have been prepared, but adjusted as follows:

_____ Heading of Order admitting will to probate indicates that order is for appointment by agreement of Independent Administrator with Will Annexed.

_____ Order admitting will to probate contains findings listing agreements between Distributees; and

_____ Order contains language appointing Independent Administrator with Will Annexed and contains additional language consistent with any other agreements (e.g., waiver of bond, power of sale)

_____ Proof Addendum Regarding Qualifications for Independent Administrator (see form on Probate Court Number Two's webpage)

_____ If prove-up is to be before an Associate Judge, Waiver of De Novo Hearing

7. Oath or Unsworn Declaration

_____ Oath or unsworn declaration complying with Tex. Est. Code § 305.051 has been prepared for Independent Executor or Independent Administrator's signature