

JUDGE AMANDA MATZKE
COUNTY COURT AT LAW NUMBER 1
BRAZOS COUNTY, TEXAS
Brazos County Courthouse
Telephone: (979) 361-4250 FAX: (979) 361-4519

FOR: _____

A Guide for the Texas Independent Administrator

CAUSE NO. _____-PC

Introduction:

This Court has appointed you to a position of great trust and confidence. It is a position that carries with it a considerable amount of responsibility. Your duties are not easy; however, you will find them less difficult if you are careful to heed the advice of your attorney. You should contact your attorney at any time you have questions concerning the handling of this estate. You should never attempt to handle the affairs of this estate without the guidance of your attorney. The following guide has been prepared by my office as a supplement to the information given to you by your attorney. It is only a supplement and not a substitute for his or her advice.

Administration:

The administration of an estate involves (1) gathering the assets of the person who died, (2) paying his or her debts, and (3) distributing the remaining assets to those entitled to them under the terms of the order declaring heirship.

Your Qualifications:

You have been appointed to act on behalf of this estate. However, you are not qualified to act for this estate until you have taken the oath of office and filed any required bond. Your oath, if not taken at the hearing, should be taken no later than 20 days from the date the Court signed the order appointing you as Independent Administrator. Generally, a bond is not required for an Independent Administrator. (A bond is an insurance policy that insures you meet your responsibilities under the Will and the Probate Code.) In the event a bond is required, the Court must approve the bond no later than 20 days from the date of the order appointing you. Your bond, if required, will have to be executed by an authorized corporate surety, and the amount of the bond will be that specified in the order making the appointment.

Letters of Administration:

You may order your letters of administration after you have taken the oath and executed the bond, if a bond is required. These letters will serve as the evidence of your appointment when dealing with third persons concerning the affairs of the estate. These letters may be ordered from the County Clerk's Office, (979) 361-4128.

Notice to Creditors:

Within 30 days after you have qualified (taken the oath and given any required bond),

you must publish your notice to creditors in some newspaper printed in this county advising all creditors of your appointment. Within two months after your qualification, you must mail a registered or certified letter, return receipt requested, to each secured creditor of the estate. A secured creditor is one who holds a claim secured by a deed of trust, a mortgage, or some other lien upon property. You must file proof of the above two notices with the clerk's office. Although the Texas Probate Code does not require that you send notice to any other type of creditor, you may want to do so; your attorney should advise you accordingly.

Inventory or Affidavit in Lieu of Inventory:

Within 90 days after your qualification, you must submit to the Court either a complete inventory of the estate or – if allowable – an affidavit in lieu of inventory.

If the decedent died before September 1, 2011, you must file an inventory. The inventory must be a complete inventory of the estate, with an attached list of claims owing to the estate (but not debts owed by the estate). The inventory must contain a list of all the real estate located within the State of Texas and a list of all personal property, regardless of where that property is located. In compiling the inventory, you must distinguish between separate and community property belonging to the estate. Your attorney will advise you as to the legal meaning of these two property classifications. The inventory must be verified by a sworn affidavit. If the order appointing you requires appraisers for the estate, then the appraisers must also sign a sworn affidavit to be attached to the inventory. You, your attorney, and any co-executor must all sign the inventory, and the attorney must include a signature block with his or her State Bar number. If at any time during the pendency of this estate you discover additional property, you must file a supplemental inventory reflecting the newly acquired assets.

If the decedent died on or after September 1, 2011, you must file either an inventory as described above or an affidavit in lieu of inventory, if appropriate. You may file an affidavit in lieu of an inventory only if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions. If you are eligible to file an affidavit in lieu of inventory and choose to do so, the affidavit must: State that all debts, except for secured debts, taxes, and administration expenses, are paid. State that all beneficiaries have received a verified, full, and detailed inventory – as described above. Be filed with the clerk within the prescribed time.

Taxes:

For sizeable estates, you as the Administrator must file U.S. Estate Tax Return, Form 706. The value of the gross estate at the date of the decedent's death governs the liability for filing the U.S. Estate Tax Return. Like the Texas Inheritance Tax Return, the return is due nine months after the date of the decedent's death, unless an extension of time for filing has been granted. Consult your attorney to determine the size of the gross estate and your obligations to either taxing authority. Both the state inheritance tax and the federal estate tax must be paid before any estate may be closed.

Your Powers and Duties:

Upon qualification, it is your duty to take possession of all property belonging to the decedent. Any cash that you receive should be maintained in a bank account separate from your personal funds. You should never co-mingle property belonging to the estate

with your personal assets. You must use ordinary diligence in the collection of all claims and debts owed to the estate. If necessary, you may employ an attorney to recover property belonging to the decedent. Your powers to administer the estate are set out in the Texas Probate Code. Generally, all powers afforded to a dependent administrator under the Texas Probate Code are also available to an Independent Administrator without the necessity of court approval, including the sale of real estate under Probate Code Section 341. This Court will not ratify or approve an Independent Administrator's actions.

Claims:

Claims of creditors against the estate may be presented to you at any time while the estate remains open. You may allow any claim you believe to be a just debt of the estate that is properly presented to you and authenticated, provided such claim is not barred by an applicable statute of limitation. Once a claim is presented to you, you should either allow or disallow it. If you reject a claim, the creditor will have to file suit to secure payment of the claim.

Closing the Estate:

You are ready to close the estate after (1) you have gathered the assets of the estate, (2) the inventory has been approved, and (3) you have paid the debts and taxes. You should begin the procedure to close the estate only upon the advice of your attorney. You may then deliver the assets of the estate to the heirs who are entitled to receive the property as dictated by the order declaring heirship. This distribution will conclude your responsibility as the Independent Administrator of this estate.