



COUNTY COURT AT LAW NO. 3 SMITH COUNTY

CLAY WHITE, JUDGE

CHECKLIST - PROBATING AN ORIGINAL WILL/CODICIL FOR LETTERS TESTAMENTARY OR AS A MUNIMENT OF TITLE

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 the will/codicil is in fact an original (see form *Check 10 Key Points in the Will* – number 2)
- 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 in the application matches the designation in the will; or
 - an aka/fka designation is used in the application
- Confirm:
 - there is a need for administration
 - there is no need for administration
- E-file the Application
 - Title of document must reflect what you are probating, e.g. “*Application for Probate Will [or Will and First Codicil] and for Issuance of Letters Testamentary*” or “*Application to Probate Will [or Will and First Codicil] as Muniment of Title*” or “*Application to Probate Will and for Letters of Independent Administration with Will Annexed*”...Prayer must reflect the same
 - If a holographic will or codicil is being probated, then the title and prayer also need to include “holographic”*
 - Application includes all requirements set forth in Texas Estates Code §256.052; or
 - Application includes all requirements set forth in Texas Estates Code §257.051
- Tender the original Will (and codicil) 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
- 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*)
- Will is self-proved (*Texas Estates Code §251.104 or §251.1045*); or
- Will is self-proved in accordance with the law of another state or foreign country where the will was executed, as that law existed at the time of the will's execution *Texas Estates Code §256.152(b)*
 - Proof of law of another state or foreign country has been emailed to the Court
- Will is not self-proved
 - 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 Alternate 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

Please include the language that the Applicant is not a convicted felon.
 - Order (with exact title on document – for example “*Order Probating Will [and First Codicil] and Authorizing Letters Testamentary*” or “*Order Admitting Will [and First Codicil] to Probate as Muniment of Title*”)
 - Confirm that both Applicant's and Decedent's names match in the Order as in the Will/Application/Notice posted
 - 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.

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: _____