

# Probate Handbook for the Personal Representative of the Estate

A Personal Representative (sometimes referred to as [Independent] Executor or Administrator) has certain responsibilities and obligations. By signing these Instructions as provided below, you acknowledge these responsibilities and obligations, and agree to abide by these Instructions and the applicable law in all circumstances, unless the Court, by written order, informs you otherwise.

## 1. GENERAL DUTIES AS PERSONAL REPRESENTATIVE

***Gathering Assets.*** Your duties as Personal Representative involve the collection, management, preservation and investment of the estate assets, payment of the proper creditor claims, and distribution of the estate to those beneficiaries as designated by the Will or as required by law. As Personal Representative you are acting in a fiduciary capacity. Fiduciaries are obliged to exercise the utmost good faith, and to act in each transaction for the *best interest of the estate*.

- You must keep accurate books and records.
- You must collect all of the assets of the estate and you must value those assets.
- You should review all of the decedent's documents to determine the extent of the assets. NEVER commingle estate assets with your assets or others' assets.
- You are required to preserve the assets of the estate which includes among other things securing and insuring the assets.
- You cannot engage in any transactions which will result in a conflict of interest between you, the estate and the beneficiaries of the estate.

***Payment of Debts.*** You are required to make sure that the decedent's debts are paid. With prior Court approval, you may also be required to sell assets if there are insufficient liquid assets to pay the debts and expenses of the estate. Also, certain assets or items will require special attention. Examples of these assets include without limitation, closely-held business interests, real estate, oil and gas interests, ongoing litigation, ongoing court proceedings.

Finally, your administrative powers are governed by the terms of the Will (if there is one) and state law. It is impossible to foresee every situation which may arise in the administration of an estate. As questions arise, please contact our office.

You ***are not required*** to expend your own funds to carry out any of the duties or obligations imposed upon you as Personal Representative. It is vital that your financial affairs and those of the estate remain separate.

## **2. COURT SUPERVISION**

Depending upon the type of probate proceeding the Personal Representative may have to seek court approval BEFORE taking any action. You should consult with your attorney if you have any questions as to whether you are required to seek Court approval prior to taking a specific action.

## **3. COMMUNICATIONS**

It is a good practice to communicate on a regular basis with the beneficiaries as to the status of the estate proceedings, the estate accountings and any investments decisions. If there is a Co-Personal Representative, you should have regular meetings with them and neither of you should act alone.

## **4. FIDUCIARY NOTICE**

You should complete and file IRS Form 56. IRS Form 56 should be filed with the Internal Revenue Service. This form will tell the IRS where to send tax information regarding the estate.

## **5. TAX IDENTIFICATION NUMBER**

You must obtain an IRS Form SS-4 “*Application for Employer Identification Number*” and file it with the Internal Revenue Service to obtain a tax identification number (TIN) for the estate. The TIN should be given to banks, title companies, brokerage houses and others from which the estate will receive income. Banks will require a TIN in order to open an estate bank account.

## **6. ESTATE BANK ACCOUNT**

You should open a checking account as soon as you receive the estate’s TIN. You should deposit all estate income and you should pay all debts of the estate, generally after Court approval, from this account. Whenever the checking account contains a substantial amount (usually more than \$20,000), you should invest the proceeds in interest-bearing accounts. If liquid assets such as cash, stocks and bonds are substantial, you should consult with a professional investment advisor regarding investments on behalf of the estate. The Will and state law will determine what investments you are authorized to make as Personal Representative on behalf of the estate.

## **7. ESTATE TAX RETURN**

Unless the gross estate is less than the exempt amount (\$5,490,000 as of January 1, 2017), a U.S. Estate Tax Return (Form 706) must be filed within nine (9) months of the date of death.

All federal estate taxes owing, if any, must be paid within nine (9) months. You may want to engage the services of an accountant or tax attorney to file the U.S. Estate Tax Return with the IRS and with the State of Texas, if necessary. In addition, if the decedent owned real property in another state, you need to check with the authorities in that state to determine if a return is required. If a return is required and you do not timely file the U.S. Estate Tax Return, penalties and interest will be imposed by the Internal Revenue Service.

## **8. INDIVIDUAL INCOME TAX RETURN OF DECEDENT**

You may need to prepare and file the final year's income tax return for the decedent. You will also need to investigate whether all income tax returns for prior years have been filed and taxes paid. You can make a request of the IRS, at your local IRS office, for a report on the decedent's filing status. If required returns have not been filed, you must have them prepared and file them with the IRS.

