

Applications to Determine Heirship

[University of Houston Clinical Legal Programs](#) [1]

This article was prepared by the clinical legal programs at the University of Houston Law Center, and contains information from other sources as well.

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What do you do when you don't know who all the heirs are, or if there is property that didn't get distributed?

If some or all of the property cannot be transferred using simpler methods (for example, small estate affidavits and affidavits of heirship), file an **application to determine heirs** with the probate court. The application to determine heirs is appropriate when the estate has not been administered and there is property in Texas, or if property in Texas was left out of a will.

What is an application for determination of heirship?

An **application to determine heirship** is a proceeding in which a court determines who the deceased's heirs are, and which heirs get which shares of the property.

Who can file an application to determine heirship?

People who can file an application to determine heirship include the following:

- the personal representative of the estate,
- a creditor of the estate,
- a person claiming to be the owner of all or part of the decedent's estate,
- a party seeking the appointment of an independent administrator.

Do I need a lawyer to file this application?

Yes. Under Texas law, people applying for letters testamentary, letters of administration, determinations of heirship, and guardianships of the person or estate must be represented by a licensed attorney. Only licensed attorneys may represent someone else's interests. Self-represented applicants may proceed in court *only* if they are really representing themselves alone.

Who are the required parties in an application to determine heirs?

Each unknown and known heir of the deceased must be made a party to this suit.

How are the heirs determined?

In order to determine who the heirs of an estate are, first determine if the deceased's property is separate or community property; if the deceased was married or unmarried; whether the deceased had children; and, if so, whether those children were also the children of the deceased's spouse. Once these facts are determined, who the heirs of the property are is governed by [Chapter 201 of the Texas Estates Code](#) [2].

Who must receive notice that an application to determine heirs has been filed?

This notice must be given to each heir who is age 12 years or older and the parent, managing conservator, or guardian of each heir who is younger than 12. See [Texas Estates Code 202.051](#) [3], which also contains proper methods of giving notice.

What if the names and locations of heirs are unknown?

The court must appoint a lawyer—known as an **attorney ad litem**—to represent the interests of heirs whose names or locations are unknown. Usually, an attorney ad litem's involvement is limited to the heirship determination proceeding. The court may expand that appointment to include representation of an incapacitated heir. See [Texas Estates Code chapter 202.009](#) [3].

What witnesses are required in an heirship determination proceeding?

Two disinterested witnesses are required. Disinterested witnesses are witnesses who have no financial interest in the estate.

If witnesses live out of town, do they have to come to court to testify in person?

Witnesses don't have to appear live. A deposition on written questions may be taken for out-of-town witnesses. The [Texas Rules of Civil Procedure](#) [4] (specifically Rule 200) related to the taking of a deposition on written questions must be followed. Neither an affidavit (a sworn, written statement) nor interrogatories (another type of written questions used for gathering evidence) can be used.

What if only one disinterested witness can be found?

A court can make a determination of heirship on the testimony of only one witness if it is impossible to find an additional disinterested witness. The court usually prefers one disinterested witness in addition to an interested witness, if that is all that is available.

What happens once the court determines who the heirs are, and what their share is?

At some point, either at the same time or following the declaration of heirs, an Application to Appoint an Administrator for the estate must be done if there is property to be distributed. The application to declare heirs and for administration of the estate are filed in one document. This request for administration must be filed within four years from the date of the decedent's death.

What are some other helpful resources if I want to learn about applications to determine heirship?

- [Texas Young Lawyers Association](#) [5]: [Texas Probate Passport](#) [6]
- [Houston Bar Association](#) [7]: [Elder Law Handbook](#) [8]
- [Austin Bar Association](#) [9]: [People's Law School videos related to probate](#) [10]

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Links

[1] <https://texaslawhelp.org/directory/legal-resource/university-houston-clinical-legal-programs>

[2] <http://www.statutes.legis.state.tx.us/Docs/ES/htm/ES.201.htm>

[3] <http://www.statutes.legis.state.tx.us/Docs/ES/htm/ES.202.htm>

[4] <http://www.txcourts.gov/media/1435952/trcp-all-updated-with-amendments-effective-912016.pdf>

[5] <http://www.tyla.org/>

[6] http://www.tyla.org/tyla/assets/File/TxProbatePassport_2015.pdf

[7] <https://www.hba.org/>

[8] <https://www.hba.org/services/legal-handbooks/>

[9] <http://www.austinbar.org/>

[10] <http://www.austinbar.org/for-the-public/peoples-law-school-2/>