

Dependent Administrator Handbook

A Guide to the Duties & Responsibilities of
the Dependent Administrator



Montgomery County Court at Law Number 2

The Honorable Claudia L. Laird Presiding

*Many thanks to Judge Hermann and the Travis County
Probate Court from whom this document is derived.*

Dear Administrator,

You have been appointed by this court as Dependent Administrator of an estate. With this appointment comes enormous responsibility to the heirs of the estate and to the court.

All actions and expenditures require Court approval prior to undertaking them. Your attorney can help you and keep you in compliance with the law.

Since we cannot anticipate or cover every possible situation that may arise, please understand that this handbook is not meant to be a definitive guide or a substitute for your attorney's advice. If you have any questions not addressed in this book, please contact your attorney for further information.

Additionally, you should have an attorney file all pleadings, applications for authorization, inventory, and annual reports on your behalf. Please remember that you have a fiduciary duty to the heirs and must administer the estate in a timely manner so that the estate may be closed and that the remaining assets are distributed to the heirs.

Thank you for your service.

Sincerely,

Judge Claudia L. Laird

You have just been appointed as the dependent administrator of your loved one's estate by Montgomery County Court at Law No. 2. As Judge of the Court, I greatly appreciate your service in this capacity. This guide is intended to serve as an introduction to your duties and responsibilities as administrator. You should use this guide as a summary of the duties of a dependent administrator and not as a legal guide. Any specific questions about your particular duties should be addressed to your attorney. If my staff can be of further assistance to you, please contact my office.

I. QUALIFYING TO SERVE

- a. OATH: Once the Court has signed the Order Appointing Dependent Administrator, you must sign and file an Oath of Office with the County Clerk within twenty (20) days of the Order appointing you. In this Oath you swear or affirm that you will faithfully discharge your duties as dependent administrator. It must be sworn before a Notary or in open court. (TEC 305.051)

- b. BOND: As Administrator, you will be required by the Order to submit a bond. This bond must be filed within twenty (20) days of the date of the Order to complete your qualification. Once the Judge approves the bond

and you have filed your Oath, you have qualified to serve as the Dependent Administrator. (TEC §303.101, §305.106, §305.151, §305.152, §305.154, and §305.156)

- c. FAILURE TO QUALIFY: If you fail to file either your Oath or your Bond, if necessary, within twenty (20) days of the date of the Order Appointing Dependent Administrator your appointment as Administrator may be revoked for failure to qualify. If you fail to qualify, the Court may send you a Show Cause Order which designates a time for you to appear before the Court and explain why you have failed to qualify. If you have failed to qualify and do not appear in Court on the date given in the Show Cause Order, your appointment as Administrator may be revoked.

II. OBTAINING LETTERS OF ADMINISTRATION

When you qualify by taking your oath and posting your bond, you may request Letters of Administration from the Clerk. The Letters of Administration certify that the Administrator has duly qualified for the position of Administrator.

III. PROPERTY OF THE ESTATE

- a. COLLECT PROPERTY: Upon qualification, it is your duty to take possession of all property belonging to the

decedent. This includes personal property, records, title papers, and other business records. Any cash you receive should be kept in a bank account in the name of the decedent's estate. You must never commingle or combine your funds with those of the estate. 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. You are bound by the terms of the Will with respect to your specific action, if there is a Will. (TEC §351.101 & §351.102)

- b. DUTY: You have a duty to preserve, protect, and insure (if insurable) all non-cash assets of the estate.

IV. NOTICE TO CREDITORS

- a. NEWSPAPER PUBLICATION: Within one (1) month of your qualification, you must publish in a local newspaper a notice to creditors of the estate.
- b. REGISTERED OR CERTIFIED MAIL: Within two (2) months of qualification, you must mail notices by registered or certified mail, return receipt requested, to all known creditors, including real estate lien creditors.
Your attorney should prepare these notices.

- c. PROOF: Proof of the publication and mailed notices must be filed with the County Clerk.

V. WHAT TO FILE WITH THE COUNTY CLERK'S OFFICE

- a. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS: Unless an Affidavit in Lieu of Inventory is timely filed, an Inventory *must* be filed with the County Clerk within ninety (90) days of your qualification or an Application for extension of time must be filed. If no extension request, affidavit or inventory is filed the Court's policy is to only accept an inventory.
- b. PURPOSE: The purpose of the inventory, appraisal, and list of claims is to identify the assets of the estate for the heirs and to protect estate creditors and the estate's heirs by identifying those assets that are available to satisfy creditor claims and assets that are to be distributed to the heirs.
- c. WHAT TO INCLUDE: All personal property that the decedent owned, real property in Texas, and any funds owed to the decedent at the time of death. All items in the inventory must be clearly identified as community property or separate property. For community property the total value of the community property and the estate portion should be clearly shown on the inventory. The inventory must have a sworn affidavit

stating the truth and completeness of the inventory.
TEC § 309.051.

VI. IS THE ESTATE TAXABLE?

- a. THE FORM 1040: If it was not already filed by the Decedent, a form 1040 personal income tax return is due on or before April 15, for the year prior to death. Additionally, a tax return for the year in which the death occurred will be due on or before the following April 15. Your attorney should advise and assist you with this.

