



# Probate Independent Administrations

## *Basic Steps*

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This memorandum provides a very general overview of the basic steps required in an independent estate administration and outlines the documents and information that will be needed in order to assist the Executor in administering the estate. Our goal is to make client conferences more efficient and to minimize the amount of legal time (and consequently the legal fee) required to administer the estate. This memorandum is designed to facilitate our discussions concerning the particular actions that the Executor or administrator of the estate will be required to take.

### I. General Description of Basic Steps Required in Estate Administration

In the course of a typical independent estate administration, the following general steps are required. All of the costs mentioned in this discussion are paid out of the estate. Not all matters mentioned in this memorandum will necessarily apply to every estate.

- A. **Probate the Will.** The first step is the probate of the Will. In order to do that, an application must be filed with the Probate Court located in the jurisdiction in which the decedent was domiciled at the time of his or her death. (There is a filing fee of approximately \$255 in Travis County; the fee in other counties may vary.) After a statutory waiting period of at least 10 days, someone personally acquainted with the decedent will be required to testify at a hearing in the Probate Court. In Travis County, these hearings are normally held on Tuesday and Wednesday mornings at a time scheduled in advance by the Probate Court staff. In smaller counties, the hearings are generally scheduled at the convenience of the Applicant and the Probate Court.
- B. **Obtain Letters Testamentary.** Following the probate hearing, the Probate Clerk will issue Letters Testamentary to the individual or corporation designated in the Will as the Executor (after the Executor has signed an Oath of Office). "Letters Testamentary" is the legal term used to describe the one-page document that is issued by the Probate Clerk to the Executor, which evidences that the Executor is officially authorized to act on behalf of the Estate. This document gives the Executor full authority to act on behalf of the estate. Such Letters are used to collect assets of the estate. Banks, insurance companies, savings and loan associations, etc. will also request an original or copy of Letters Testamentary before giving out requested information or recognizing the authority of the Executor to act on behalf of the decedent.
- C. **Publish a Notice to General Creditors.** Every Executor must give a general notice to unsecured creditors within 30 days of his or her appointment. This notice must be published once in the legal notice section of a newspaper of general circulation in the county where the Letters Testamentary were issued. We will prepare and submit the required notice for publication. There is a publisher's fee for publication of the notice which varies depending on the newspaper used. We try to use the paper with the lowest fee. Currently, the law also allows the Executor to elect to give unsecured creditors of the estate a "special notice" by certified or registered mail which directs the creditors to file a claim with the Executor for money owed to them by the decedent within 120 days of receipt of such written notice or face the possibility that their claims might be barred from collection. We will discuss this elective claim procedure with the Executor.
- D. **Give Notice to Secured Creditors.** Within 60 days of the Executor's appointment, he or she must also give notice by certified or registered mail to each secured creditor whose debt is secured by a lien on Texas real property or personal property owned by the estate. We will work with the Executor to prepare and timely mail these required notices to secured creditors, if any.
- E. **Notify Life Insurance Companies.** If it is necessary to make a claim for life insurance death benefits on the decedent's life, the Executor will need to assist the designated beneficiaries of such policies in contacting the life insurance companies and in presenting a formal claim to the companies so that the life insurance proceeds will be paid directly to the designated beneficiaries. Insurance companies typically require a claim form (provided by the insurance company) and a certified death certificate before they will process a claim. Occasionally, the death benefit will be payable directly to the decedent's estate, and the Executor will submit the claim for payment of such benefits directly to the estate.

- F. Apply for Social Security and Veterans Administration Benefits. If the funeral home does not apply for the lump-sum death benefit afforded to certain beneficiaries of the decedent by the Social Security Administration, the Executor should contact the Social Security office to apply for this benefit. If there is a surviving spouse of the decedent who is entitled to survivor's benefits from Social Security, that office will need to be contacted for that purpose as well.

Similarly, certain burial death benefits are available from the Veteran's Administration to veterans of the U.S. Services. A small burial benefit (paid directly to the funeral home) and a small benefit for a cemetery plot (paid to the funeral home as an additional burial benefit if the decedent had already purchased a burial plot) is available to veterans with wartime service. Usually, the funeral home itself requests the benefits that are payable directly to the funeral home. Furthermore, the Veteran's Administration provides a free small headstone, or alternatively a small headstone refund, to veterans with an honorable discharge. There are also survivor's benefits to provide surviving spouses with a certain minimal guaranteed annual income. The Veteran's Administration should be contacted directly to apply for any of these benefits.

