

Submitting Paperwork for Will Prove-ups and Heirships: When & How?

County Court at Law No. 3, Smith County

Note to pro se applicants. If you are probating a Will as a muniment of title and do not have an attorney, you are not required to e-file. When the instructions here say to **e-file** a document, you may deliver the document to the **County Clerk**. When the instructions say to **email** a document, follow the email instructions or deliver the document to the **Clerk**.

It is the Court's policy to review, before the hearing, proposed probate prove-up hearing documents. By reviewing documents in advance, the Court can ensure that hearings go more smoothly for participants who are already dealing with the stress of someone's death. Attorneys also benefit from smoother hearings and can avoid having errors pointed out to them in front of their clients.

1. Do when you e-file the application.

- Deliver the original Will to the County Clerk's office.
- Email the death certificate directly to the court.
- If there is no will, you are still required to email the death certificate.

2. Do within 3 business days after e-filing application to probate a Will.

- TRCP Rule 21(f)(12) requires that any original Will must be **physically filed in the County Clerk's office** within three business days after the application is electronically filed.
- If you are probating a copy of a Will or there is a copy of a Will that you are not offering for probate, this Court requires that the actual copy of the Will being offered for probate (or filed and not offered for probate) must be **physically filed in the Clerk's office** within three business days after the application is electronically filed. (It will be the paper document that your client handed to you.) Having the "original" copy helps the Court in its evaluation.

3. Do BEFORE requesting an heirship hearing.

- To set an heirship hearing, you must e-file a request for setting. The applicant's attorney and the ad litem must sign the request. (It is always a good idea to contact the court first to get available dates.)
- Before requesting an heirship hearing please ensure the following forms have been completed. **All of the following need to be completed and e-filed before you send in a request to set an heirship hearing:**
 1. Service of citation on – or waiver from – all non-applicant heirs and other persons requiring notice under Texas Estates Code §202.008.
 2. Consents from all heirs if seeking independent administration.
 3. Affidavit of citation by publication. (Clerk prepares citation and sends to the publisher, you make the payment, the publisher sends the affidavit to you, and you e-file the affidavit.)
 4. Section 202.057 affidavit or certificate. See the statute; don't forget 202.057(a)(2)(A)!
- The two disinterested witnesses will be required to attend the hearing and provide testimony, or in the alternative, a Motion for Alternative Proof may be filed to prove up the witnesses' testimony via deposition by written questions (see requirements below). *No witness affidavits will be accepted.*

4. Do BEFORE contacting the Court to set a hearing.

E-file everything the Estates Code or the Court requires before an order can be entered. **For example:**

1. Motion for Alternate Proof (with proposed order) if you plan to prove up a non-self-proved Will by (1) the deposition of one or both subscribing witnesses or by (2) the testimony of two handwriting witnesses
2. Declinations of executors with priority
3. Proof of reason other executors with priority are unable to serve (e.g., death certificate or Smith County Probate Cause No.).
4. Consents or waivers (for example, if the Will does not name an independent executor without bond)
5. Appointment of resident agent
6. Deposition answers (NOTE: DWQs must be served pursuant to §51.203 - questions are filed with the clerk; citation is posted; the deponent can answer the questions after the citation comes down; then answers are filed with the clerk.)

Additional documents will be required for (1) wills that are not self-proved, (2) copies of wills, and (3) wills being probated more than four years after death. See Estates Code for more information.

Please note: The witnesses for the prove-up of a will that is not self-proved or for the prove-up of a copy of the will are required to attend the hearing and provide testimony, or in the alternative, a Motion for Alternative Proof may be filed to prove up the witnesses' testimony via deposition by written questions (see requirements for both above). No witness affidavits will be accepted.

5. Do IMMEDIATELY upon setting a probate prove-up hearing.

For ALL probate prove-ups:

- **Upon setting a hearing you must e-file all proposed hearing documents.** This helps the Court enormously – and getting it out of the way means you don't need to calendar a future deadline.
- Email a personal representative sheet for each applicant. The relatives/friends section MUST be complete and the addresses for the friends/relatives cannot be the same as the applicant or the other friend/relative.

For Will probates (with no intestacy or partial intestacy):

- E-file all proposed documents to be signed at the hearing.
- For letters testamentary or letters of administration with will annexed, e-file *the following at minimum:*
 1. Proof of death and other facts
 2. Order (with exact title on document)
 3. Oath (with exact title on document)
- For muniment of title, e-file the following *at a minimum:*
 1. Proof of death and other facts (include testimony about no debts; don't use separate oath of no debts)
 2. Order (with exact title on document)
- For all witnesses - if not already signed/notarized/filed - e-file their proposed testimony in writing to be signed at the hearing.

For heirships (or dependent administration with heirship to follow):

- E-file all proposed documents
- E-file the following documents at a minimum. (If DA with heirship to follow, you do not need #2 yet.)
 1. Proof of death and other facts
 2. Statement of facts concerning the identity of heirs for each of two disinterested witnesses
 3. Oath (if seeking administration)

IMPORTANT NOTE: If there are any documents/proposed documents still missing the week before the hearing date, your case will be removed from the docket.