AN OVERVIEW OF CHECKLISTS FOR UNCONTESTED PROCEEDINGS

At various times, lawyers who practice in The Probate Court have suggested it would be helpful to have checklists for use in preparing uncontested applications for probate of wills (whether for administration or as muniments of title), for determinations of heirship in intestate estates, and for independent administrations by agreement. Court staff have likewise concluded that checklists might help lawyers pursuing uncontested "basic" proceedings assure that pleadings and other documents for the proceedings contain essential and required information and that statutorily mandated procedures are otherwise followed. The objective of the checklists appearing here is to help lawyers follow the required steps from the start and avoid repleading, reposting, and rescheduling of prove-ups that occur when the necessary contents do not appear in pleadings and required actions are missed.

Please note that the checklists are not the "be-all-and-end-all" for the uncontested proceedings they address. The checklists are mere starting points. There may be special aspects to a given case that bear disclosure in pleadings and prove-up that are not in the checklists. Lawyers and their staff members are encouraged to be mindful in their preparation and adjust any forms in their systems to take into account any such special dimensions.

It is possible that more than one checklist may be relevant in a given case. For instance, one may follow the usual steps to get a will admitted to probate, but need to take additional steps for, say, getting an independent administration approved as well. As another example, one may wish to have both a determination of heirship in connection with an intestate estate and appointment of an independent administrator. In both of these examples, two checklists will be appropriate for review. For one reason or another that affects timing of case activities, two separate applications may be submitted, but it may also be the case that the two activities may be pursued simultaneously in one application and prove-up. In so many words, simply because there are two checklists presented here does not mean that two separate applications must be filed and separate prove-ups pursued.

The Probate Court has endeavored to have the checklists presented here reviewed by lawyers who frequently appear in the Court and to obtain their suggestions for improvement. It is hoped that, through the collaborative efforts, the checklists will be truly helpful and facilitate smooth progression in proceedings.

The checklists have been prepared in light of pertinent statutory provisions as the same may have been amended during the 2025 session of the Texas Legislature.

IMPORTANT NOTICE: ONLY LICENSED LAWYERS OR STAFF ACTING UNDER THEIR DIRECTION ARE ELIGIBLE AND AUTHORIZED TO FILE A PROCEEDING TO WHICH THIS CHECKLIST APPLIES

CHECKLIST FOR LAWYERS

UNCONTESTED APPLICATION FOR LETTERS TESTAMENTARY WITH EXECUTOR NAMED IN WILL

This checklist is for lawyers to review in preparing documents and preparing for a prove-up in a case in which a will with a named executor is to be offered for probate and the Court will be requested to appoint the named executor and approve issuance of letters testamentary.

This document does not constitute legal advice and it is not intended to cover every circumstance. A particular case may have special circumstances that require special pleadings and actions. This checklist is intended only as a guide to assist lawyers in seeing that basic requirements set forth in the Tex. Est. Code are satisfied.

Kindly be advised that no attorney appearing in The Probate Court is required to utilize this or other checklists in order to obtain a setting on any matter or otherwise proceed with the case. The checklists are intended only to be an aid to licensed attorneys and in no way affect an attorney's opportunity to obtain a conference with Court staff regarding Court procedures. In addition, The Probate Court reserves the right to change or modify the items on the checklists for the completion of a matter.

1. Application specifies:

_____ Heading of application states what is being sought (e.g., probate of will and issuance of letters testamentary)

_____ The name of the Decedent in the same way as is set forth in the will (if another form of the Decedent's name is needed in order to be consistent with the name in a deed or on a bank account, list that name as an a/k/a)

_____ The name of the named executor in the same way as is set forth in the will (if named executor has changed his/her name since will was drafted, use that name, but also reference the name in the will as an f/k/a)

_____ If named executor is named in will as successor executor, the reason the predecessor named individual is not seeking to be appointed executor (e.g., died, is unable to serve, declines to serve) (file declination as appropriate)

_____ The applicant's (not attorney's) physical address (prepare designation of resident agent if applicant lives out of state)

_____ The last three digits of Decedent's and applicant's social security and driver's license numbers (if the Decedent or applicant does not have a social security or driver's license number, please say so)

_____ Date of Decedent's death

_____ Place of Decedent's death

_____ Facts necessary to show Court has venue

_____ Decedent owned property and probable value thereof

_____ Date of will

_____ Name, state of residence, and physical address (not attorney's address) where service can be had of the executor named in the will

_____ Name of each subscribing witness (if any)

_____ Whether one or more children born to or adopted by Decedent after will was made survived Decedent and, if so, the name of each such child

_____ Whether a marriage of Decedent was ever dissolved after will was made and, if so, when and from whom

_____ Whether state, governmental agency of the state, or charitable organization is named in the will as a devisee

_____ Named executor is not disqualified by law from accepting letters (see Tex. Est. Code § 304.003 and the Proof Addendum Regarding Qualifications on The Probate Court's webpage)

_____ If desired relief is not specified in the will (e.g., independent administration without bond, power of sale), whether beneficiaries agree or are expected to agree to such relief

_____ In the prayer, desired relief is specified (e.g., admission of will to probate, appointment of independent or dependent executor with or without bond, with power of sale)

_____ Footer is inserted at bottom of each page specifying the title of the pleading and the cause number

2. Special conditions requiring additional information in application

_____ If will is offered after the fourth anniversary of Decedent's death, applicant has complied with Tex. Est. Code §§ 258.051-.052 (N.B., The Probate Court will appoint an attorney ad litem for unknown heirs.)