- G. **Determine Employee Benefits.** The decedent's employer should be contacted to determine whether unpaid wages, employee death benefits, stock options, or other employment-related benefits are available and to ascertain any options available in receiving these benefits.
- H. **Inspect Safe Deposit Box.** If the decedent had a safe deposit box, it is important to know its location and the names of any persons who are co-signatories on the box. The financial institution where the box is located may want to wait until after an Executor is appointed before releasing items other than the decedent's Will, burial deed, or insurance policies in the box. Texas law provides for the delivery of certain documents held in a safe deposit box to designated persons both with or without a Probate Court Order prior to the probate of the decedent's Will.
- I. **Collect Assets and Information.** Once appointed, the Executor has a duty to take possession, custody or control of the assets of the decedent with certain limited exceptions. Information regarding assets and liabilities of the estate will have to be compiled by the Executor in order to prepare the probate Inventory and any required state and federal death tax returns for the estate. This is the area of the estate administration where the Executor can provide the most assistance. A surviving spouse, if any, or other person closely associated with the decedent will usually be able to provide a list of the various assets the decedent had at the time of his or her death. The discussion beginning on page 7, entitled "Specific Information Needed in Order to Administer an Estate," will help in this area. Once the Executor is appointed, the Executor has legal authority to obtain books, records, documents, and other financial information of the decedent.
- J. **Prepare Inventory, Appraisal, and List of Claims.** The Inventory, Appraisal, and List of Claims must list all of the decedent's probate assets and all claims that are owed by third persons to the estate. (Note that the term "claims" in this context refers not to the decedent's debts or claims the decedent owes to others, but only to amounts that other people owe to the decedent.) The Inventory will not disclose or report non-probate assets (i.e., assets that do not pass under decedent's Will) such as life insurance, IRAs, or retirement benefits paid directly to third parties. The Inventory must categorize the assets as either community property or separate property of the decedent. It must generally be filed with the Probate Court within 90 days of the date that Letters Testamentary are issued, although an extension can be secured if necessary. Once the Inventory, Appraisal, and List of Claims have been approved by the Probate Court, the Executor is, for the most part, "finished" with the "required" Probate Court proceedings. Although the Executor may elect to file a final accounting or affidavit of his or her administration, it is generally not necessary to do so.
- K. **File a Federal Estate Tax Return.** Generally, a federal estate tax return (Form 706) is not required to be filed if the value of the decedent's estate (that is, one half of the community property and all of the decedent's separate property) is less than a designated amount. That amount for decedents dying in either 2007 or 2008 is \$2,000,000.00, with an increase to \$3,500,000 for decedents dying in 2009. If a federal estate tax return is required, the return is due 9 months from the date of death, but the filing of the return can be extended for an additional 6-month period.
- L. **File a Texas Inheritance Tax Return.** A Texas inheritance tax return is not required to be filed unless the decedent's estate is required to file a federal estate tax return [see discussion above]. If required to be filed, the Texas inheritance tax return is also due 9 months from the date of death, but this return can also be extended for an additional 6 month period of time.

- M. **File an Individual Income Tax Return.** If a federal income tax return [Form 1040] has not already been filed by the decedent for the year prior to the year of the decedent's death, an income tax return for that year will have to be filed with respect to income earned by the decedent and his or her spouse (if any). In addition, an income tax return must also be filed for the year of the decedent's death if a return is otherwise required by law to be filed. If the decedent was married, the surviving spouse may generally file a joint return with the Executor of the decedent's estate for both of these tax years.

*Note: GSRJ does not prepare state or federal income tax returns, and it will be necessary for the executor to retain a qualified tax accountant or other income tax return preparer to prepare and file these returns.*

- N. **File an Estate Income Tax Return.** An estate is a separate taxable entity from the decedent and from the distributees of the decedent's estate and must file its own income tax return [Form 1041]. The Executor will be entitled to elect the taxable year of the estate (which may be either a calendar year or fiscal year end), and the estate income tax return will be due 3½ months after the end of the estate's chosen taxable year. There is considerable flexibility regarding income tax planning for the estate and the estate beneficiaries, and therefore, the estate's income tax filings will need to be discussed with the estate's tax accountant in detail.