## **9. ESTATE INCOME TAX RETURN**

The estate is a separate taxable entity for all income received after the date of death, which may require that you prepare and file an estate income tax return (Form 1041). You need to keep accurate books and records, both for this probate proceeding and for the filing of such returns. If you do not timely file any required income tax returns for an estate of a decedent, then penalties and interest will be imposed. After two years the estate must file estimated income tax payments.

## **10. APPRAISALS**

In general, estate assets may need to be appraised, both for tax purposes as well as for the purpose of distributing assets from the estate. You must obtain an appraisal for real property or any other assets whose value is not readily known. Appraisals of real property should be done by licensed appraisers. Other assets such as bank accounts, certificates of deposit, or marketable securities which can be easily valued at the date of death do not need to be appraised.

## **11. INVENTORY AND ACCOUNTINGS OF ESTATE**

An inventory of the estate's assets must be filed with the Court within ninety (90) days of the date of the order appointing you as Personal Representative. You must locate all assets and determine the value of those assets in order to complete such inventory. In addition, Texas law states that an accounting may be required to be submitted to the Court within 15 (fifteen) months from appointment. Thereafter, annual accountings of the estate to the Court for the

Court's approval are required. Receipts and expenditures must be allocated between principal and income.

## **12. ANCILLARY PROBATE**

If you determine that the decedent owned real property in another state, it may be necessary to commence what is called an "ancillary probate proceeding." You should consult with your attorney to decide if an ancillary proceeding is necessary.

## **13. DEBTS/EXPENSES/CREDITORS**

All amounts paid for the decedent's medical, funeral, burial expenses and all debts due but unpaid as of the date of death (*i.e.*, utilities, charge accounts, etc.) must be accounted for.

All creditors of the decedent must be given notice of his/her death. Creditors who are readily ascertainable must be notified in writing by certified mail [RRR] while other creditors are entitled to receive notice by means of publication in the local newspaper. Creditor claims may require Court approval. You should consult with your attorney prior to paying either creditor claims or administrative expenses.

The law in Texas distinguishes between administrative expenses of the estate and creditor claims. You may not reimburse yourself or others for administrative expenses other than funeral expenses and expenses of last illness without prior approval of the Court. Creditor claims are generally pre-death expenses and administrative expenses are generally post-death expenses.

Monthly payment for debts of the decedent which are secured by assets of the estate may be paid without seeking prior Court approval if payment is necessary to preserve those assets for future sale or distribution and if those assets have some value beyond the debt owed.

For example, in most instances mortgages for real property should be kept current to avoid foreclosure by the lender. Similarly, loans secured by automobiles, RV's or other vehicles should be paid unless and until it is determined that the asset has no value to the estate and the vehicle can be returned to the lender without loss to the estate. In addition, small claims (less than \$500) may be paid without seeking Court approval in certain circumstances. Once again, it is impossible to foresee every situation, and you should consult with your attorney before you take any action which affects an asset of the estate.

## **14. INSOLVENT ESTATES**

In some estates the claims filed by creditors may be greater than the value of the assets of the estate. In such instances, the law sets forth an order of priority for the payment of the claims. For example, administrative costs and fees and spousal or family allowances, if any, may take precedence over other claims. Similarly, taxes may have a priority claim over other creditors. It is possible in some circumstances for you, as Personal Representative, to have personal liability for such claims if you fail to follow legal requirements. You should consult an attorney or tax advisor in such circumstances.

## **15. MAINTAIN AND SECURE ASSETS**

You also have an obligation to maintain the value of all assets of the estate. For this reason, utilities (lights, heat, sewer, etc.) for a residence or commercial property should be paid. In addition, any real property must be secured and maintained. Any insurance in place should be continued or if none exists, you should obtain appropriate insurance coverage. Any vehicles should be properly stored and secured. They cannot be driven or used in any other manner. Personal property items such as jewelry, coins, guns, antique furniture or other items of value should be stored and secured from theft or loss. Insurance coverage may also be appropriate for these assets.

## **16. CANCELLATION OF CERTAIN ITEMS**

All credit cards and charge accounts in the decedent's name should be cancelled and you should keep copies of all correspondence. Frequently, final Social Security checks and some pension checks must be returned (or refunded) with deceased written across the checks. You should notify the U.S. Postal Service that all mail for the decedent should be delivered to your address. The Post Office may require a copy of the Court order appointing you and the Letters issued to you.