_____ Application identifies devisees and heirs at law

_____ If copy of will is offered for probate, applicant has complied with Tex. Est. Code §§ 256.054 and 258.002 (N.B., The Probate Court will appoint an attorney ad litem for unknown heirs.)

_____ If will is holographic, will is entirely in Decedent's handwriting, is signed by the Decedent and, if applicable, dated, will otherwise qualifies for admission as Decedent's will, and two disinterested individuals have been identified who will testify at prove-up

_____ If Decedent executed one or more codicils, application's heading references codicils and application contains information regarding codicils of the type required for a will

2. Related Proceedings

_____ Upon filing of application, notification to Probate Clerk of any related proceedings

3. Will

_____ Copy of will (and codicils) attached to application

_____ Original of will (and codicils) filed within three days of filing of application

4. Citation and Notice

_____ Citation has been posted and returned before hearing

_____ If application amended one or more times, each amended application has been posted and citation returned before hearing

_____ If will is offered after the fourth anniversary of Decedent's death, applicant has complied with Tex. Est. Code § 258.051

_____ If copy of will offered for probate, applicant has complied with §§ 258.002, 51.054, and 51.103(b)(4)

_____ If citation or notice is required on a potential distributee or heir under the Texas Estates Code and the potential distributee or heir post-deceased Decedent, citation or notice is provided as set forth in Texas Estates Code § 51.057

5. Proposed prove-up documents **(N.B. PROPOSED PROVE-UP DOCUMENTS MUST BE FILED BEFORE A SETTING FOR THE PROVE-UP IS OBTAINED. PROVE-UP DOCUMENTS INCLUDE NOT ONLY THOSE DOCUMENTS LISTED BELOW, BUT ALSO ANY OTHER REQUIRED DOCUMENTS BEFORE WILL CAN BE ADMITTED TO PROBATE, E.G., RETURNS, DESIGNATIONS OF RESIDENT AGENTS [IF APPLICABLE], DECLINATIONS TO SERVE AS EXECUTOR [IF APPLICABLE], WAIVERS, CONSENTS, ANY AGREEMENTS UNDER TEX. EST. CODE CH. 401, ETC.)**

_____ Death Certificate with SSN redacted (if counsel does not wish to efile death certificate, a copy must be emailed or hand delivered to the Court)

_____ Proof of Death and Other Facts (consistent with application and establishing named executor is qualified to serve)

_____ Proof Addendum Regarding Qualifications for named executor (see form on The Probate Court's webpage)

_____ If will is attested, but not self-proved, proofs for subscribing witnesses if available or, if unavailable, documentary proof complying with Tex. Est. Code § 256.153

_____ If codicil is offered with will and proof to obtain admission to probate would differ if the documents were offered for probate separately (e.g., will is self-proved and codicil is holographic), evidence is presented and stated in proofs to support admission of each testamentary document

_____ Each proof of a subscribing witness describes (1) how witness knew Decedent and for how long and (2) witness' familiarity with Decedent's handwriting

_____ If will is holographic and not self-proved, proofs of two witnesses to Decedent's handwriting complying with Tex. Est. Code § 256.154

_____ If will is offered for probate after the fourth anniversary of Decedent's death, proofs containing evidence required under Tex. Est. Code § 256.003(a) to establish applicant not in default in failing to present will for probate on or before the fourth anniversary; proof also providing information regarding heirs who would take if there were no will

_____ If copy of a will is offered, proofs complying with Tex. Est. Code § 256.156, including evidence overcoming presumption of revocation (N.B., a will that would qualify as self-proved if original offered for probate is not self-proved if a copy is offered, but requires proof complying with Tex. Est. Code § 256.153); proof also providing information regarding heirs who would take if there were no will

_____ Simple jurat on proofs ("Sworn to and subscribed by [insert name]" and date) (No "known to me" language)

_____ Proposed order admitting will to probate, appointing named executor, and authorizing issuance of letters testamentary (with findings consistent with application and proofs)

_____ Proposed order identifies the proper pleading before the Court (e.g., First, Second, or Third Amended or Supplemental . . . .)

