

**IMPORTANT NOTICE: A SELF-REPRESENTED LITIGANT MAY CAUSE PROBATE OF A WILL AS A MUNIMENT OF TITLE IF THE LITIGANT IS THE SOLE BENEFICIARY. OTHERWISE, ONLY LICENSED LAWYERS OR ACTING UNDER THEIR DIRECTION ARE ELIGIBLE AND AUTHORIZED TO FILE A PROCEEDING TO WHICH THIS CHECKLIST APPLIES**

**CHECKLIST FOR LAWYERS**

**UNCONTESTED APPLICATION FOR PROBATE OF WILL AS MUNIMENT OF TITLE**

This checklist is for lawyers to review in preparing documents and preparing for a prove-up in a case in which a will is to be offered for probate as a muniment of title. (A self-represented litigant who is authorized to file an application for probate of a will as a muniment of title because he/she is the only beneficiary under the will may benefit from the checklist as well.)

This document does not constitute legal advice and it is not intended to cover every circumstance. A particular case may have special circumstances that require special pleadings and actions. This checklist is intended only as a guide to assist lawyers in seeing that basic requirements set forth in the Texas Estates 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.**

1. Application specifies:

\_\_\_\_\_ Heading states that application is for probate of will as muniment of title

\_\_\_\_\_ T The name of the Decedent is *identical* to the name set forth in the will, including middle initials (if another form of the Decedent's name is needed in order to be consistent with the name in a deed or on a bank account, list that name as an a/k/a)

\_\_\_\_\_ Applicant's name and Applicant's (not attorney's) physical address (prepare designation of resident agent if applicant lives out of state)

\_\_\_\_\_ The last three digits of Decedent's and applicant's social security and driver's license numbers (if the Decedent or applicant does not have a social security or driver's license number, please say so)

- \_\_\_\_\_ Date of Decedent's death
- \_\_\_\_\_ Place of Decedent's death
- \_\_\_\_\_ Facts necessary to show Court has venue.
- \_\_\_\_\_ Decedent owned property and probable value thereof
- \_\_\_\_\_ Date of will
- \_\_\_\_\_ Name, state of residence, and physical address where service can be had of the executor named in the will
- \_\_\_\_\_ Name of each subscribing witness (if any)
- \_\_\_\_\_ Whether one or more children born to or adopted by Decedent after will was made survived Decedent and, if so, the name of each such child
- \_\_\_\_\_ Whether a marriage of Decedent was ever dissolved after will was made and, if so, when and from whom
- \_\_\_\_\_ Whether state, governmental agency of the state, or charitable organization is named in the will as a devisee
- \_\_\_\_\_ Whether Decedent's estate does not owe unpaid debt other than any debt secured by a lien on real estate
- \_\_\_\_\_ Decedent did not apply for and receive Medicaid benefits on or after March 1, 2005 (if Decedent received such Medicaid benefits, that Medicaid Estate Recovery Program ["MERP"] certification has been received that Decedent's estate is not subject to MERP claim; MERP letter must be attached)
- \_\_\_\_\_ No amount is or will be owed for child support or spousal support payable by Decedent or Decedent's estate.
- \_\_\_\_\_ Footer is inserted at bottom of each page specifying the title of the pleading and the cause number

## 2. Related Proceedings

- \_\_\_\_\_ Upon filing of application, notification to Probate Clerk of any related proceedings

3. Special conditions requiring additional information in application

\_\_\_\_\_ If will is offered after the fourth anniversary of Decedent's death, applicant has complied with Texas Estates Code §§ 258.051-.052. (N.B., Probate Court Number Two will appoint an attorney ad litem for unknown heirs.)

\_\_\_\_\_ Application identifies devisees and heirs at law

\_\_\_\_\_ If copy of will is offered for probate, applicant has complied with Texas Estates Code §§ 257.053 and 258.002. (N.B., Probate Court Number Two will appoint an attorney ad litem for unknown heirs.)

