



COUNTY COURT AT LAW NO. 3 SMITH COUNTY

CLAY WHITE, JUDGE

CHECKLIST – HEIRSHIP & ADMINISTRATION

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 notice to all parties/counsel who have made an appearance.

Case Number _____ Estate of _____

Checklist for Heirship

→Please cross through actions that do not apply:←

- Confirm Jurisdiction/Venue are proper
- E-file Sworn Heirship Application in compliance with Texas Estates Code §202.007
Applicant must identify every heir of the estate and whether or not the heir is an adult
- The decedent's name in the application matches the name on the death certificate; or
 - an aka/fka designation is used in the application
- 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
- Confirm Citation by Publication completed (review to ensure no errors)
 - Publisher's Affidavit filed – contact the County Clerk for questions or corrections
 - OCA Affidavit filed – check your case at: [https://www.txcourts.gov/judicial- data/citation-by-publication/](https://www.txcourts.gov/judicial-data/citation-by-publication/) - contact the County Clerk for questions
- E-file Answer of Attorney Ad Litem
- E-file Report of Attorney Ad Litem
- E-file Sworn Waivers by heirs who are at least age 16 (Texas Estates Code §202.056); or
- E-file Proof of Qualified Delivery Method to all known or ascertainable distributees 12 years of age or older. (Texas Estates Code §202.051, §202.052, §202.053 & §202.054)
- E-file Affidavit of Service of Citation in compliance with Texas Estates Code §202.057.

If the decedent was pre-deceased by an heir or an heir of decedent has subsequently died, proof regarding that heir shall be provided as follows:

If there are heirs of decedent who have also died:

If they died **AFTER** the decedent:

- their estate has been probated and an executor/administrator has been appointed who can sign a waiver on behalf of the estate; or
- their heirs have been determined in an heirship proceeding
 - the application includes the cause number and county of heirship proceeding;
 - a copy of the out-of-county heirship judgment has been efiled;

- all heirs of the decedent's children have signed waivers and consents or have been noticed
 - all proofs of notice and/or waivers have been e-filed
- or
- No probate has been completed and none is planned
 - Affidavits of heirship have been filed into the deed records of the appropriate jurisdiction stating who the deceased heir's heirs are; or
 - Affidavits of Heirship, Texas Estates Code §203.002, have been drafted and signed by two disinterested witnesses in front of a notary public
 - (do not include the caption of this case because the deceased heir's estate is a separate matter from the instant case – we cannot do an heirship within an heirship)*
 - they are recorded in the deed records of the appropriate jurisdiction, and
 - the recorded affidavits of heirship (AOH) have been e-filed in this case
 - All heirs who have been identified as an heir in the recorded AOH have signed waivers and consents or have been noticed
 - all proofs of notice and/or waivers have been e-filed

If they died **BEFORE** the decedent, were their heirs determined in an heirship proceeding?

- their heirs been determined in an heirship proceeding
 - the application includes the cause number and county of heirship proceeding;
 - a copy of the heirship judgment from the out-of-county heirship has been efiled; and
- all heirs of the decedent's children have signed waivers and consents or have been noticed (this will not include a spouse of a pre-deceased heir)
 - all proofs of notice and/or waivers have been filed

or

- No probate has been completed and none is planned
 - Affidavits of heirship have been filed into the deed records of appropriate jurisdiction stating who the deceased child's heirs are; or
 - Affidavits of Heirship, Texas Estates Code §203.002, have been drafted and signed by two disinterested witnesses in front of a notary public
 - (do not include the caption of this case because the deceased heir's estate is a separate matter from the instant case – we cannot do an heirship within an heirship)*
 - they are recorded in the deed records of the appropriate jurisdiction, and
 - All heirs who have been identified as an heir in the recorded AOH have signed waivers and consents or have been noticed
 - all proofs of notice and/or waivers have been filed

- Confirm availability of all witnesses (before requesting a hearing)

The Court requires live testimony from two disinterested witnesses.

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 below). No witness affidavits will be accepted.

- E-file Motion for Alternate Proof (with proposed order) if you plan to take the testimony by the deposition by written questions of one or both disinterested witnesses
- E-file 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.)

Note: This court uses the following explanation of "disinterested witness" for purposes of determining heirs: A disinterested individual is a person who has no interest in the estate, no interest in the outcome of the proceeding, and is familiar with the decedent's family history.

In the event a disinterested witness is simply not available, please state the circumstances in a Motion/Order.

- 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
 - Testimony in Writing for each witness
 - Statements of Facts Regarding Identity of Heirs from two Disinterested Witnesses (They will need to appear at the hearing.).*
- Proposed Judgment declaring heirship e-filed for review prior to hearing (*this should be separate from the Order of Administration*)
 - Verify distribution shares are correct based on the chart published on CCL#3 website
 - Attorney ad Litem fee (leave blank if more than \$500)
 - Discharging Attorney ad Litem
 - Prior to filing the proposed judgment, please send it to your AAL for review and approval.
 - Once approved, all attorneys sign Judgment prior to e-filing.*

Checklist for Administration

→Please cross through actions that do not apply:←

- E-file the Application.
 - Independent Administration or
 - Dependent Administration
 - If you just include "Administration" in the title and body of your application, and if notice posts that way, the Court will assume you are asking for a Dependent Administration.*
- 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*)
- 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
- E-file sworn consents from all heirs if seeking independent administration without bond
 - The consent must specifically state "independent" and "without bond" and, if applicable, include language giving the independent administrator the right to sell real property without the consent of the heirs*
- I understand that I must e-file all proposed hearing documents with all dates filled in with the hearing date.
 - Proof of death (only one if simultaneous with heirship proceeding).
 - Order (with exact title on document – for example "*Order Granting Independent Administration and Authorizing Letters of Independent Administration*" or "*Order Granting Dependent Administration and Authorizing Letters of Administration*")
 - Blank space in Order for completion of bond amount (if dependent administration)
 - Oath (with exact title on document – for example "*Independent Executor's Oath*")
- 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.

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: _____