



COUNTY COURT AT LAW NO. 3 SMITH COUNTY

CLAY WHITE, JUDGE

CHECKLIST - PROBATING WILL MORE THAN FOUR YEARS AFTER DEATH OF DECEDENT

Procedure: Please e-file all appropriate documents for your case with the Smith County Clerk's office. **Once the checklist is fully completed, the applicant's attorney can request to set a hearing on this matter.**

The Court will send the hearing date and time in an email to all parties/counsel who have made an appearance. If you would like a formal hearing notice, please contact the Court.

Case Number _____ Estate of _____

→Please cross through actions that do not apply:←

- Confirm Jurisdiction/Venue are proper
 - The decedent's name on the application, will, and death certificate match; or
 - an aka/fka designation is used in the application
 - E-file the Application
 - Title of document must reflect what you are probating – for example, “*Application to Probate Will as a Muniment of Title After Period for Probate*”...Prayer must reflect the same
 - If a holographic will is being probated, then the title and prayer also need to include “holographic”*
- If seeking an independent administration:
- In addition to meeting all criteria to probate a Will, the requirements of Texas Estates Code §301.002 must be included when probating a will and requesting an administration more than four years after decedent's death.
 - receive or recover property due a decedent's estate; or
 - prevent real property in a decedent's estate from becoming a danger to the health, safety, or welfare of the general public and the applicant for the issuance of letters testamentary or of administration is a home-rule municipality that is a creditor of the estate.
 - E-file declinations of executors with priority
 - Email proof of reason other executors with priority are unable to serve (for example, a death certificate or Smith County Probate Cause No.).
 - E-file consents from all devisees if seeking to appoint independent administrator not named in will
 - The consent must specifically state “independent” and “without bond”.*
 - Confirm the Applicant is not disqualified to serve (*Texas Estates Code §304.003*)
 - E-file Appointment of Resident Agent (*to accept service of process in all actions or proceedings with respect to the estate*)
- Application states date of death and affirmatively states more than four years passed since the date of death.
 - Application includes statement explaining how the person offering the Will is not in default for probating after 4 years and why they are not in default. Must overcome the presumption.
 - Affirm Decedent did not apply for and receive Medicaid benefits after March 1, 2005.
 - If received Medicaid benefits, need proof of release of MERP claim

- Affirm Decedent died before age 55, or
- Spouse is still alive, or
- There is a child under 21 years of age.
- Tender the Will offered for probate to the Clerk
 - 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.*
- Email the death certificate directly to the court.
 - If no death certificate has been received, an obituary or funeral service program can be emailed and the death certificate can be emailed once it has been received.*
- Confirm the citation was posted by the clerk with (1) correct case number; (2) correct name of decedent; (3) correct name of applicant; and (4) correct title of application
- File proof of notice to each of the testator's heirs OR Affidavit from each of the testator's heirs.
 - Notice must be given to each of the testator's heirs whose address can be ascertained with reasonable diligence (Texas Estates Code §258.051)
 - Reasonable diligence to ascertain address is unsuccessful, request alternative service, such as publication (Texas Estates Code §258.101)
 - Sworn Affidavit with language required by Texas Estates Code §258.051(c).
- I understand that I must e-file all proposed hearing documents with all dates filled in with the hearing date.
 - Proof of Death & Other Facts
 - Order (with exact title on document – for example “*Order Probating Will after Period for Probate and Authorizing Letters Testamentary*” or “*Order Admitting Will to Probate as Muniment of Title after period for Probate*”)
 - Oath (with exact title on document – for example “*Independent Executor's Oath*”)
 - Oath of No Debts (*Muniment of Title*)
 - Required if the statement regarding no debts is not included in the Proof of Death & Other Facts*
- I understand I must email a completed personal representative sheet for each applicant before the hearing or I must bring the completed form to the hearing and have the applicant sign it in front of the notary.
 - I understand that 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.
- This is also an application to probate a copy of a will.
 - The Checklist for Probating a Copy of a Will is attached.*

Attorney Verification

I, _____ confirm that all required documents for the hearing I am requesting in Cause No. _____ are correct and have been e-filed and accepted by the Smith County Clerk's office or emailed to the Court as directed.

Signed: _____

Date: _____