

## Overview of Executor's Duties

I have prepared this as an overview of the process and I am available anytime a question arises. An "executor" is the person named in the Will who is in charge of administering the estate of a person dying with a valid Will. A title of "executrix" is simply the female description. By agreeing to serve as executor, you are agreeing to carry out the last wishes of a person who had the utmost confidence in you ("the decedent"). It is a position of great trust, but it also comes with great responsibilities.

At the moment of death, a legal estate is formed holding all assets of the decedent. This estate represents all the affairs of the deceased. That could include legal assets and/or liabilities of the deceased. This could include claims that the estate has against others (i.e., wrongful death, monies owed the decedent by third parties).

The assets of the estate are referred to as the "probate assets of the estate". These assets are attempting to be transferred to the beneficiaries under the Will. But before these assets can legally move to the beneficiaries, any creditors of the estate must be addressed.

Contrast this to what is referred to as "non-probate assets" of an estate. These are assets held and owned by the decedent at death but are being transferred to another at death outside the decedent's Will (most common a contract principle). The most common are "payable on death" accounts with a financial institution and/or life insurance policies.

Since Texas applies the concept of community property, those rules must be applied to your situation to determine legally what is in the estate of the decedent and thus subject to proper administration.

### FOUR BASIC STEPS

- 1) **Locate the Will**
- 2) **Offer the Will for Probate**
- 3) **Qualify as Executor**
- 4) **Administer the Estate**

#### **1. Locate the Will**

The executor's first task in probating any Will is to, of course, locate the original Will. If the executor does not already have possession of the original Will, he or she should check in the following places:

**Decedent's Financial Papers.** Usually, testators will store their Will in the same location as other important papers such as life insurance policies, birth certificates, and other financial documents. A thorough search of the decedent's home and safe deposit box should be undertaken immediately after the decedent's death.

**Safe Deposit Boxes.** If the decedent's financial institution refuses to grant access to the safe deposit box, then a judge of a court having probate jurisdiction of a decedent's estate may order the institution to permit a court representative named in the order to examine a decedent's documents or safe deposit box if it is shown to the judge that: (1) the financial institution may possess or control the documents or that the financial institution leased the safe deposit box to the decedent; and (2) the documents or safe deposit box may contain the decedent's Will, a deed to a burial plot in which the decedent is to be buried, or an insurance policy issued in the decedent's name and payable to a beneficiary named in the policy.

**County Clerk.** A Will may also be deposited by the person making it with the county clerk of the county of the testator's residence. The county clerk is required to keep an index of all wills so deposited with the clerk. In order to retrieve a deposited Will from the clerk, a family member must submit an affidavit to the clerk stating that the testator of any Will deposited with the clerk has died. Upon learning of the testator's death, the clerk shall notify by registered mail the person or persons named on the endorsement of the wrapper of the will that the will is on deposit in his office. Upon request, the clerk shall deliver the will to such person or persons.

**Decedent's Attorney.** Also, some estate planners store their clients' Wills for them as an effort to gain business after the decedent's death. You may want check with the decedent's attorney to see if the attorney retained the original Will. Please remember that an executor named in the Will is not obligated to use the decedent's attorney when probating the decedent's Will.

**Uncooperative Family Member.** There are things that can be done if an uncooperative person refuses to surrender the Will to the executor or the probate court clerk. Upon receiving notice of the death of a testator, any person having custody of the decedent's Will must deliver it to the executor named in the will or the clerk of the court which has jurisdiction of the estate. On sworn written complaint that a person has the Will of any decedent, or any papers belonging to the estate of a decedent, the probate court can force that person to appear before the judge and show cause why the person should not deliver such Will to the court for probate, or why he should not deliver such papers to the executor.

## **2. Offer the Will for Probate**

**A Will Must be Admitted to Probate to Have Legal Effect.** A written, signed, witnessed and notarized document entitled "Last Will and Testament" is still just a piece of paper until a court with jurisdiction admits the document to probate as *the* Last Will and Testament of the decedent. Furthermore, an "executor" named in a Will has no authority until he or she is appointed as the executor by the same court. Therefore, the Will must be offered for probate before any legitimate action regarding the Will can occur.

**Who Can Offer a Will for Probate?** An executor named in a Will, or any interested person, may make application to the court of a proper county for an order admitting the Will to probate and for the appointment of the executor named in the will. "Interested persons" means heirs, devisees, spouses, creditors, or any others having a property right in, or claim against, the estate being administered, and anyone interested in the welfare of a minor or incompetent ward.

**Deadlines for Probate.** There are deadlines for offering a Will for probate. According to statute, no will shall be admitted to probate after the lapse of four years from the death of the decedent unless it be shown that the party applying for such probate was not in default in failing to present the same for probate within the four years.

**Act Quickly.** Furthermore, the assets of the estate seem to disappear with the passage of time. Family members and other persons often help themselves to the assets of the estate in total disregard of the Will. Often it becomes impossible to retrieve these items.

