

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 APPLICATION FOR LETTERS TESTAMENTARY WITH EXECUTOR NAMED IN WILL

This checklist is for lawyers to review in preparing documents and preparing for a prove-up in a case in which a will with a named executor is to be offered for probate and the Court will be requested to appoint the named executor and approve issuance of letters testamentary.

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 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.

1. Application specifies:

_____ Heading of application states what is being sought (e.g., probate of will and issuance of letters testamentary)

_____ 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)

_____ The name of the named executor is *identical* to the name set forth in the will, including middle initials (if named executor has changed his/her name since will was drafted, use that name, but also reference the name in the will as an f/k/a)

_____ If named executor is named in will as successor executor, the reason the predecessor named individual is not seeking to be appointed executor

(e.g., died, is unable to serve, declines to serve) (file declination as appropriate)

_____ The applicant's (not attorney's) physical address (prepare and file separate 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 (not attorney's 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

_____ Named executor is not disqualified by law from accepting letters (see Tex. Est. Code § 304.003 and the Proof Addendum Regarding Qualifications on Probate Court Number Two's webpage)

_____ If desired relief is not specified in the will (e.g., independent administration without bond, power of sale), whether beneficiaries agree or are expected to agree to such relief

_____ In the prayer, desired relief is specified (e.g., admission of will to probate, 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. Special conditions requiring additional information in application

_____ If will is offered after the fourth anniversary of Decedent's death, applicant has complied with Tex. Est. 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 Tex. Est. Code §§ 256.054 and 258.002 (N.B., Probate Court Number Two will appoint an attorney ad litem for unknown heirs.)

_____ If will is holographic, will is entirely in Decedent's handwriting, is signed by the Decedent 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

2. Related Proceedings

_____ Upon filing of application, notification to Probate Clerk of any related proceedings

3. 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

4. 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 citation returned before hearing

_____ If will is offered after the fourth anniversary of Decedent's death, applicant has complied with Tex. Est. Code § 258.051

_____ If copy of will offered for probate, applicant has complied with §§ 258.002, 51.054, and 51.103(b)(4)

5. 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.)**

_____ 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 (consistent with application and establishing named executor is qualified to serve)

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

_____ 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 presented and stated in proofs to support admission of each testamentary document

_____ Each proof of a subscribing witness describes (1) how witness knew Decedent and for how long and (2) witness' familiarity with Decedent's handwriting

_____ If will is holographic and not self-proved, proofs of two witnesses to Decedent's handwriting complying with Tex. Est. Code § 256.154

_____ If will is offered for probate after the fourth anniversary of Decedent’s death, proofs 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, 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, appointing named executor, and authorizing issuance of letters testamentary (with findings consistent with application and proofs)

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

_____ 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, marriages), but are not required for order admitting will to probate

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

_____ Proposed order excludes reference to payment of any Attorney Ad Litem

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

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