*Note: As stated above, GSRJ does not prepare state or federal income tax returns, and a qualified tax accountant or other tax return preparer will have to be retained by the executor for this purpose.*

- O. Distribute Estate Assets.

- **The Estate Must Be Solvent Before Distributions Can Be Made.** Although it is not essential that all of the above listed steps be completed before distributing any estate asset to the distributees of the estate, the Executor is required to make certain that sufficient assets are always retained by the estate to assure that all estate debts, taxes, and administration expenses can be paid, particularly all federal income and death taxes. Failure to do so can result in personal liability of the Executor for some of those items. If there are sufficient assets to pay all federal taxes, administration expenses, and other debts as they come due, the Executor may make interim or partial distributions to the estate beneficiaries. However, distributions of estate assets to a beneficiary may have income tax consequences, which should also be discussed in detail with the Executor's tax accountant and attorneys before any distributions are made.
- **Some Distributions Require a Change in Title.** Certain assets, such as real estate, stocks, or automobiles require certain formal documentation to establish that the legal title to the asset has changed. We can assist the Executor in providing this documentation.
- **Setting up an Estate Checking Account is Advisable.** Once the will has been probated, the Executor should close and make appropriate transfers of the decedent's bank and other cash accounts. The Executor must also determine if any of the decedent's depository accounts are so-called "multi-party accounts" which may be contractually payable to third parties under terms of the depository agreement. As discussed below, if a state or federal death tax return will be required, if there are multiple beneficiaries or if testamentary trusts must be funded during the administration of the estate, the Executor should establish an estate checking account to maintain accurate estate records for all cash receipts and disbursements of the estate.

- P. **Pay Estate Debts.** All of the estate's debts should be paid as they become due, including the liability for federal estate taxes and Texas inheritance taxes. If the estate owes federal estate or state inheritance tax, a careful record of all debts owed by the decedent at the date of death should be kept. These debts will be deductible on both the federal estate tax and the Texas inheritance tax returns.

- **Funeral and Administration Expenses Should be Paid First.** Texas law requires that funeral and administration expenses be paid before all other debts. As with all debts and expenses, the Executor should obtain a copy of the statement for the funeral expenses from the funeral home. If an estate or inheritance tax return is required, these expenses may be deducted. The easiest way to keep track of estate expenses is to transfer all cash receipts of the estate into an estate checking account on which the Executor is the only signatory so that all estate expenses can be paid out of that account.
- **No Debts or Taxes Should be Paid from Exempt Assets.** Because some assets are not available to the claims of unsecured creditors (these are referred to as "exempt assets"), it is important to identify which of the estate assets qualify as exempt. Examples of exempt assets are the decedent's homestead, life insurance and annuity proceeds, and retirement accounts. Furthermore, the decedent's Will may contain a specific and detailed provision directing from which assets debts and taxes are to be paid.

- Q. Conduct Ancillary Administrations. If the decedent owned real estate outside of Texas, it may be necessary to have a separate probate proceeding in that other state or states – this is called an “ancillary administration.” It may also be necessary to file a separate death tax return in that state or states.
- R. Make the Final Distribution of Estate Assets. After all of the steps listed above have been satisfied, the Executor will make a final distribution of all of the assets remaining in the estate to the designated estate beneficiaries, including any trusts which are required to be funded by the Executor. If the Will devises assets to trusts for beneficiaries, then the assets will be distributed to the designated Trustee of such trusts for the benefit of the trust beneficiaries.

## II. Specific Information Needed in Order to Administer an Estate

In order to complete the above-described general steps, it is necessary to compile the following items of information.

### A. Real Estate

- **Deed and Mortgage Instruments.** The Executor will need to obtain all deed and mortgage instruments relating to real estate owned by the decedent (including his or her personal residence).
- **Valuation of all Real Estate.** If state and federal death tax returns are required to be filed, it is generally necessary to secure a written appraisal from a qualified real estate broker or appraiser indicating the value of the property. If death tax returns are not required, determination of value by the Executor will generally be sufficient for listing on the Inventory.
- **Mineral Interests.** If the decedent owned any mineral interests, the Executor will need to obtain the mineral deeds, lease agreements, division orders, or other appropriate documentation to identify the particular interest owned by the decedent. The Executor will also need to value each such interest. If the mineral interests have significant value, a written appraisal of those interests is advised. If the decedent was receiving oil and gas royalties from a lessee, these royalties will be suspended when the lessee learns of the decedent's death.