## **17. PAYMENT OF FEES AND COSTS**

Attorneys' fees and costs may require court approval. If you engage an attorney, you should insist on a written engagement letter which sets forth the billing rate of the attorney, an estimate of fees, and how costs will be billed. You may receive commissions for serving as a Personal Representative pursuant to Texas statute or as provided under the Will. You may also waive such commissions. If compensation is provided under the Will, you are required to decide within sixty (60) days after appointment between statutory commissions and the compensation provided by the Will. Any commissions accepted by you must be approved by the Court prior to payment and will be taxed as income to you under the Internal Revenue Code.

## **18. DILIGENCE**

You are required to complete the probate process within a reasonable time. If no federal estate tax return is required, you must close the estate within six (6) months, or report to Court why this has not occurred. If a federal estate tax return is required, you must close the estate within fifteen (15) months or report to the Court why the estate has not been closed.

## **19. DISTRIBUTING THE ESTATE/DISCHARGE**

For any estates required to file an Estate Tax Return, final distribution of the estate must await the filing of that return and the payment of any tax due and receipt of confirmation of acceptance of the taxes due by the IRS. Assuming this task has been accomplished, or when no return is required, a final account and a request for distribution must be filed with the Court. Normally, payment of creditors must await this order, but there are instances when creditors may be paid earlier, with Court approval. Any final distribution should be accompanied by a receipt and voucher which the creditor or beneficiary should sign and return to you.

After you have filed all tax returns, paid all appropriate creditors and distributed the estate in accordance with the distribution order signed by the Court, it is in your interest to go back to the Court in a final step to seek the Court's Order of Discharge. This gives you a formal release and discharge from all liability that might be incurred later, and exonerates you from further liability.

### **ACKNOWLEDGMENT**

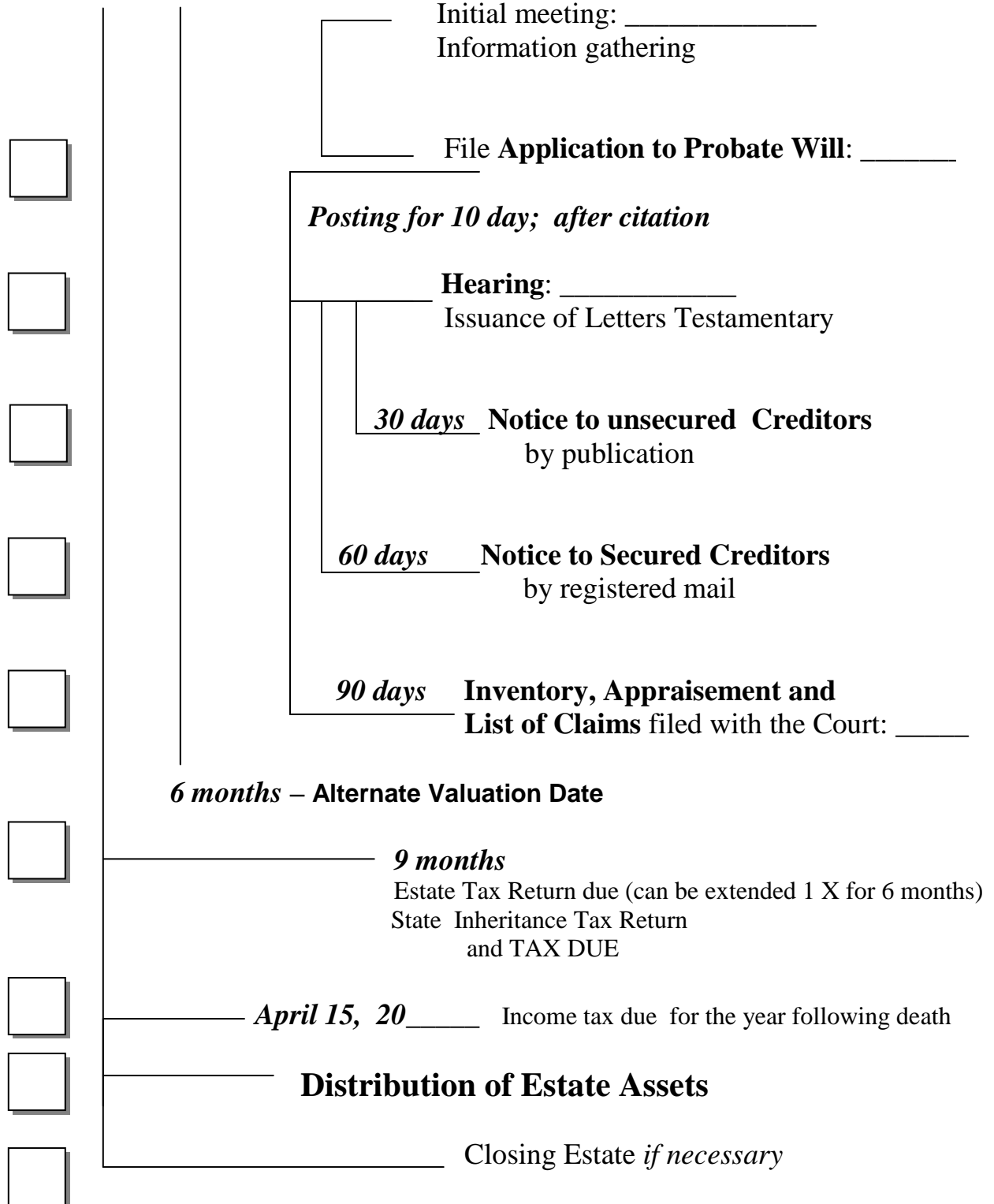
I have read the foregoing and received a copy of these Instructions.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

