

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 INTESTATE ESTATE – TEX. EST. CODE § 401.003
INDEPENDENT ADMINISTRATION BY AGREEMENT

This checklist is for lawyers to review in preparing documents and preparing for a prove-up for the establishment of an independent administration by agreement. The checklist is used when there is in no will, an administration of the estate is needed, and an Application for Determination of Heirship has been or will be filed. The Application may be submitted as a document separate from the Application for Determination of Heirship or combined with it.

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 DISTRIBUTEE. THIS DOCUMENT APPLIES ONLY TO CASES IN WHICH THERE ARE NO MINORS.

1. Application

Along with the contents required for determination of heirship (see Tex. Est. Code § 202.005), application specifies:

_____ Application’s heading states that independent administration is sought by agreement

_____ **All** Distributees will agree and consent, or have agreed and consented, to the creation of an Independent Administration (see Tex. Est. Code §§ 401.003-.004 for means of establishing Distributee consent); **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 §§ 401.003-.004)

_____ 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 Administrator to be bonded (see Tex. Est. Code § 401.005)

_____ If power of sale is desired, **all** Distributees will agree and consent, or have agreed and consented, to Administrator's having the power of sale (see Tex. Est. Code § 401.006)

_____ In the prayer, desired relief is specified (e.g., creation of dependent or independent administration, appointment of independent or dependent administrator with or without bond, with power of sale [if needed])

_____ Footer is inserted at bottom of each page specifying the title of the pleading and the cause number

2. Qualification of Proposed Administrator:

_____ The proper inquiries have been made and the designated Independent Administrator is qualified to serve. (See Tex. Est. Code § 304.003 and the Proof Addendum Regarding Qualifications on Probate Court Number Two's webpage.)

3. Citation

_____ If application combines request for determination of heirship and independent administration, **all** Distributees have been served with citation and notice of the Application or waivers have been filed. (Personal service required for Distributees **or** waivers of the issuance of citation have been filed **or** the Distributees have entered an appearance in Court [see Tex. Est. Code § 401.004(b)].) (If determination of heirship has been obtained under separate application, only posted notice is required. See #5 below.)

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 (see Tex. Est. Code §§ 401.003-.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], 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)

_____ If prove-up in connection with determination of heirship has previously occurred and prove-up is for independent administration only (N.B. that Tex. Est. Code 401.003(b) requires that prove-up of heirship precede any appointment of independent administrator):

_____ Heading on Order indicates that it grants Independent Administration and appoints an Independent Administrator by agreement

_____ Order contains language that heirs, being all of the distributees, have previously been determined

_____ Order contains findings listing agreements between Distributees pertaining to independent administration; and

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

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

_____ If prove-up is for **both** independent administration and determination of heirship **and** two different documents are to be offered for signature, one containing the Judgment Declaring Heirship and one containing the Order for Independent Administration:

_____ Prove-up documents of the kind listed in the checklist for Uncontested Application for Determination of Heirship

_____ Judgment Declaring Heirship is drafted as set forth in the checklist for Uncontested Application for Determination of Heirship

_____ Order for Independent Administration is drafted as set forth above

_____ Heading on Order indicates that it grants Independent Administration and appoints an Independent Administrator by agreement

_____ Order contains findings listing agreements between Distributees pertaining to independent administration; and

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

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

_____ If prove-up is for both determination of heirship and creation of independent administration **and** the Judgment Declaring Heirship and Order for Independent Administration will be consolidated into one document, Judgment contains both provisions for declaration of heirship (see Uncontested Application for Determination of Heirship) and provisions for independent administration akin to those set forth above when Order for independent administration is sought separately.

7. Oath or Unsworn Declaration

_____ Oath or unsworn declaration complying with Tex. Est. Code § 305.052 has been prepared for Independent Administrator's signature.