_____ Proposed order does not contain improper provisions to the effect:

_____ "All allegations in the application are true."

_____ "All necessary proof required for probate of the will has been made."

_____ Proposed order does not list demographic or other facts that are required for application (e.g., date of death, age at death, marriages), but are not required for order admitting will to probate

_____ If will is holographic, a copy, or offered for probate after fourth anniversary, heading of proposed order so states

_____ Proposed order excludes reference to payment of any Attorney Ad Litem

_____ Oath or unsworn declaration of named executor complying with Tex. Est. Code § 305.051 has been prepared for Independent Administrator's signature.

_____ If prove-up is to be before an Associate Judge, Waiver of De Novo Hearing

IMPORTANT NOTICE: ONLY LICENSED LAWYERS OR STAFF ACTING UNDER THEIR DIRECTION ARE ELIGIBLE AND AUTHORIZED TO FILE A PROCEEDING TO WHICH THIS CHECKLIST APPLIES

CHECKLIST FOR LAWYERS

UNCONTESTED TESTATE ESTATE – TEX. EST. CODE § 401.002 INDEPENDENT ADMINISTRATION BY AGREEMENT

This checklist is for lawyers to review in preparing documents and preparing for a prove-up to establish an independent administration by agreement. The checklist is used when there is a will for which an application for probate has or will be filed and (1) the will does not name an executor, (2) the named executor(s) is(are) unavailable to serve, whether because of death, inability/incapacity, or declination, and/or (3) the will does not state that the administration is to be independent.

This checklist does not constitute legal advice and is not intended to cover every circumstance. Please note that Chapter 401 of the Tex. Est. Code covers other instances when the need for an independent administration may arise. A particular case may have special circumstances that require special pleadings and actions. This checklist is designed for review in seeing that basic requirements set forth in the Tex. Est. Code are satisfied.

Kindly be advised that no attorney appearing in The Probate Court is required to utilize this or other checklists in order to obtain a setting on any matter or otherwise proceed with the case. The checklists are intended only to be an aid to licensed attorneys and in no way affect an attorney's opportunity to obtain a conference with Court staff regarding Court procedures. In addition, The Probate Court reserves the right to change or modify the items on the checklists for the completion of a matter.

NOTE: THE PROBATE COURT DOES NOT ALLOW INDEPENDENT ADMINISTRATION OF AN ESTATE IN WHICH A MINOR IS A DISTRIBUTEE. THIS DOCUMENT APPLIES ONLY TO CASES IN WHICH THERE ARE NO MINORS.

1. Application

   Along with the contents required for the prove-up of any will (see Tex. Est. Code § 256.052), application specifies:

   _____ Application's heading states that independent administration is sought by agreement in accordance with Tex. Est. Code Ch. 401

   _____ In the case of a will that names an Executor, but does not state that the administration is to be independent:

_____ **All** Distributees will agree and consent, or have agreed and consented, to the creation of an Independent Administration (see Tex. Est. Code §§ 401.002 and 401.004 for means of establishing Distributee consent); **and**

_____ **All** Distributees will agree and consent, or have agreed and consented, to have the Executor named in the will serve as Independent Executor (see Tex. Est. Code §§ 401.002 and 401.004).

_____ In the case of a will that does not name an Executor or named Executors are deceased, incapacitated, disqualified, or declined to serve (Appointment of Independent Administrator with Will Annexed)

_____ **All** Distributees will agree and consent, or have agreed and consented, to the creation of an Independent Administration (see Tex. Est. Code §§ 401.002 and 401.004); **and**

_____ **All** Distributees will agree, or have agreed, collectively on the designation of a qualified person, firm, or corporation to serve as Independent Administrator (state the name of the designated person. (See Tex. Est. Code §§ 401.002 and 401.004. But see Tex. Est. Code § 254.006 if the will grants authority to an individual to name an administrator.)

_____ If waiver of bond is requested, **all** Distributees will agree and consent, or have agreed and consented, to waiver of the requirement for the Independent Executor or Independent Administrator to be bonded. (See Tex. Est. Code § 401.005).

_____ If power of sale is desired and will does not provide for it, **all** Distributees will agree and consent, or have agreed and consented, to Executor or Administrator's having power of sale. (See Tex. Est. Code §§ 401.006 and 254.006(d)).

_____ In the prayer, desired relief is specified (e.g., admission of will to probate, creation of an independent administration with will annexed, appointment of independent or dependent executor with or without bond, with power of sale)

_____ Footer is inserted at bottom of each page specifying the title of the pleading and the cause number

2. Qualification of Executor/Administrator

_____ The proper inquiries have been made and the designated Independent Executor/Administrator is qualified to serve (see Tex. Est. Code § 304.003)

3. Citation

_____ **All** Distributees have been served with citation and notice of the Application or waivers have been filed before hearing. (Personal service required for Distributees **or** proper waivers for the issuance of citation have been filed **or** the Distributees have entered an appearance in Court [see Tex. Est. Code § 401.004(b)].)