\_\_\_\_\_ If applicant is other than first named executor in will, reason first named executor is not filing application for probate of will as muniment of title

\_\_\_\_\_ If applicant is other than first named executor and named executor is alive and his/her location is known, proof is provided that notice was given to such individual

\_\_\_\_\_ If will is holographic, will is entirely in Decedent's handwriting, is signed and, if applicable, dated, will otherwise qualifies for admission as Decedent's will, and two disinterested individuals have been identified who will testify at prove-up

\_\_\_\_\_ If Decedent executed one or more codicils, application's heading references codicils and application contains information regarding codicils of the type required for a will

4. Will

\_\_\_\_\_ Copy of will (and codicils) attached to application

\_\_\_\_\_ Original of will (and codicils) delivered to the Probate Clerk within three days of filing of application

5. Citation and Notice

\_\_\_\_\_ Citation has been posted and returned before hearing

\_\_\_\_\_ If application amended one or more times, each amended application has been posted and returned before hearing

\_\_\_\_\_ If will is offered after the fourth anniversary of Decedent's death, applicant has complied with Texas Estates Code § 258.051

\_\_\_\_\_ If copy of will offered for probate, applicant has complied with Texas Estates Code §§ 258.002, 51.054, 51.103(b)(4)

6. Proposed prove-up documents **(N.B. PROVE-UP DOCUMENTS MUST BE FILED BEFORE A SETTING FOR THE PROVE-UP IS OBTAINED)**

\_\_\_\_\_ Death Certificate with SSN redacted (if counsel does not wish to efile death certificate, a copy must be emailed or hand delivered to the Court)

\_\_\_\_\_ Proof of Death and Other Facts complying with Tex. Est. Code § 257.054

\_\_\_\_\_ Affidavit of No Debts (available on Court's webpage) stating, in addition to the language required by Tex. Est. Code § 257.054(5):

\_\_\_\_\_ Decedent did not apply for and receive Medicaid benefits on or after March 1, 2005 (if Decedent received such Medicaid benefits, that Medicaid Estate Recovery Program ["MERP"] certification has been received that Decedent's estate is not subject to MERP claim)

\_\_\_\_\_ No amount is or will be owed for child support or spousal support payable by Decedent or Decedent's estate.

\_\_\_\_\_ If will is attested, but not self-proved, proofs for subscribing witnesses if available or, if unavailable, documentary proof complying with Tex. Est. Code § 256.153

\_\_\_\_\_ If codicil is offered with will and proof to obtain admission to probate would differ if the documents were offered for probate separately (e.g., will is self-proved and codicil is holographic), evidence is marshaled and stated in proofs to support admission of each testamentary document

\_\_\_\_\_ Each proof describes how witness knew Decedent and for how long

\_\_\_\_\_ If will is holographic and not self-proved, proofs complying with Tex. Est. Code § 256.154

\_\_\_\_\_ If will is offered for probate after the fourth anniversary of Decedent’s death, proofs complying with Tex. Est. Code § 256.053 and containing evidence required under Tex. Est. Code § 256.003(a) to establish applicant not in default in failing to present will for probate on or before the fourth anniversary; proof also providing information regarding heirs who would take if there were no will

\_\_\_\_\_ If copy of a will is offered, proofs complying with Tex. Est. Code §§ 256.156 and 257.053, including evidence overcoming presumption of revocation (N.B., a will that would qualify as self-proved if original offered for probate is not self-proved if a copy is offered, but requires proof complying with Tex. Est. Code § 256.153); proof also providing information regarding heirs who would take if there were no will

\_\_\_\_\_ Simple jurat on proofs (“Sworn to and subscribed by [insert name]” and date) (No “known to me” language)

\_\_\_\_\_ Proposed order admitting will to probate contains findings consistent with application and proofs and containing language set forth in Tex. Est. Code § 257.102(a))

\_\_\_\_\_ Proposed order identifies the proper pleading before the Court (e.g., First, Second, or Third Amended or Supplemental . . . .)

\_\_\_\_\_ If will is holographic, a copy, or offered for probate after fourth anniversary, heading of proposed order so states

\_\_\_\_\_ To facilitate its acceptance as legal authority, proposed order contains language substantially as follows:

This Order shall constitute sufficient legal authority to all persons owing money to Decedent, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to Decedent’s Estate, and to persons purchasing from or otherwise dealing with Decedent’s Estate for payment or transfer without liability, to the persons described in the Will to receive the particular asset without administration; and further that the person or persons entitled to property under provisions of the Will shall be entitled to deal with and treat the properties to which they are so entitled in the same manner as if the record title thereof were vested in their names.

\_\_\_\_\_ Proposed order does not contain improper provisions to the effect:

\_\_\_\_\_ “All allegations in the application are true.”

\_\_\_\_\_ “All necessary proof required for probate of the will has been made.”

\_\_\_\_\_ Proposed order does not list demographic or other facts that are required for application (e.g., date of death, age at death, whether marriage dissolved), but are not required for order admitting will to probate

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