TARRANT COUNTY
FORT WORTH, TEXAS 76196

BROOK BELL.
JUDGE, PROBATE COURT 2

1895 COURTHOUSE
100 WEATHERFORD

GUIDE FOR AN INDEPENDENT EXECUTOR IN TARRANT COUNTY PROBATE COURT TWO

As independent executor, you have a fiduciary duty to treat all beneficiaries and creditors fairly. By law, throughout the entire process, you must be represented by an attorney who is licensed to practice law in Texas. You should consult your attorney before taking any action as independent executor. Your attorney MUST prepare and sign anything that is filed with the Court. This guide does not replace the advice of your attorney.

The Basics

As independent executor, you must:

- gather or collect the assets of the estate;
- notify the beneficiaries of the estate;
- notify the creditors of the decedent;
- file an inventory with the Court;
- file an affidavit or certificate that beneficiaries have been notified;
- pay the debts of the decedent;
- pay your attorney's fees and other administrative expenses; and
- distribute the remaining assets to the beneficiaries.

Steps to Qualify as an Independent Executor

Once the Court signs the order admitting the Will to probate and appointing you as Independent Executor, you have a 20-day window to complete the "qualification" steps (Texas Estates Code (TEC) Chapter 305):

- File your Oath: This must be signed and sworn to in open Court or before a notary.
- Post Bond (if required): You must file with the Court unless the order specifically waives.
- Appoint a Resident Agent: If you do not live in Texas, you must formally file a document appointing a local agent to receive legal notices on your behalf.

Your official Qualification Date is once the Court approves the final document above. This date marks the official start of your legal duties and sets the clock for future deadlines.

Requesting Letters Testamentary

On or after your Qualification Date, you are eligible to receive Letters Testamentary.

You can obtain these letters and certified copies of the Will from the Probate Clerk's office:
- Location: 100 West Weatherford, Room 233 (2nd Floor, West End), Fort Worth.
- Hours: 8:00 a.m. to 5:00 p.m..
- Phone: 817-884-2840.
- Cost: Contact the clerk directly to confirm current fees for letters and certified copies.

Letters Testamentary

Letters Testamentary establish your authority to serve as independent executor of the estate. When managing estate business, keep in mind entities such as banks, brokers, title companies, insurance companies, and government agencies will require Letters Testamentary to authorize you to handle assets. Some of these institutions will only accept letters that have been certified within the past 60 days. Additionally, some third parties may require you to provide a certified copy of the Will in addition to your Letters Testamentary.

Notifying Creditors

General Published Notice (Required): Within one month of your Qualification Date, you must publish a notice to creditors in a newspaper within the county (such as the Commercial Recorder at 817-926-5351).

This notice must include (TEC § 308.051):

- Your Qualification Date.
- The address where claims should be sent.
- Instructions to address claims to the executor, the executor's attorney, or the representative of the estate of _______.

Proof of Publication: You must file a copy of the printed notice and the publisher's affidavit with the Probate Clerk. (TEC § 308.052)

Notice to the Comptroller (Required if applicable): Within one month of your Qualification Date, if the deceased person paid (or should have paid) taxes to the Texas Comptroller of Public Accounts, you must send notice via certified mail. (TEC § 308.051)

Notice to Secured Creditors (Required): Within two months of your Qualification Date, you must send notice via certified mail, return receipt requested, to any creditors with a claim secured by real or personal property of the estate. Notice requirements are the same as above. Proof of this service must be filed with the Probate Clerk. (TEC § 308.051)

Permissive Notice to Unsecured Creditors (Optional): Anytime before the estate is closed, you may choose to send a notice via certified mail, to unsecured creditors (like credit card companies). This notice must explicitly state that if they do not present a claim within four months of receiving the notice, their claim is legally barred. The notice must include the items listed General Published Notice mentioned above. (TEC § 308.054)

Penalty for Failure to Notify Creditors: If you fail to provide the notices required above, other than the permissive notice, you and the sureties on your bond, are personally liable for any damage which any person suffers by reason of such neglect, unless it appears that such person had notice otherwise. (TEC § 308.056)

Notice to Beneficiaries

Within 60 days of the date the Will is admitted to probate, you must work with your attorney to send formal notice via certified mail, return receipt requested, to every person or entity named as a beneficiary. A copy of the Will and the Order admitting the Will to Probate must be attached. This notice must include:

- The beneficiary's name and address.
- The name of the deceased and the fact that their Will has been admitted to probate.
- Confirmation that the person receiving the notice is a named beneficiary.
- The name and contact information for the Independent Executor.

Alternatively, beneficiaries may sign a waiver of notice which should be filed with the clerk.

Affidavit or Certificate of Notice

Within 90 days of the order admitting the will to probate, you must file a signed and sworn affidavit or certificate signed by the attorney. This document must include:

- The names and addresses of all beneficiaries notified by certified mail.
- The names and addresses of beneficiaries who waived notice.
- The names of any beneficiaries who could not be identified or located despite reasonable diligence.
- An explanation for any failure to provide notice to a beneficiary.

This affidavit or certificate may be included with the estate's inventory, appraisement, and list of claims, or with an application for an extension of time to file those documents.