_____ If citation or notice is required on a potential distributee or heir under the Texas Estates Code and the potential distributee or heir post-deceased Decedent, citation or notice is provided as set forth in Texas Estates Code § 51.057

4. Consents

_____ For **each and every** matter described above in which Distributees agree and consent or desire waiver (e.g., waiver of bond), **each and every** Distributee has signed a **sworn** consent specifying such agreement/consent and the same is on file before hearing. (See Tex. Est. Code §§ 401.002, .004, .005, and .006)

5. Posting

_____ General citation has been posted (see Tex. Est. Code § 303.001)

6. Proposed prove-up documents **(N.B. PROPOSED PROVE-UP DOCUMENTS MUST BE FILED BEFORE A SETTING FOR THE PROVE-UP IS OBTAINED. PROVE-UP DOCUMENTS INCLUDE NOT ONLY THOSE DOCUMENTS LISTED BELOW, BUT ALSO ANY OTHER REQUIRED DOCUMENTS BEFORE WILL CAN BE ADMITTED TO PROBATE, E.G., RETURNS, DESIGNATIONS OF RESIDENT AGENTS [IF APPLICABLE], DECLINATIONS TO SERVE AS EXECUTOR [IF APPLICABLE], WAIVERS, CONSENTS, ANY AGREEMENTS UNDER TEX. EST. CODE CH. 401, ETC.)**

_____ Proposed prove-up documents of the kind listed in the checklist for Uncontested Application for Letters Testamentary with Executor Named in Will have been prepared, but adjusted as follows:

_____ Heading of Order admitting will to probate indicates that order is for appointment by agreement of Independent Administrator with Will Annexed.

_____ Order admitting will to probate contains findings listing agreements between Distributees; and

_____ Order contains language appointing Independent Administrator with Will Annexed and contains additional language consistent with any other agreements (e.g., waiver of bond, power of sale)

_____ Proof Addendum Regarding Qualifications for Independent Administrator (see form on The Probate Court's webpage)

_____ If prove-up is to be before an Associate Judge, Waiver of De Novo Hearing

7. Oath or Unsworn Declaration

_____ Oath or unsworn declaration complying with Tex. Est. Code § 305.051 has been prepared for Independent Executor or Independent Administrator's signature

IMPORTANT NOTICE: A SELF-REPRESENTED LITIGANT MAY CAUSE PROBATE OF A WILL AS A MUNIMENT OF TITLE IF THE LITIGANT IS THE SOLE BENEFICIARY. OTHERWISE, ONLY LICENSED LAWYERS OR ACTING UNDER THEIR DIRECTION ARE ELIGIBLE AND AUTHORIZED TO FILE A PROCEEDING TO WHICH THIS CHECKLIST APPLIES

CHECKLIST FOR LAWYERS

UNCONTESTED APPLICATION FOR PROBATE OF WILL AS MUNIMENT OF TITLE

This checklist is for lawyers to review in preparing documents and preparing for a prove-up in a case in which a will is to be offered for probate as a muniment of title. (A self-represented litigant who is authorized to file an application for probate of a will as a muniment of title because he/she is the only beneficiary under the will may benefit from the checklist as well.)

This document does not constitute legal advice and it is not intended to cover every circumstance. A particular case may have special circumstances that require special pleadings and actions. This checklist is intended only as a guide to assist lawyers in seeing that basic requirements set forth in the Texas Estates Code are satisfied.

Kindly be advised that no attorney appearing in The Probate Court is required to utilize this or other checklists in order to obtain a setting on any matter or otherwise proceed with the case. The checklists are intended only to be an aid to licensed attorneys and in no way affect an attorney's opportunity to obtain a conference with Court staff regarding Court procedures. In addition, The Probate Court reserves the right to change or modify the items on the checklists for the completion of a matter.

1. Application specifies:

_____ Heading states that application is for probate of will as muniment of title

_____ The name of the Decedent in the same way as is set forth in the will (if another form of the Decedent's name is needed in order to be consistent with the name in a deed or on a bank account, list that name as an a/k/a)

_____ Applicant's name and Applicant's (not attorney's) physical address (prepare designation of resident agent if applicant lives out of state)

_____ The last three digits of Decedent's and applicant's social security and driver's license numbers (if the Decedent or applicant does not have a social security or driver's license number, please say so)

_____ Date of Decedent's death

_____ Place of Decedent's death

_____ Facts necessary to show Court has venue.

_____ Decedent owned property and probable value thereof

_____ Date of will

_____ Name, state of residence, and physical address where service can be had of the executor named in the will

_____ Name of each subscribing witness (if any)

_____ Whether one or more children born to or adopted by Decedent after will was made survived Decedent and, if so, the name of each such child

