



COUNTY COURT AT LAW NO. 3 SMITH COUNTY

CLAY WHITE, JUDGE

CHECKLIST - PROBATING A COPY OF A WILL

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 in the application matches the name in the will and on the death certificate; or
 - an aka/fka designation is used in the application
- The applicant's name on the application matches the designation in the will; 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 Copy of a Will*”...Prayer must reflect the same
 - If a copy of a holographic will is being probated, then the title and prayer also need to include “holographic”*
 - In addition to meeting all criteria to probate an original Will, the requirements of Texas Estates Code §256.054 or §257.053 must be included when probating a copy of a Will.
 - Note: An original Codicil does not relieve the Applicant from proving up a copy of a Will nor does an original Will relieve the Applicant from proving up a copy of a Codicil.*
 - Application includes a statement why probating a copy of Will and what diligence was done to locate the original Will
 - Application includes statements to overcome presumption the original Will was revoked
- Tender the actual copy of 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.*
 - The “original” will be the document that your client delivered to your office.**
- 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
- 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.).
- 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*)

- E-file Proof of Service for – or waiver from – all non-applicant heirs and other persons requiring notice under Texas Estates Code §258.002.
 - The heirs requiring notice were listed in the application per §256.054.
 - Sworn Waivers with explicit acknowledgement of their right to contest the probate of a copy of a Will and they are waiving such right.
- E-file consents from all heirs if seeking independent administration without bond and the specific wording is not included in the will.

The consent must specifically state “independent” and “without bond”.
- Confirm availability of all witnesses (before requesting a hearing)

The Court requires live testimony from two of the subscribing witnesses, one of which can be the notary. If a subscribing witness cannot be located or is now deceased, two handwriting witnesses can testify in lieu of the one subscribing witness. The second subscribing witness will still be required to provide testimony. A handwriting witness must include testimony of why they would be familiar with the decedent’s handwriting/signature.

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 prove up a copy of the will by:
 - the testimony of any handwriting witnesses
 - the deposition by written questions of one or both subscribing witnesses and/or handwriting 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.)
- 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

Include statement that copy of Will offered for probate with no objection. Also state why probating copy, what diligence was done to locate original Will, and testator did not revoke the Will.
 - Order (with exact title on document – for example “*Order Probating Copy of Will and Authorizing Letters Testamentary*” or “*Order Admitting Copy of Will to Probate as Muniment of Title*”)

Include language finding that Applicant overcame presumption that Original Will was revoked.
 - 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
 - Testimony in Writing for each witness
- 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 the will after the period for probate.
 - The Checklist for Probating Will More than Four Years After Death of Decedent 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: _____