

BEXAR COUNTY PROBATE COURT NO. 3

Judge Barbie Scharf-Zeldes
Bexar County Courthouse
100 Dolorosa, Ste. 1.20
San Antonio, Texas 78205



CHECKLIST FOR PROBATING A COPY OF A WILL OR CODICIL

Procedures: In addition to meeting all criteria to probate an original Will, the following must be included when probating a Copy of a Will or Codicil. **Once the checklist is fully completed and all documents e-filed, the applicant's attorney will contact the Court's paralegal to review and approve. Upon approval, the attorney may set this matter for hearing with the Court Coordinator.**

A FIAT is required. Please use the template on the Probate Court 3 website or you can use the proposed FIAT given by the Court's Court Coordinator once a setting date is selected. The case will be reviewed by a staff attorney after it has been set for hearing. If there are concerns with the case, the staff attorney will make every effort to contact the filing attorney in a timely fashion, but if the issue is not resolved prior to the hearing, the case will have to be re-set.

Please cross through actions that do not apply

Note: This court uses the following explanation of "disinterested witness" for purposes of determining heirs: A disinterested individual is a person who has no interest in the estate, no interest in the outcome of the proceeding, and is familiar with the decedent's family history. In the event a disinterested witness is simply not available, please state the circumstances in a Motion/Order.

Case Number _____ Estate of _____

Checklist for Probating a Copy of a Will or Codicil

- ☐ Application:
 - ☐ Title of document must reflect what you are probating, e.g. *Application to Probate Copy of a Will*. Prayer must reflect the same.
 - ☐ Application should include the requirements under *Texas Estates Code §256.052* and:
 - (1) the reason the Will cannot be produced;
 - (2) the contents of the Will, as far as known; and
 - (3) the name and address, if known, whether the person is an adult or minor, and the relationship to the testator, if any, of
 - (A) each devisee;
 - (B) each person who would inherit as an heir of the testator in the absence of a valid will; and
 - (C) in the case of partial intestacy, each heir of the testator. (*Tex. Est. Code §256.054*)

- The Application must prove, in addition to the proof required by *Texas Estates Code §256.151*, the testator did not revoke the will (*Tex. Est. Code §256.152*).
- All names (Decedent, Applicant(s), etc.) need to match exactly in all documents filed and remain consistently listed and especially match the name(s) addressed within the Will.
- An original codicil does not revive a copy of a will, unless the original codicil specifically republishes the will of which there is only a copy. The codicil must include the specific language, otherwise must probate the will as a copy.
- Tender a separate physical copy of the Will offered for probate to the Clerk's office.
- If the Applicant resides outside of the State of Texas, the applicant must designate a Resident Agent. *Tex. Est. Code §304.003*.
- Posting with correct title - Please ensure that both the Decedent's and the Applicant's names match EXACTLY in the Application/Notice/Order/Proof of Death/Oath as they are stated in the Will. If the Decedent and/or Applicant use(d) other names, name variations, middle initial v. entire middle name, etc. we ask that you include all applicable variations in your application using an AKA, FKA, or NKA. Applications and notices that do not include the Decedent's and Applicant's names exactly as they are stated in the Will will be dropped until an amended application and new notice are e-filed and posted.
- Citation issued by the Clerk to all parties interested in the estate (devisees under the Will and heirs-at-law as if died intestate and if residents of Texas and addresses known). Make sure the posting states that a COPY of a Will is being offered for probate.
- Citation to heirs-at-law by personal service (*Tex. Est. Code §258.002*).
 - Service of the citation may be made by publication if: (1) the heirs are not residents of this state; (2) the names or addresses of the heirs are unknown; or (3) the heirs are transient persons. If you have exhausted all other options and cannot reach the heirs, BEFORE doing a citation by publication, you must file a Motion for Alternative Service and explain the methods you have used to try to locate the heir but have been unsuccessful. E-file a proposed order with your motion. Once the order is signed, you may then contact the Clerk for a citation by publication. If citation by publication is granted, it should state the name(s) of all applicable heirs, if known.
- In lieu of sending citation by personal service, beneficiaries and heirs may sign sworn Waivers of Citation with explicit acknowledgement of their right to contest the probate of a copy of a Will and they are waiving such right.
- If probating a copy of a codicil only, the beneficiaries of the Original Will tendered are served with personal citation or beneficiaries must execute an affidavit waiving citation specifically stating they have received notice that a copy of a codicil is being probated.
- Affidavit to provide testimony from a credible witness that the Copy of Will produced is an exact duplicate, who read either the original Will, or a copy of the Will, heard the Will read, or can identify a copy of the Will. *Tex. Est. Code §256.156(b)(2)*.

