

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 WILL MORE THAN FOUR YEARS AFTER DEATH (AS EXCEPTION UNDER § 301.002(b) OR AS MUNIMENT OF TITLE)

Procedures: In addition to meeting all criteria to probate an original Will, the following must be included when probating a Will after Four Years. **Once the checklist is fully completed, 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. 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 Probate of Will After 4 Years

- ☐ Application:
 - ☐ Title of document must reflect what you are probating, e.g. *Application to Probate Will as a Muniment of Title More than Four Years After Death*. Please ensure that both the Decedent's and the Applicant's names match EXACTLY in the Application/Notice/Order 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.
 - 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.

- Application should include the requirements under *Texas Estates Code §256.052* and:
 - (1) the reason why Applicant is not in default for probating the Will within four years;
 - (2) 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 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. *Texas Estates Code §256.054*.
- Application states date of death and affirmatively states more than four years passed since date of death, and states how person offering Will is not in default for probating after 4 years.
 - If the applicant is requesting Letters, they must also state how they meet the exception under *Texas Estates Code §301.002(b)*. For example, “Bank of America is holding funds in an account and will not release them until Letters are issued).”
- If the Application is for Muniment, affirm Decedent **did not** apply for and receive Medicaid benefits after March 1, 2005.
 - Received Medicaid benefits, need proof of release of MERP claim
 - Affirm Decedent died before age 55, or
 - Spouse is still alive, or
 - There is a child under 21 years of age.
- Any interested person may file a muniment; however, if the applicant is not the original independent executor named in the Will, the original independent executor and any successor independent executor, who is ahead of your applicant, must be noticed or sign a Waiver & Declination because they have priority to serve as applicant (*Tex. Est. Code §256.051*). In this case, if the executor or successor executor is unwilling/unable to sign a Waiver of Notice & Declination, they will have to be served notice by personal service (*Tex. Est. Code §258.051*) issued by the sheriff or constable if the recipient is located in Texas (*Tex. Est. Code §51.051*).
- Tender the original Will offered probate to the Clerk. If no original is available, please tender a valid copy, and follow the checklist instructions for probating a COPY of a Will.
- 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 efiled and posted.
- Citation returned.
- File **Proof of Personal Process** to each of the testator’s heirs or Affidavit Waiving Process and Waiving Objection. Please note that waivers are not for beneficiaries – they are for heirs. If waivers are not signed, notice must be given to heirs by personal service per *Texas Estates Code §258.051*, and if they are located in Texas, served by Constable per *Texas Estates Code §51.051*.

_____ Waiver of Process _____ Waiver of Objection

- If an heir is a transient person, has an unknown address, or is not a resident of this state, Applicant may file a Motion/Order requesting alternative service and describing all the ways Applicant has tried but has been unsuccessful locating the heir. If citation by publication is granted, it should state the name(s) of applicable heirs, if known. See *Tex. Est. Code* §258.051, §258.052 and §258.101. Also see *Tex. R. Civ. P.* §109, §109a.
- If another Will is accepted into probate, notice to beneficiaries of admitted Will or signed by Executor/Administrator of that estate into this case.
- **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.
 - For Letters Testamentary – In addition to the language required under *Tex. Est. Code* §301.151, please include the language that the Applicant is not a convicted felon, as well as that the applicant is not in default for probating after 4 years and why they are not in default. If not self-proved, add that there is proof by subscribing witness to Will or witnesses to the handwriting of a subscribing witness or the testator.
 - For Muniment of Title – Please include language that no administration is necessary, that there are no debts of the estate, and that the decedent did not receive Medicaid on or after March 1, 2005 (or if they did, that Medicaid is not planning to recover, and include Proof

from MERP as an attachment), as well as that the applicant is not in default for probating after 4 years and why they are not in default. If not self-proved, add that there is proof by subscribing witness to Will or witnesses to the handwriting of a subscribing witness or the testator

- ☐ E-file Proposed Order prior to requesting hearing date that includes proper title and language on Probating Will as More Than 4 Years After Death.
 - ☐ If you are requesting Letters, please include language that specifically limits the power of the Executor/Administrator to recovery of the property described in the Application. For example, "IT IS FURTHER ORDERED, that the Independent Executor's power shall be limited to recovery of Decedent's funds held by Bank of America."
- ☐ 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: _____