Inventory

Within 90 days of your Qualification Date, you, with the assistance of your attorney, must file with the Court a sworn inventory, appraisement and list of claims ("Inventory"). Failure to file your Inventory timely could result in your removal as independent executor and a fine of up to $1,000.00 (TEC § 309.057c). Please ask your attorney to request an extension if you are unable to file your Inventory on time. Do not depend on Show Cause Order from the Court as a reminder to file your Inventory. Your Inventory must be prepared by and signed by your attorney, and must:

- List all personal property of the estate wherever it is located with cash and investment account descriptions including the name and address of the bank or brokerage firm and at least the last four numbers of each account;
- List all real property that is located in Texas;
- List all property owned in common with others, including the fraction of the interest owned by the estate;
- State whether the decedent was married and time of death, and specify what portion of the property, if any, is separate property and what portion of the property, if any, is community property;
- List the fair market value of each item of property as of the decedent's date of death; and
- List all claims the estate has against other parties including the name and address of the debtor; the nature of the claim; the initial date and due date of the claim; the amount of the claim and interest rate; and whether the claim is separate or community;

Do not list the debts of the estate on your Inventory. If your Inventory is not approved, file an amended inventory (TEC § 309.054).

Affidavit in Lieu of Inventory: You may file an Affidavit in Lieu of Inventory if the estate has no unpaid debts (excluding taxes, administration expenses, and secured debts) at the time the Inventory is due. To use this option, you must first provide each beneficiary with a verified, detailed inventory privately. The Affidavit—which confirms that all debts are paid and beneficiaries have been notified—must be filed within 90 days of your Qualification Date, unless a formal extension is granted. (TEC § 309.056)

Collecting Assets

As Independent Executor, you shall:

- Take care of the estate property as a prudent person would take of his or her own property and shall keep real property in good repair (TEC § 351.101);
- Collect all personal property, record books, title papers, and other business papers of the estate (TEC § 351.102);
- Keep estate funds in a separate designated account and not mix estate funds with your private funds;
- Use ordinary diligence to collect all claims and debts due the estate and to recover possession of all property of the estate provided there is a reasonable prospect of collecting such claims or recovering such property (TEC § 351.151); and
- Seek Court approval prior to entering a contingency fee contract with an attorney that exceeds 33% of the property to be recovered (TEC § 351.152).

Selling Assets

Your power to sell assets of the estate should be addressed in the Will. You should not sell any estate assets without first consulting your attorney. If the Will does not specifically permit you the power to sell estate real property and such sale becomes necessary, your attorney must apply to sell real property under Court order (TEC § 356.251). This is a multi-step procedure that requires posted notice for specified periods of time thus allowing beneficiaries the right to object to such sale. Therefore, you should not enter into any contracts to sell real property without consulting your attorney and obtaining Court permission if necessary.

Claims

Please consult your attorney when you receive a claim or a claim is filed with the Clerk by a creditor. Here are some general rules about claims:

Presentment. Claims of creditors against the estate may be presented to you at any time before the estate is closed if the claim is not barred by the permissive notice or by the general statute of limitations. Claims may be secured or unsecured by estate assets.

Action on Claims. Once you receive a claim or if a claim is filed with the Clerk, you should immediately contact your attorney because certain deadlines may apply when dealing with the claim. Under certain circumstances, if a creditor files suit on a just claim that has been rejected, the Court may find you personally liable for the cost of the suit, and you may be removed as executor for failure to have properly acted on the claim.

Barred Claims. Claims barred by the general statute of limitations should be rejected. Claims of creditors to whom you sent the permissive notice described above are barred if they are not presented or filed within four months from the date the creditor received the notice. These late claims should also be rejected.

Payment of Claims. If the estate is insolvent, claims should not be paid until the estate has been open at least six months because claims have a certain priority of payment. You should consult your attorney prior to paying any claims.

Taxes

Please consult your attorney to determine which income, state inheritance, or federal estate tax returns are required. You may need to file income tax returns for both the decedent and the estate itself. Note that all required tax returns must be filed before the estate can be closed. Additionally, you are responsible for using estate funds to pay any property taxes due. If necessary, your attorney can apply for a Court extension to delay filing the Inventory until the Federal Estate Tax due date.

Compensation

As independent executor, your compensation is dictated by the provisions of the decedent's will. If the decedent's will is silent on this issue, the law provides that you are entitled to five percent (5%) of the receipts and disbursements, with exceptions (TEC § 352.002). Please consult your attorney as to the amount of compensation you are entitled. The Court does not approve the compensation unless it is contested by a beneficiary or creditor.

Closing the Estate

Typically, an estate remains open for at least six months following your Qualification Date. Once you have gathered all assets, notified creditors, filed the Inventory (or Affidavit in Lieu of Inventory), and settled all valid claims, you should coordinate with your attorney to distribute the remaining assets to beneficiaries. Your attorney may prepare receipts for beneficiaries to sign, acknowledging they have received their share. These are often filed with the Clerk alongside a Closing Report or a Notice of Closing of the Estate (TEC § 405.004). If you are under a Bond, filing a Closing Report is necessary to release your sureties; you must provide a certified copy to your bonding company. While closing the estate officially starts the statute of limitations for future claims, many executors choose to keep the estate open in case additional assets are discovered. Please consult your attorney to determine which filing is appropriate for your specific situation.

Attorney Issues

As independent executor, you are free to hire the attorney of your choice. Your attorney represents you as independent executor and does not represent the "estate." However, you have a fiduciary duty to treat all legitimate creditors and estate beneficiaries fairly, and your attorney should remind you of that duty. The Court does not review or approve attorney's fees in an independent administration. The Court cannot resolve complaints that you may have against your attorney. For those purposes, you may contact the State Bar of Texas at 1.800.932.1900.

Court Contacts

Judge Brook Bell
Probate Court Two
100 West Weatherford Street, Room 160A
Fort Worth, Texas 76196
817.884.1415

Associate Judge
100 West Weatherford Street, Room 220A
817-884-2794

Steve Fields,Court Administrator
sdfields@tarrantcountytx.gov
817.884.1049