

Texas Probate



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Texas Probate Procedures

- Types of Administration
 - Independent has very limited court control
 - Dependent is subject to full court control
 - No letters testamentary or letters of administration can be issued if decedent has been dead for more than 4 years (general rule with limited exception of the need to collect funds owing to estate)



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Admit Will to Probate with No Personal Representative

- Muniment of Title Proceeding Requirements:
 - no debts other than those secured by real property
 - if not brought within 4 years of death must show good cause for delay in probating Will and applicant must not be in default
 - there is no administration necessary
 - If beneficiaries cannot be ascertained from Will a declaratory judgment proceeding will also be needed

Judicial Determination of Heirship

- Typically used where there is no Will and heirs must be determined under laws of descent and distribution
- An Attorney Ad Litem will be appointed by the Probate court to protect the unknown and undetermined heirs—Howard Hughes Case
- If a minor heir, a guardianship for minor's property may result



Small Estate Affidavit

- No Will
- \$75,000 limit on value of decedent's property exclusive of homestead and exempt property
- Assets of decedent must exceed liabilities exclusive of assets and liabilities relating to homestead and exempt property
- No petition for appointment of a personal representative is pending
- 30 days have elapsed since decedent's death



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Independent Administration

- Independent Executor appointed under Will or Independent Administrator appointed by Court
- Provides statutory notice to beneficiaries and heirs
- Publishes notice to creditors, provides notice to secured creditors, and may provide notice to unsecured creditors
- Files Inventory and List of Claims or Affidavit in Lieu of Inventory



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Independent Administration (cont.)

- Pays valid debts owed by Estate
- Collects money owed to Estate
- Files final income tax return of decedent and resolves any outstanding income tax liability
- Files a federal estate tax return if required and pays estate tax if owed

Independent Administration (cont.)

- Personally liable for taxes if distributes estate property and taxes are not paid
- May make partial distributions depending on situation
- Once debts and tax liabilities are resolved make final distribution to beneficiaries, including funding any trusts created under Will

Affidavit of Heirship

- An informal procedure used to clear title to real property without court involvement
- If a person dies without a Will, and title to his or her property does not expressly include joint tenancy with survivorship language, then issues may arise as to which persons now have title and in what percentages
- Such property is often referred to as “heirship property.” It is essentially unsellable as it is,



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Affidavit of Heirship (cont.)

and a title company will not insure the title until heirship issues are addressed and resolved

- This is usually accomplished by either a probate proceeding in county court, resulting in appointment of a personal representative of the estate and ultimately a judgment determining heirship (see Estates Code § 202); or by the less formal and expensive method of utilizing an affidavit of heirship (see Estates Code § 203.002) followed by a “curative deed” or “consolidation deed” (our terms) signed by the surviving heirs in favor of a new sole owner.



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Affidavit of Heirship (cont.)

- Even if the decedent had a will, affidavit of heirship may be used. Reason? A last will and testament is not self-executing as to bequests of real property. It is merely a statement of the decedent's intent. The Will must be acted upon in some manner, either by means of a formal probate proceeding (filed within four years of death) or by means of a recorded affidavit of heirship, the result of which is to declare as a matter of record the identity and interests of the heirs.



Affidavit of Heirship (cont.)

- The purpose of the affidavit in an intestacy case (no will) is to describe family history and circumstances and identify the likely heirs. Texas Estates Code Section 203.001 states in part:
 - (a) A court shall receive in a proceeding to declare heirship or a suit involving title to property a statement of facts concerning the family history, genealogy, marital status, or the identity of the heirs of a decedent as prima facie evidence of the facts contained in the statement if:



Affidavit of Heirship (cont.)

(1) the statement is contained in:

(A) an affidavit or other instrument legally executed and acknowledged or sworn to before, and certified by, an officer authorized to take acknowledgements or oaths, as applicable;
or

Affidavit of Heirship (cont.)

- (B) a judgment of a court of record; and
- (2) the affidavit or instrument containing the statement has been of record for five years or more in the deed records of a county in this state in which the property is located at the time the suit involving title to the property is commenced, or in the deed records of a county in this state in which the decedent was domiciled or had a fixed place of residence at the time of the decedent's death.



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Affidavit of Heirship (cont.)

- The affidavit must be signed under oath by a person familiar with facts relating to family circumstances and history, which is usually but not always a family member. Although the statute does not expressly require that the affidavit be attested to by disinterested witnesses (i.e., persons who have no personal or financial stake in the outcome), title



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Affidavit of Heirship (cont.)

companies routinely require the notarized signatures of two disinterested persons notarized—three is prudent.

- After execution, the affidavit should be filed in the real property records of the county where the property is located.
- Also used to transfer title to motor vehicles if there is no Will. Texas Department of Motor Vehicles has a form on its website.



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Texas Guardianship Law

- Guardian of Estate
- Guardian of Person
- Guardian for minor child
- Limited Guardianship

Guardianship Subject to Court Control

- Annual Accounts
- Investment Restrictions
- Bonding Requirements
- Application and Order to take action
- Cannot use minor's property to discharge support obligation
- Very expensive way to have property managed
- Ongoing attorney's fees



QUESTIONS?

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