_____ Whether a marriage of Decedent was ever dissolved after will was made and, if so, when and from whom

_____ Whether state, governmental agency of the state, or charitable organization is named in the will as a devisee

_____ Whether Decedent's estate does not owe unpaid debt other than any debt secured by a lien on real estate

_____ Decedent did not apply for and receive Medicaid benefits on or after March 1, 2005 (if Decedent received such Medicaid benefits, that Medicaid Estate Recovery Program ["MERP"] certification has been received that Decedent's estate is not subject to MERP claim; MERP letter must be attached)

_____ No amount is or will be owed for child support or spousal support payable by Decedent or Decedent's estate.

_____ Footer is inserted at bottom of each page specifying the title of the pleading and the cause number

2. Related Proceedings

_____ Upon filing of application, notification to Probate Clerk of any related proceedings

3. Special conditions requiring additional information in application

_____ If will is offered after the fourth anniversary of Decedent's death, applicant has complied with Texas Estates Code §§ 258.051-.052. (N.B., The Probate Court will appoint an attorney ad litem for unknown heirs.)

_____ Application identifies devisees and heirs at law

_____ If copy of will is offered for probate, applicant has complied with Texas Estates Code §§ 257.053 and 258.002. (N.B., The Probate Court will appoint an attorney ad litem for unknown heirs.)

_____ If applicant is other than first named executor in will, reason first named executor is not filing application for probate of will as muniment of title

_____ If applicant is other than first named executor and named executor is alive and his/her location is known, proof is provided that notice was given to such individual

_____ If will is holographic, will is entirely in Decedent's handwriting, is signed and, if applicable, dated, will otherwise qualifies for admission as Decedent's will, and two disinterested individuals have been identified who will testify at prove-up

_____ If Decedent executed one or more codicils, application's heading references codicils and application contains information regarding codicils of the type required for a will

4. Will

_____ Copy of will (and codicils) attached to application

_____ Original of will (and codicils) filed within three days of filing of application

5. Citation and Notice

_____ Citation has been posted and returned before hearing

_____ If application amended one or more times, each amended application has been posted and returned before hearing

_____ If will is offered after the fourth anniversary of Decedent's death, applicant has complied with Texas Estates Code § 258.051

_____ If copy of will offered for probate, applicant has complied with Texas Estates Code §§ 258.002, 51.054, 51.103(b)(4)

_____ If citation or notice is required on a potential distributee or heir under the Texas Estates Code and the potential distributee or heir post-deceased Decedent, citation or notice is provided as set forth in Texas Estates Code § 51.057

6. Proposed prove-up documents **(N.B. PROVE-UP DOCUMENTS MUST BE FILED BEFORE A SETTING FOR THE PROVE-UP IS OBTAINED)**

_____ Death Certificate with SSN redacted (if counsel does not wish to efile death certificate, a copy must be emailed or hand delivered to the Court)

_____ Proof of Death and Other Facts complying with Tex. Est. Code § 257.054

_____ Affidavit of No Debts (available on Court's webpage) stating, in addition to the language required by Tex. Est. Code § 257.054(5):

_____ Decedent did not apply for and receive Medicaid benefits on or after March 1, 2005 (if Decedent received such Medicaid benefits, that Medicaid Estate Recovery Program ["MERP"] certification has been received that Decedent's estate is not subject to MERP claim)

_____ No amount is or will be owed for child support or spousal support payable by Decedent or Decedent's estate.

_____ If will is attested, but not self-proved, proofs for subscribing witnesses if available or, if unavailable, documentary proof complying with Tex. Est. Code § 256.153

_____ If codicil is offered with will and proof to obtain admission to probate would differ if the documents were offered for probate separately (e.g., will is self-proved and codicil is holographic), evidence is marshaled and stated in proofs to support admission of each testamentary document

_____ Each proof describes how witness knew Decedent and for how long

_____ If will is holographic and not self-proved, proofs complying with Tex. Est. Code § 256.154

_____ If will is offered for probate after the fourth anniversary of Decedent's death, proofs complying with Tex. Est. Code § 256.053 and containing evidence required under Tex. Est. Code § 256.003(a) to establish applicant not in default in failing to present will for probate on or before the fourth anniversary; proof also providing information regarding heirs who would take if there were no will

_____ If copy of a will is offered, proofs complying with Tex. Est. Code §§ 256.156 and 257.053, including evidence overcoming presumption of revocation. Proof should also provide information regarding heirs who would take if there were no will.

_____ Simple jurat on proofs ("Sworn to and subscribed by [insert name]"and date) (No "known to me" language)

_____ Proposed order admitting will to probate contains findings consistent with application and proofs and containing language set forth in Tex. Est. Code § 257.102(a))

_____ Proposed order identifies the proper pleading before the Court (e.g., First, Second, or Third Amended or Supplemental . . . .)