- **Statement of Facts or Affidavits of Heirship Regarding Identity of Heirs signed by 2 Disinterested Witnesses** (They will need to appear at the hearing.). The affiants must identify all heirs of the estate. Per Tex. Est. Code §203.002, state whether decedent died with or without leaving a written will. E-file signed/notarized Statements of Fact/Affidavits of Heirship prior to requesting a hearing. The Statements of Fact/Affidavits of Heirship must explain how the affiant knew the Decedent.

If the decedent was pre-deceased by an heir or an heir of decedent has subsequently died, proof regarding that heir shall be provided as follows:

1. Your application should identify the deceased heir, if the deceased heir's estate has been probated, the name of any appointed executor/administrator, the cause number and the county where filed. If it's an out-of-county heirship, please include a copy of the heirship judgment.
2. All heirs of a predeceased heir will need to sign waivers and consents, or the heirs must be served with notice per the notice requirements as listed above.
3. If an heir post-deceased (survived the Decedent by 120 hours per Tex. Est. Code §121.052) then citation or notice must comply with Tex. Est. Code §51.057.
 - a. If notice by citation by publication is required under Tex. Est. Code §51.057, you must file a motion describing the circumstances requiring the citation by publication and a proposed order. Please let the staff attorneys know when the motion and order are accepted.
4. The two disinterested witnesses or a Court approved genealogist report must identify the pre-deceased and/or post-deceased heir, the relationship to the decedent, and the deceased heir's date of death.
5. It's the Court's preference that an obituary or death certificate of the deceased heir be provided to the Court prior to setting. If neither are obtainable, please contact the staff attorneys for further guidance.

- E-file signed and notarized Proof of Death prior to requesting hearing date. Proof of Death states copy of Will offered for probate with no objection. If not self-proved, add there is proof by subscribing witness to Will or witnesses to the handwriting of a subscribing witness or the testator. Proof of Death states why probating copy, what diligence was done to locate original Will, the testator did not revoke the Will, and any additional proof required under *Texas Estates Code* §256.153 and §256.156 (see additional proof requirements under *Texas Estates Code* §256.154 for holographic Will).

- E-File blank Oath.

- E-file proposed Order prior to requesting hearing date that includes proper title and language on probating a Copy of a Will, and include finding that Applicant overcame presumption that Original Will was revoked. *Tex. Est. Code* §256.203, requires that the Court shall make a finding on the contents of the Will in the Order. As a practical matter, the most straightforward way to do this may be to attach a file-stamped (by the Clerk) copy of the Will to the Order, reference it as Exhibit A and incorporate it, including the number of pages of the Will, the date it was signed, and the date it was filed stamped by the Probate Clerk.

- Email an Original or Copy of the Death Certificate to both staff attorneys and paralegal.

- ☐ Attorney has provided their client with the Court Instructions pertaining to their application, as well as any applicable guides. (Forms are located on the PC3 Website).
- ☐ Anyone who signs a Proof of Death, Affidavit from a Credible Witness, Proof by Subscribing Witness, Proof of Decedent's Handwriting and Signature or Statement of Facts must appear at the hearing to testify.

Attorney Verification

*I, _____, confirm that all required documents for the hearing I am requesting in Cause No. _____ **-PC3-** _____ are correct and have been e-filed and accepted by the Bexar County Probate Clerk's office.*

Signed: _____ Date: _____