### **3. Qualify as Executor**

Once the Will is admitted to probate and the court appoints an executor of the estate, the executor must qualify as executor by posting any required bond and by taking the executor's Oath. Many professionally drafted Wills waive the bond requirement for the executor of the estate. If neither the Will nor the court waive the bond requirement, then the executor will have to post a corporate surety bond in an amount equal to the value of the liquid assets of the estate. All executors must also take an oath to "well and truly" perform all of the duties of the executor of the estate. This oath must be made before a notary public or the court clerk.

Once the bond and oath are filed, the court clerk will issue "Letters Testamentary" to the court-appointed executor. These Letters Testamentary are the keys to unlocking the decedent's financial accounts as they allow the executor to conduct all business on behalf of the estate.

### **4. Administer the Estate**

Only after the court-appointed executor qualifies and is issued Letters Testamentary may the executor legally administer the estate.

**Collect Estate Assets.** The executor of the estate has the duty to immediately collect all personal property, records, and other business papers of the estate (including bank accounts, certificates of deposit, property in safe- deposit boxes, etc.) and place them under his or her control. It is very important to understand that an executor has a fiduciary duty to safeguard the estate's assets for the benefit of the heirs of the estate until such time as the assets can be finally distributed. For example, the executor must verify that all real property and automobiles belonging to the estate are covered by insurance.

If the executor is also an heir of the estate, it is important to realize that the property belonging to the estate does not belong to the executor until all claims and expenses against the estate have been settled. Therefore, an executor must establish a separate account for the estate's financial assets and hold any cash in the separate account until the estate is ready for distribution. An executor should never commingle the estate's assets with his own at any time.

**File an Inventory of the Estate's Assets.** The executor must also file an Inventory, Appraisal and List of Claims (the "Inventory") with the Probate Court. The Inventory includes complete descriptions of all of the assets of the estate with accurate valuations of the property. The Inventory must be filed within 90 days after the issuance of Letters.

**Notify Creditors.** The executor also has a duty to notify certain creditors of the estate. Within one month from being appointed, the executor must publish a "Notice to Creditors" of the estate in a local newspaper. Within two months from appointment, the executor must also send notice to any secured creditors of the estate via certified mail.

The executor is also permitted to send notice to the unsecured creditors of the estate. This permissive notice demands the creditor to submit its claim against the estate within four months or the claim is barred.

**Act on Claims.** The executor must act on all creditors' claims that are submitted. Once a claim is submitted, the executor must either allow or disallow the claim. After the executor has received all of the claims of the estate, the executor must pay the allowed creditors' claims in accordance with the priority established in the Texas Probate Code. That priority generally is as follows:

**Class 1: Funeral expenses and expenses of last sickness for a reasonable amount to be approved by the court, not to exceed a total of \$15,000.00, with any excess to be classified and paid as other unsecured claims.**

**Class 2: Expenses of administration and expenses incurred in the preservation, safekeeping, and management of the estate.**

**Class 3: Secured claims for money, including tax liens, so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien.**

**Class 4: Claims related to child support.**

**Class 5: Claims for taxes, penalties, and interest due.**

**Class 6: Claims for the cost of confinement.**

**Class 7: Claims for repayment of medical assistance payments made by the state to or for the benefit of the decedent.**

**Class 8: All other claims.**

**Pay Taxes.** There are also various tax filings that *may* have to be made on behalf of the estate and the decedent. Usually a Certified Public Accountant or Tax Attorney can assess the tax ramifications and prepare any filings. As both an Attorney and CPA—I can take care of this or you may use someone of your choice.

**Distribute the Estate.** Only after the payment of all known claims and taxes may the executor distribute the remaining assets to the beneficiaries of the estate.

**Handling a Contest to a Will Admitted to Probate.** After a Will has been admitted to probate, any interested person may institute suit to contest the validity thereof, within two years after such Will shall have been admitted to probate, and not afterward, except that any interested person may institute suit to cancel a Will for forgery or other fraud within two years after the discovery of such forgery or fraud, and not afterward. Also, incapacitated persons (for example, minor children) shall have two years after the removal of their disabilities within which to institute such contest. Again, an "interested person" means heirs, devisees, spouses, creditors, or any others having a property right in, or claim against, the estate being administered, and anyone interested in the welfare of a minor or incompetent ward.

**Remember this is simply an overview.** Every situation is unique. Please do not hesitate to contact me as questions arise. Your concerns are mine. Any confusion can be explained and you have my commitment to work extra hard to remove any.

**Adjust your estate plan.** Now is the time to adjust your estate plan. Your Will likely needs to be reviewed and adjusted based on the changes. I would be happy to assist you in that regard.

I am personally deeply sorry for your loss. As a lawyer, I want to fix everything for my clients. I do realize some things I cannot fix. I can offer you the very best professional assistance with compassion and the heart of a servant to help you get through this. With God's grace and mercy you will.

Warmest regards,

A handwritten signature in black ink, appearing to read 'D. R. Harrington', written in a cursive style.

Deron R. Harrington  
Attorney at Law and CPA