_____ If will is holographic, a copy, or offered for probate after fourth anniversary, heading of proposed order so states

_____ To facilitate its acceptance as legal authority, proposed order contains language substantially as follows:

> This Order shall constitute sufficient legal authority to all persons owing money to Decedent, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to Decedent's Estate, and to persons purchasing from or otherwise dealing with Decedent's Estate for payment or transfer without liability, to the persons described in the Will to receive the particular asset without administration; and further that the person or persons entitled to property under provisions of the Will shall be entitled to deal with and treat the properties to which they are so entitled in the same manner as if the record title thereof were vested in their names.

_____ Proposed order <u>does</u> not contain improper provisions to the effect:

_____ "All allegations in the application are true."

_____ "All necessary proof required for probate of the will has been made."

_____ Proposed order does not list demographic or other facts that are required for application (e.g., date of death, age at death, whether marriage dissolved), but are not required for order admitting will to probate

_____ If prove-up is to be before an Associate Judge, Waiver of De Novo Hearing

IMPORTANT NOTICE: ONLY LICENSED LAWYERS OR STAFF ACTING UNDER THEIR DIRECTION ARE ELIGIBLE AND AUTHORIZED TO FILE A PROCEEDING TO WHICH THIS CHECKLIST APPLIES

CHECKLIST FOR LAWYERS

UNCONTESTED APPLICATION FOR DETERMINATION OF HEIRSHIP

This checklist is for lawyers to review in preparing documents and preparing for a prove-up in a case in which a determination of heirship is sought.

This document does not constitute legal advice and it is not intended to cover every circumstance. A particular case may have special circumstances that require special pleadings and actions. This checklist is intended only as a guide to assist lawyers in seeing that basic requirements set forth in the Tex. Est. Code are satisfied.

Kindly be advised that no attorney appearing in The Probate Court is required to utilize this or other checklists in order to obtain a setting on any matter or otherwise proceed with the case. The checklists are intended only to be an aid to licensed attorneys and in no way affect an attorney's opportunity to obtain a conference with Court staff regarding Court procedures. In addition, The Probate Court reserves the right to change or modify the items on the checklists for the completion of a matter.

1. Application specifies:

   _____ The name of the Decedent

   _____ Applicant's name, Applicant's (not attorney's) physical address (prepare designation of resident agent if applicant lives out of state), qualification under Tex. Est. Code § 202.002 to commence proceeding, and true interest of applicant in Decedent's estate or trust, as applicable

   _____ Date of Decedent's death

   _____ Place of Decedent's death

   _____ Names and physical addresses where service can be had of decedent's heirs and for each heir:

      _____ Relationship to Decedent

      _____ Whether heir is adult or minor

_____ True fractional (not percentage or decimal) interest of heir in Decedent's estate or trust, as applicable

(A narrative and diagram explaining the family tree are helpful, especially when the family structure is complicated and/or when heirs take from more than one generational level.)

_____ If Decedent was a male, allegations address paternal inheritance requirements set forth in Tex. Est. Code § 201.052

_____ If applicant does not definitely know name or physical address where service can be had of heir, all of the material facts and circumstances of which applicant has knowledge and information that might reasonably tend to show name or physical address where service can be had of the heir

_____ Each of Decedent's marriages and for <u>each</u> such marriage:

_____ Date of marriage

_____ Name of spouse

_____ Date and place of termination if marriage terminated

_____ Facts showing spouse's interest, if any, in Decedent's property

_____ If no administration is necessary, state that there are no debts or need for administration and, in the prayer, request that the Court approve no administration (see Tex. Est. Code §§ 202.006 and 202.205)

_____ If administration is necessary, so state and request order appointing dependent/independent administrator (see specific requirements regarding independent administration contained in checklist for "Uncontested Intestate Estate – Tex. Est. Code § 401.003; Independent Administration by Agreement").

_____ If any information regarding a given marriage is omitted, the reason for omission

_____ Whether Decedent died testate and, if so, disposition made of will

_____ Facts necessary to show Court has venue

_____ General description of all property, as applicable (a) belonging to Decedent's estate that is subject to distribution under a judgment in the proceeding; or (b) held in trust for the benefit of Decedent; and

_____ Explanation for omission from application of any of the information described above

_____ In the prayer, desired relief is specified (e.g., appointment of attorney ad litem for unknown heirs, entry of judgment declaring heirship)

_____ Supporting affidavit containing language required by Tex. Est. Code § 202.007

_____ Footer is inserted at bottom of each page specifying the title of the pleading and the cause number

2. Related Proceedings

_____ Upon filing of application, notification to Probate Clerk of any related proceedings

3. Citation

_____ Citation by qualified delivery method to each heir/distributee complying with Tex. Est. Code §§ 202.051 and 51.052 OR waiver of citation as set forth in Tex. Est. Code §§ 202.055-.056 has occurred before hearing