- b. IF THE ESTATE IS TAXABLE: If the Estate is taxable, within nine (9) months of the date of death of the decedent, you should file State and Federal Estate and Inheritance Tax Returns, or seek an extension of time to file from the appropriate agency, not the court. Within the same time, all taxes due must be paid. All taxes must be paid before the estate can be closed.

VII. HEIRSHIP DETERMINATION

- a. IF THERE IS NO WILL: The Administrator **must** file an *Application to Determine Heirship*. The court must appoint an attorney *ad litem* to represent any unknown heirs or heirs suffering from disabilities. Two disinterested witnesses will be required to appear in court at a hearing to determine heirship, and the Court will sign a Judgment declaring the identity of the heirs.

VIII. DISBURSEMENTS/DISTRIBUTIONS/SALES/CHANGES IN VALUE/TRANSFERS/PAYMENTS/PURCHASES

- a. ADVANCE COURT AUTHORIZATION: You must make an application and obtain an order *in advance*, in order to sell, lease, transfer, or otherwise dispose of any assets of the estate, including any personal items. You must make an application for and obtain an order of Court authorizing any expenditure or investment of estate funds *before* the expenditure is made and before any funds are invested. Failure to do so may result in you being required to reimburse the estate from your personal funds.
- b. RECORD: You should maintain accurate records of all transactions. You must keep and file records (receipts, checks, etc.) with the Annual and Final Accountings. The court will require you to submit records with the accountings.

IX. ANNUAL ACCOUNT

- a. ANNUAL ACCOUNT: If the estate remains open a year or more, the Administrator must file Annual Accounts, which must be reviewed and approved by the Court. The period covered by the Annual Account begins on the date of qualification and receipt of letters and ends

with the day before your date of qualification in the following year.

- b. WHAT TO INCLUDE: The Court's website includes a form to use for annual accountings. The form includes reference to all items necessary to complete the annual accountings. The Annual Account should describe all receipts and disbursements of funds and distribution of property and must be accompanied by verifications of the amounts on deposit in banks and receipts for all expenditures and records of all transactions. Be sure to obtain authorization by Court order to distribute any property of the Estate to anyone and, if so ordered by the Court, obtain a receipt to file with the Annual Accounts or Final Account.
- c. WHEN TO FILE AN ANNUAL ACCOUNT: You ***must*** file an Annual Account with the Court not later than the 60th day after the first anniversary of the date of qualification/receipt of letters. If the estate extends beyond twelve (12) months, an Annual Account must be filed every twelve (12) months.
- d. FAILURE TO FILE ANNUAL ACCOUNT: If you fail to file an Annual Account, your letters can be revoked and you

can be removed and a court appointed successor named.

X. CLOSING THE ESTATE

- a. WHEN TO CLOSE: Every administration ***must*** be closed within three (3) years of the granting of letters of administration unless good cause is shown for its continuance. (TEC §361.052(6)(A)) The estate can be closed once all the debts are paid in full or to the extent assets will permit payment and when no further necessity exists for the continuation of the administration. Prior to closing, there must be a determination of the identities of the heirs if there is no will.

- b. FINAL ACCOUNT: A Final Account should be filed when the estate is ready to be closed. Your Final Account must include the following.
 - i. All receipts and vouchers of the estate since the last approved Annual Account.
 - ii. The property belonging to the estate which has come into the hands of the executor or administrator.
 - iii. The disposition that has been made of such property.
 - iv. The debts that have been paid.
 - v. The debts and expenses, if any, still owing by the estate.
 - vi. The property of the estate, if any, still remaining on hand.
 - vii. The persons entitled to receive such estate, their relationship to the decedent, and their residence, if

known, and whether adults or minors, and, if minors, the names of their guardians, if any.

- viii. All advancements or payments that have been made, if any, by the administrator from such estate.
 - ix. The tax returns due that have been filed and the taxes due and owing that have been paid and a complete account of the amount of taxes, the date the taxes were paid, and the governmental entity to which the taxes were paid.
 - x. If any tax return due to be filed or any taxes due to be paid are delinquent on the filing of the account, a description of the delinquency and the reasons for the delinquency.
 - xi. A statement that the Administrator has paid all required bond premiums.
- c. NOTICE OF FINAL ACCOUNT: Each heir or beneficiary must receive notice by certified mail, return receipt requested, and you must include a copy of the final account in the letter. (TEC §362.005(B)(2)).
- d. DISTRIBUTING THE ESTATE: You will need to seek an order of the Court authorizing distribution of the estate assets in accordance with the Will, if there is a Will, or consistent with the Declaration of Heirship.
- e. APPLICATION TO CLOSE THE ESTATE: Once all of the assets of the estate are distributed, you should apply to the court for an Order releasing you and discharging the

sureties on the bond. (TEC §362.013) An application and order must be filed to close the estate and release the administrator's bond. You must attach a receipt and release from the persons identified in the Will as being entitled to receive assets or the heirs.