### B. Stocks

- **Copies of Stock Certificates.** Copies of all stock certificates for stock owned and held by the decedent are needed.
- **Original Stock Certificates.** In order to re-register the shares, the Executor will eventually need to obtain the original stock certificates, and we will prepare stock powers and affidavits of domicile for the Executor. In addition, the Executor will send a copy of the Will, recently issued Letters Testamentary, and other requested documents to the stock transfer agent of the company issuing the stock.
- **Non-Certificated Stock.** Some stock may be registered at a brokerage company or financial institution only in book form and not represented by actual stock certificates. Such shares can generally be transferred with assistance of the financial institution or brokerage company where the stock account is maintained. It will also be necessary for the Executor to determine if such stock account was a “multi-party account” payable to a third party pursuant to the agreement governing the stock account.

### C. Cash

- **Bank Accounts.** The Executor should determine each financial institution in which the decedent had a depository account, and request that they send a statement or letter verifying the balance of the account at the date of death. The financial institution's letter or statement should also list the account number, the correct style of the account, and, if the account is interest bearing, the interest accrued on the account up to the date of death. It may be helpful to provide a copy of Letters Testamentary to the financial institution, because such financial institutions often require this authority to release such information. As noted previously, the Executor must determine if any such accounts were “multi-party accounts” which are payable directly to a third party and not to the estate. In some cases, it may be necessary or desirable to ask the Probate Court to provide the Executor with instructions regarding the legal ownership of certain accounts.

- **Certificates of Deposit (CDs).** The Executor will need to obtain a copy of any certificates of deposit, indicating the account number, the style of the account, the principal balance in the account, and the interest rate. If a copy of the CD cannot be obtained, the Executor may request that the financial institution where the funds are deposited to write a letter like the one described above, which discloses the necessary information. As noted above, the Executor must also determine if any CD is subject to a valid multi-party account agreement.

D. Life Insurance

- **List of Policies.** The Executor will need to compile a list of all of the life insurance policies issued on the decedent's life, including for each policy the insurance company, policy number, face amount, and designated beneficiary, if any.
- **Form 712.** The Executor should ask the life insurance agent or company to issue a "Form 712" to the Executor when they send the claim for payment.

E. Jointly Owned Property

- **Joint Tenancy with Right of Survivorship.** The Executor needs to find out whether the decedent owned any property with other people as a "joint tenant with right of survivorship." Except for certain multi-party depository accounts held at financial institutions, this type of ownership designation is not commonly used in Texas.

F. Miscellaneous Property

- **Automobile.** The Executor will need to determine the value of all automobiles in the estate. We can provide the bluebook value of the automobiles.
- **Transferring Title.** In order to transfer title to automobiles, the Executor must take the following documents to one of the branch offices of the Travis County Assessor—Collector of Taxes for each automobile in the estate:
  1. Certificate of title to the automobile
  2. License registration receipts for each automobile
  3. Certified copy of letters testamentary
  4. Release of lien if a lien holder is described on the certificate of title, but the lien has been paid

The following forms will need to be filled out, and the following fee paid, at the Tax Assessor's office:

1. Application for Texas Certificate of Title for a Motor Vehicle—Seller, Donor or Trade's Affidavit
  2. Odometer Disclosure Statement unless automobile is 10 years old or older
  3. There is a transfer fee for each automobile
- **Boats.** The executor will need to determine the value of any boats in the estate. In order to transfer title to the boat, the following forms, which are available from the Texas Parks and Wildlife Office in Austin, will need to be completed:
    1. Application for Texas Certificate of Number—Title for a Motor Boat
    2. Application for Certificate of Title for an Outboard Motor (if the boat has an outboard motor of at least 12 horsepower)

If there is a boat trailer, title to the trailer will not need to be transferred as such, but the license registration receipts for the trailer will need to be taken to the Travis County Tax Office Highway Division at the same time that titles to the automobiles are transferred.

- **Household Furnishings.** If there any particular household furnishings or other personal property that have substantial value, such as works of art, collections, valuable antiques or imported oriental rugs, we will need to list and value those items separately on the probate Inventory and death tax returns. A written appraisal of these items may be required. If none of these special properties exist, we will generally list "miscellaneous household furnishings and personal effects" as one item on the Inventory and death tax returns, and place a value (i.e., resale value) on those items.