_____ If citation or notice is required on a potential distributee or heir under the Texas Estates Code and the potential distributee or heir post-deceased Decedent, citation or notice is provided as set forth in Texas Estates Code § 51.057

_____ Citation posted as specified in Tex. Est. Code § 202.053

_____ If application amended one or more times, each amended application has been posted and returned

_____ Citation by publication (both in county in which proceeding to declare heirs is commenced and at Office of Court Administration) to unknown heirs and known heirs whose addresses are unknown has occurred and been returned

_____ If application amended one or more times, citation by publication for each application to unknown heirs and known heirs whose addresses are unknown has occurred and been returned

4. Affidavit of Service

_____ Affidavit or Certificate filed regarding service of citation as required by Tex. Est. Code § 202.057

5. Attorney Ad Litem

_____ Deposit of Ad Litem fee (see local rules and administrative orders)

_____ Attorney Ad Litem appointed to represent unknown heirs and known heirs whose address unknown

_____ Attorney Ad Litem appointed to represent minor and/or otherwise incapacitated heirs

_____ Answer filed by each Attorney Ad Litem

6. Proposed prove-up documents **(N.B. PROPOSED PROVE-UP DOCUMENTS MUST BE FILED BEFORE A SETTING FOR THE PROVE-UP IS OBTAINED)**

_____ Death Certificate with SSN redacted (if counsel does not wish to efile death certificate, a copy must be emailed or hand delivered to the Court)

_____ Affidavit or Certificate required by Tex. Est. Code § 202.057

_____ Proof of Death and Other Facts (with contents consistent with application)

_____ Proofs for signature at prove-up by two disinterested witnesses regarding heirs and family history or otherwise as authorized in Tex. Est. Code § 202.151 (with contents consistent with application)

_____ Each proof describes how witness knew Decedent and for how long

_____ Proofs contain detailed information regarding family and marital history (not the same as proof of death)

_____ Simple jurat on proofs ("Sworn to and subscribed by [insert name]" and date) (No "known to me" language)

_____ Proposed judgment declaring heirship complying with Tex. Est. Code § 202.201 (including both a finding and decretal provisions regarding heirs) and order of no administration if there is to be none

_____ Proposed judgment identifies the proper pleading before the Court (e.g., First, Second, or Third Amended or Supplemental . . . .)

_____ Judgment contains findings regarding appointment and name(s) of AAL(s), answer(s) filed by AAL(s), and services were performed in that capacity

_____ Judgment states heirs' respective fractional (not percentage or decimal) interests

_____ Judgment excludes reference to payment of Attorney Ad Litem

_____ If prove-up is to be before an Associate Judge, Waiver of De Novo Hearing

IMPORTANT NOTICE: ONLY LICENSED LAWYERS OR STAFF ACTING UNDER THEIR DIRECTION ARE ELIGIBLE AND AUTHORIZED TO FILE A PROCEEDING TO WHICH THIS CHECKLIST APPLIES

CHECKLIST FOR LAWYERS

UNCONTESTED INTESTATE ESTATE – TEX. EST. CODE § 401.003 INDEPENDENT ADMINISTRATION BY AGREEMENT

This checklist is for lawyers to review in preparing documents and preparing for a prove-up for the establishment of an independent administration by agreement. The checklist is used when there is in no will, an administration of the estate is needed, and an Application for Determination of Heirship has been or will be filed. The Application may be submitted as a document separate from the Application for Determination of Heirship or combined with it.

This checklist does not constitute legal advice and is not intended to cover every circumstance. Please note that Chapter 401 of the Tex. Est. Code covers other instances when the need for an independent administration may arise. A particular case may have special circumstances that require special pleadings and actions. This checklist is designed for review in seeing that basic requirements set forth in the Tex. Est. Code are satisfied.

Kindly be advised that no attorney appearing in The Probate Court is required to utilize this or other checklists in order to obtain a setting on any matter or otherwise proceed with the case. The checklists are intended only to be an aid to licensed attorneys and in no way affect an attorney's opportunity to obtain a conference with Court staff regarding Court procedures. In addition, The Probate Court reserves the right to change or modify the items on the checklists for the completion of a matter.

NOTE: THE PROBATE COURT DOES NOT ALLOW INDEPENDENT ADMINISTRATION OF AN ESTATE IN WHICH A MINOR IS A DISTRIBUTEE. THIS DOCUMENT APPLIES ONLY TO CASES IN WHICH THERE ARE NO MINORS.

