

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 DETERMINATION OF HEIRSHIP

This checklist is for lawyers to review in preparing documents and preparing for a prove-up in a case in which a determination of heirship is sought.

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:

_____ The name of the Decedent

_____ Applicant's name, Applicant's (not attorney's) physical address (prepare designation of resident agent if applicant lives out of state), qualification under Tex. Est. Code § 202.002 to commence proceeding, and true interest of applicant in Decedent's estate or trust, as applicable

_____ Date of Decedent's death

_____ Place of Decedent's death

_____ Names and physical addresses where service can be had of decedent's heirs and for each heir:

_____ Relationship to Decedent

_____ Whether heir is adult or minor

_____ True fractional (not percentage or decimal) interest of heir in Decedent's estate or trust, as applicable

(A narrative and diagram explaining the family tree are helpful, especially when the family structure is complicated and/or when heirs take from more than one generational level.)

_____ If Decedent was a male, allegations address paternal inheritance requirements set forth in Tex. Est. Code § 201.052 and Texas Family Code §160.204

_____ If Applicant does not definitely know name or physical address where service can be had of heir, all of the material facts and circumstances of which applicant has knowledge and information that might reasonably tend to show name or physical address where service can be had of the heir

_____ Each of Decedent's marriages and for each such marriage:

_____ Date of marriage

_____ Name of spouse

_____ Date and place of termination if marriage terminated

_____ Facts showing spouse's interest, if any, in Decedent's property

_____ If no administration is necessary, state that there are no debts or need for administration and, in the prayer, request that the Court approve no administration (see Tex. Est. Code §§ 202.006 and 202.205)

_____ If administration is necessary, so state and request order appointing dependent/independent administrator (see specific requirements regarding independent administration contained in checklist for "Uncontested Intestate Estate – Tex. Est. Code § 401.003; Independent Administration by Agreement").

_____ If any information regarding a given marriage is omitted, the reason for omission

_____ Whether Decedent died testate and, if so, disposition made of will

_____ Facts necessary to show Court has venue

_____ General description of all property, as applicable (a) belonging to Decedent's estate that is subject to distribution under a judgment in the proceeding; or (b) held in trust for the benefit of Decedent; and

_____ Explanation for omission from application of any of the information described above

_____ In the prayer, desired relief is specified (e.g., appointment of attorney ad litem for unknown heirs, entry of judgment declaring heirship)

_____ Supporting affidavit containing language required by Tex. Est. Code § 202.007

_____ 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. Citation

_____ Citation by qualified delivery method to each heir/distributee complying with Tex. Est. Code §§ 202.051 and 51.052 OR waiver of citation as set forth in Tex. Est. Code §§ 202.055-.056 has occurred before hearing

_____ Citation by publication as specified in Tex. Est. Code §§ 202.052 and 51.054

_____ If application seeks administration, posted notice as specified in Tex. Est. Code §§ 303.001 and 51.053

_____ If application amended one or more times, citation by publication for each application to unknown heirs and known heirs whose addresses are unknown has occurred and been returned

4. Affidavit of Service

_____ Affidavit or Certificate filed regarding service of citation as required by Tex. Est. Code § 202.057

_____ If application amended, file an amended Affidavit or Certificate

5. Attorney Ad Litem

- _____ Deposit of Ad Litem fee (see local rules and administrative orders)
- _____ Attorney Ad Litem appointed to represent unknown heirs and known heirs whose address unknown
- _____ Attorney Ad Litem appointed to represent minor and/or otherwise incapacitated heirs
- _____ Answer filed by each Attorney Ad Litem

6. Proposed prove-up documents (**N.B. PROPOSED 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 (with contents consistent with application)
- _____ Proof Addendum Regarding Qualifications for named administrator, if administration sought (see form on Probate Court Number Two’s webpage)
- _____ Proofs for signature at prove-up by two disinterested witnesses regarding heirs and family history or otherwise as authorized in Tex. Est. Code § 202.151 (with contents consistent with application)
 - _____ Each proof describes how witness knew Decedent and for how long
 - _____ Proofs contain detailed information regarding family and marital history (not the same as proof of death)
- _____ Simple jurat on proofs (“Sworn to and subscribed by [insert name]” and date) (No “known to me” language)
- _____ Proposed judgment declaring heirship complying with Tex. Est. Code § 202.201 (including both a finding and decretal provisions regarding heirs) and order of no administration if there is to be none
 - _____ Proposed judgment identifies the proper pleading before the Court (e.g., First, Second, or Third Amended or Supplemental . . .)

- _____ Judgment contains findings regarding appointment and name(s) of AAL(s), answer(s) filed by AAL(s), and services were performed in that capacity
- _____ Judgment states heirs' respective interests, expressed as **fractions** (not decimals or percentages)
- _____ Heirship interests should be expressed according to one of the two table templates below
- _____ Judgment excludes reference to payment of Attorney Ad Litem
- _____ If prove-up is to be before an Associate Judge, Waiver of De Novo Hearing