- **Personal Effects.** As noted above, if there are any particularly valuable items of jewelry or other personal effects, we will need to appraise those special items and list them separately on the Inventory and death tax returns. If not, we will list personal effects as one item as noted above, and place a resale value on the personal effects. Typically used clothing and used furniture are valued at resale value and not at original cost.
- **Life Insurance on Third Parties.** If the decedent owned an interest in any life insurance on the life of a spouse or other person that has a cash surrender value, the Executor will need to obtain the company name, policy number, and face amount of each policy. In addition, the Executor should request a "Form 712, Part II" from each life insurance company for these policies.
- **Business Interests.** If the decedent owned an interest in a non-publicly traded business venture, including a proprietorship, general partnership, limited partnership, or closely held corporation, we will need a copy of any such business agreements. In particular, we need to examine the organizational documents for the business venture, any buy-sell agreements, stock options, or stock redemption agreements. If death tax returns are required to be filed for the estate, it will be necessary to obtain a written appraisal of the decedent's business interest. Certain income and financial statements from the business will also be needed to document the valuation to attach to the federal estate tax return.

#### G. Transfers During the Decedent's Life

If the decedent made any taxable gifts (i.e., gifts to any individual in excess of \$10,000 per year before 2002, or \$11,000 per year in 2002 and later years) during his or her life, or made any transfers with a retained beneficial interest, we will need the dates, description, and amounts of such gifts. Also copies of all federal gift tax returns [Form 709] filed by the decedent will be needed.

#### H. Trusts and Powers of Appointment

We will need copies of any trust documents under which the decedent possessed any beneficial interests or rights during his or her lifetime. If the decedent possessed any lifetime or testamentary power under any trust created for decedent's benefit to appoint trust assets to himself/herself or to his/her estate, we will need detailed information from the Trustee of such trust indicating the value of the property subject to the decedent's power of appointment.

#### I. Annuities

We need to know whether the decedent was receiving an annuity or any distributions from a retirement plan during his or her lifetime, or whether there any benefits payable to a beneficiary under any retirement plan by reason of such beneficiary surviving the decedent.

#### J. Debts and Mortgages

- **Debts.** Outstanding debts that the decedent owed at the date of death are deductible on the state and federal death tax returns and therefore should be documented as accurately as possible. The Executor should immediately begin gathering this data so that, later in the administration of the estate, reconstruction of these records will not be so burdensome. Receipts and records should be retained as proof for any such deduction. Full details must be disclosed, including the name of the payee, face and unpaid balance, date and term of note, interest rate, and the date to which interest was paid prior to death.
- **Mortgages.** Obligations secured by mortgages and other liens upon property owned by the decedent are itemized as deductions on the tax return as well. The name and address of the mortgagee, payee, or obligee, and the date and term of the mortgage, note, or other agreement under which the indebtedness is established should be secured for documentation on the tax return. We must also include the face amount, the unpaid balance, the rate of interest, and the date to which the interest was paid prior to decedent's death.



K. Prior Transfers to Decedent

If the decedent received any bequest or inheritance from another person's estate within 10 years preceding his or her death, we will need:

1. A copy of the federal estate tax return [Form 706] for each person's estate from which the decedent received a bequest. Copies of such returns can be requested from the IRS, if not otherwise available;
2. Information indicating the nature of the property received, including its value at the time of receipt; and
3. Information detailing any transformations of the inherited property (i.e., sales and purchases).

L. Miscellaneous Documents

- **Income Tax Returns.** It would be helpful for us to have a copy of the decedent's federal income tax returns [Form 1040] for the past two years.
- **Gift Tax Returns.** We will need to have a copy of any gift tax returns [Form 709] that were filed during the decedent's lifetime.
- **Trust Instruments.** If the decedent created any trusts during his or her lifetime, we will need copies of all such trust agreements.
- **Financial Statement.** If a relatively recent financial statement has been prepared for the decedent, a copy of that statement would be very helpful to us.

M. Final Income Tax Return and Estate Income Tax Returns

As stated previously, GSRJ does not prepare individual or fiduciary income tax returns. We suggest that the decedent's tax accountant file the federal income tax returns for the decedent as he or she has done in the past. In addition, the accountant may also be familiar with estate accountings and fiduciary income tax returns, and can assist the Executor in filing an estate income tax return (if one is required). We will assume that a qualified tax accountant selected by the Executor will be responsible for preparation and timely filing of all income tax returns due for the decedent or for the decedent's estate.