1. Application

   Along with the contents required for determination of heirship (see Tex. Est. Code § 202.005), application specifies:

   _____ Application's heading states that independent administration is sought by agreement

   _____ **All** Distributees will agree and consent, or have agreed and consented, to the creation of an Independent Administration (see Tex. Est. Code §§ 401.003-.004 for means of establishing Distributee consent); **and**

   _____ **All** Distributees will agree, or have agreed, collectively on the designation of a qualified person, firm, or corporation to serve as Independent

Administrator (state the name of the designated person) (see Tex. Est. Code §§ 401.003-.004)

_____ If waiver of bond is requested, **all** Distributees will agree and consent, or have agreed and consented, to waiver of the requirement for the Independent Administrator to be bonded (see Tex. Est. Code § 401.005)

_____ If power of sale is desired, **all** Distributees will agree and consent, or have agreed and consented, to Administrator's having the power of sale (see Tex. Est. Code § 401.006)

_____ In the prayer, desired relief is specified (e.g., creation of dependent or independent administration, appointment of independent or dependent administrator with or without bond, with power of sale [if needed])

_____ Footer is inserted at bottom of each page specifying the title of the pleading and the cause number

2. Qualification of Proposed Administrator:

_____ The proper inquiries have been made and the designated Independent Administrator is qualified to serve. (See Tex. Est. Code § 304.003 and the Proof Addendum Regarding Qualifications on The Probate Court's webpage.)

3. Citation

_____ If application combines request for determination of heirship and independent administration, **all** Distributees have been served with citation and notice of the Application or waivers have been filed. (Personal service required for Distributees **or** waivers of the issuance of citation have been filed **or** the Distributees have entered an appearance in Court [see Tex. Est. Code § 401.004(b)].) (If determination of heirship has been obtained under separate application, only posted notice is required. See #5 below.)

_____ If citation or notice is required on a potential distributee or heir under the Texas Estates Code and the potential distributee or heir post-deceased Decedent, citation or notice has been provided as set forth in Texas Estates Code § 51.057

4. Consents

_____ For **each and every** matter described above in which Distributees agree and consent or desire waiver (e.g., waiver of bond), **each and every**

Distributee has signed a **sworn** consent specifying such agreement/consent (see Tex. Est. Code §§ 401.003-.006)

5. Posting

_____ General citation has been posted (see Tex. Est. Code § 303.001)

6. Proposed prove-up documents **(N.B. PROPOSED PROVE-UP DOCUMENTS MUST BE FILED BEFORE A SETTING FOR THE PROVE-UP IS OBTAINED. PROVE-UP DOCUMENTS INCLUDE NOT ONLY THOSE DOCUMENTS LISTED BELOW, BUT ALSO ANY OTHER REQUIRED DOCUMENTS BEFORE WILL CAN BE ADMITTED TO PROBATE, E.G., RETURNS, DESIGNATIONS OF RESIDENT AGENTS [IF APPLICABLE], WAIVERS, CONSENTS, ANY AGREEMENTS UNDER TEX. EST. CODE CH. 401, ETC.)**

_____ Death Certificate with SSN redacted (if counsel does not wish to efile death certificate, a copy must be emailed or hand delivered to the Court)

_____ If prove-up in connection with determination of heirship has previously occurred and prove-up is for independent administration only (N.B. that Tex. Est. Code 401.003(b) requires that prove-up of heirship precede any appointment of independent administrator):

_____ Heading on Order indicates that it grants Independent Administration and appoints an Independent Administrator by agreement

_____ Order contains language that heirs, being all of the distributees, have previously been determined

_____ Order contains findings listing agreements between Distributees pertaining to independent administration; and

_____ Order contains language appointing Independent Administrator and additional language consistent with any other agreements (e.g., waiver of bond, power of sale)

_____ If prove-up is to be before an Associate Judge, Waiver of De Novo Hearing

_____ If prove-up is for **both** independent administration and determination of heirship **and** two different documents are to be offered for signature, one containing the Judgment Declaring Heirship and one containing the Order for Independent Administration:

_____ Prove-up documents of the kind listed in the checklist for Uncontested Application for Determination of Heirship

_____ Judgment Declaring Heirship is drafted as set forth in the checklist for Uncontested Application for Determination of Heirship

_____ Order for Independent Administration is drafted as set forth above

_____ Heading on Order indicates that it grants Independent Administration and appoints an Independent Administrator by agreement

_____ Order contains findings listing agreements between Distributees pertaining to independent administration; and

_____ Order contains language appointing Independent Administrator and additional language consistent with any other agreements (e.g., waiver of bond, power of sale)

_____ If prove-up is to be before an Associate Judge, Waiver of De Novo Hearing

_____ If prove-up is for both determination of heirship and creation of independent administration **and** the Judgment Declaring Heirship and Order for Independent Administration will be consolidated into one document, Judgment contains both provisions for declaration of heirship (see Uncontested Application for Determination of Heirship) and provisions for independent administration akin to those set forth above when Order for independent administration is sought separately.

7. Oath or Unsworn Declaration

_____ Oath or unsworn declaration complying with Tex. Est. Code § 305.052 has been prepared for Independent Administrator's signature.