



**CLAUDIA L. LAIRD**

JUDGE PRESIDING

MONTGOMERY COUNTY COURT AT LAW NO. 2

**INDEPENDENT EXECUTOR OR ADMINISTRATOR**

**INTRODUCTION:**

This Court has appointed you to a position of great trust and confidence. It is a position that carries with it a considerable amount of responsibility. Your duties are not easy; however, you will find them less difficult if you are careful to heed the advice of your attorney. You should contact your attorney at any time you have questions concerning the handling of this estate. You should never attempt to handle the affairs of this estate without the guidance of your attorney. The following guide has been prepared as a supplement to the information given to you by your attorney. It is only a supplement and not a substitute for his or her advice.

**ADMINISTRATION:**

The administration of an estate involves (1) gathering the assets of the person who died, (2) paying his or her debts, and (3) distributing the remaining assets to those entitled to them under the terms of the Will

The court expects, and the Texas Estates Code (TEC) requires, that you do the following things. If you do not understand any of these duties, please consult your attorney for assistance.

1. Within twenty (20) days of the date of the Order appointing you, you must file your Oath of Office with the County Clerk. If a bond was required in the Order, it must also be filed within the same twenty (20) days. You become "qualified" by filing your oath and bond, if any. You will receive Letters of Testamentary or Letters of Administration, depending on the position to which you were appointed.
2. Upon qualification, it is your duty to take possession of all property belonging to the decedent. Any cash that you receive should be kept in a bank, savings and loan or money market account in the name of the decedent's estate. You must never commingle, nor combine your personal funds with those of the estate. The Estates Code requires that you use ordinary diligence in the collection of all claims and debts owed to an 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 other specific duties and actions.
3. Within sixty (60) days from the date the will was admitted to probate, you, as the personal representative, **must notify** all beneficiaries named in the will. The notice must include a copy of the will and the order admitting the will to probate. Waivers are permitted. Within ninety (90) days from the date the Will was admitted to probate, you as the personal representative must file an affidavit

pursuant to the new requirements of §308.002 TEC. **There are no extensions allowed and failure to comply may result in removal.**

4. Within one (1) month of your qualification date (the qualification date will be shown on your Letters), you must publish in a local newspaper a notice to all creditors of the estate. Within two (2) months of your qualification, you must mail notices by registered or certified mail, return receipt requested, to all known secured creditors. **Your attorney should prepare these notices.** Proof of the publication and mailed notices should be filed with the County Clerk.
5. Within ninety (90) days of your qualification, you must file your Inventory, Appraisal and List of Claims with the County Clerk. **Failure to file your Inventory, Appraisal and List of Claims is cause for removal and revocation of Letters.**
6. You should be aware that if the estate is taxable, you are required to file State and Federal Estate and Inheritance Tax Returns, or seek an extension of time to file, from the appropriate agency (not the Court).
7. After you have gathered the assets of the estate and paid debts and taxes that are owed, you are ready to distribute the estate. You may then distribute the assets to the distributees named in the will. If a bond was required when you qualified, it can be discharged by filing an affidavit to terminate the administration and the bond under §405.004 TEC, and an order to conclude your responsibility as the Independent Executor or Administrator of the estate.

#### **LETTERS TESTAMENTARY:**

You may order your letters testamentary after you have taken the oath and executed the bond, if a bond is required. These letters will serve as the evidence of your appointment when dealing with third persons concerning the affairs of the estate. These letters may be ordered from the County Clerk's office, (936) 539-7885.

#### **YOUR POWERS AND DUTIES:**

Upon qualification, it is your duty to take possession of all property belonging to the decedent. Any cash that you receive should be maintained in a bank account separate from your personal funds. You should never commingle property belonging with the estate with your personal assets. You must 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. Your powers to administer the estate are set out in the Will and the Texas Estates Code. Generally, all powers afforded to a dependent administrator under the TEC are also available to an Independent Executor without the necessity of court approval, including sale of real estate under §356.251 TEC. This Court will not ratify or approve an Independent Executor's actions.

**CLAIMS:**

Claims of creditors against the estate may be presented to you at any time while the estate remains open. Once a claim is presented to you, you should either allow or disallow it. You may allow any claim you believe to be a just debt of the estate if it is properly presented to you and authenticated, provided such a claim is not barred by an applicable statute of limitation.