# Probate Timeline – Independent Administration

Date of Death of Decedent: \_\_\_\_\_





## PERSONAL REPRESENTATIVE'S TO DO LIST

- \_\_\_1. Locate the Will or any other dispositive, corporate documents of the deceased.
- \_\_\_2. Inventory any safety deposit box.
- \_\_\_3. Locate all property owned individually or otherwise by the Decedent on the date of death. Secure and keep safe all property (change locks on houses, storage units etc if applicable); maintain adequate insurance coverage; keep records of the assets.
- \_\_\_4. Provide Thrash Law Firm with 5 certified copy(s) of the Decedent's Death Certificate.
- \_\_\_5. Sign Disclosures for accounts and securities in order to transfer some or all of these assets. Please provide us with information on the accounts, including name of financial institution, account number, and date of death balance, so that we can then prepare Disclosures.
- \_\_\_6. Collect any proceeds of life insurance on the life of the Decedent; check with pensions and other retirement payments re death benefits; check with credit cards regarding death benefits.
- \_\_\_7. Have mail forwarded; complete change of address forms at the Post Office.
- \_\_\_8. Inspect all documents and personal papers of the Decedent and retain anything pertinent to tax reporting, location and value of assets, debts or obligations of or to the Decedent, or any other items of significance to administering the final affairs of the Decedent.
- \_\_\_9. Prepare and file returns and pay taxes due (or claim any refund) for both State and Federal income taxes for that tax year in which the Decedent died and any prior years, if applicable.
- \_\_\_10. Contact Appraiser and request appraisal on any real estate (value as of date of death).
- \_\_\_11. Contact Appraiser and request appraisal on any unique personal property (value as of date of death).

## **GATHERING THE ASSETS**

- Real Property  
(Common Address, Legal Description, Owner & Value)
- Mobile Homes, Automobiles, Trucks, Boats, Trailers, Campers  
(Year, Make, VIN Number, Owner & Value)
- Bank & Credit Union Accounts — Savings, Checking, Certificate of Deposit  
(Account Number, Institution, Owner & Value)
- Investment Accounts — Mutual Funds, Money Market, Stocks, Bonds, US Savings Bonds  
(Account Number, Institution, Owner & Value)
- Valuable Personal Property — Jewelry, Collections, Antiques, Household Furniture, Crops
- Business Interests — Corporations, Partnerships, Proprietorship  
(Company Name & Address, Percentage Interest, Value)
- Life Insurance  
(Insurance Company, Policy Number, Beneficiary, Death Benefit)
- Annuities, IRA, 401K, SEP  
(Institution, Account Number, Beneficiary, Value)
- Safe Deposit Box  
(Institution, Box Number, Contents)
- Pension, Back Pay, Veteran or Employee Benefits, Social Security or Retirement Fund
- Cash
- Other — Monies Owed Decedent, Property Out of State, etc.

## **DEBTS**

- Last Illness Expenses
- Funeral & Cemetery Expenses
- Mortgages, Real Estate Taxes, Utilities
- Insurance
- Unpaid Income Taxes
- Credit Cards

