

Estate Administration in Texas

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Does the estate administrator need to be a lawyer?

No, you don't need to be a lawyer to serve as an administrator. The administrator usually needs to be agreed upon by the heirs.

As estate administrator, how would I be representing the interests of others?

It is incorrect to assume that you're acting on your behalf only, thinking that *you* are the one that needs the letters of administration. As administrator of a decedent's estate, you represent other interests beside your own. An administrator represents the interests of beneficiaries and creditors. This responsibility to act for the benefit of another is known as a fiduciary relationship. It gives rise to legal obligations and responsibilities that require legal expertise. The lawyer you hire represents you in your capacity as administrator, and helps you account to those to whom you are responsible.

Is there anyone who is not permitted to be an administrator?

The following cannot be appointed to administer the estate:

- Incapacitated people,
- Felons,
- Nonresidents of Texas,
- Corporations that have not appointed an agent in Texas, or
- Any person the court finds unsuitable.

Do you go to court to get appointed as estate administrator?

Yes. There will be a court hearing to give the court testimony about the need for an administration of the estate and other information.

What is the first thing I must do after the court appoints me to administer the estate?

Within 20 days from the date the order appointing you, file an oath of office. If a bond was required in the order, it too must be filed within 20 days. Once you have taken the oath and paid the bond (if ordered), you have "qualified" and you may request one or more letters of administration.

What are the estate administrator's responsibilities?

After the court qualifies the administrator, he or she should take possession of all property belonging to the deceased. Any cash received from the estate should be kept in a separate bank account. The administrator pays estate debts and distributes the remaining assets as set out in the will (if there is one), or in line with the court's findings of heirship.

In addition, the administrator may have to oversee a [family allowance](#) [2] sufficient for the maintenance of the decedent's surviving spouse, minor children, and adult incapacitated children for one year from the date of death. The Texas Estates Code also allows for certain property to be exempt from creditors. The administrator sets the exempt property aside.

What is an independent administration?

Texas provides for independent administration free of court supervision. This means that after an independent executor or administrator is approved and an inventory of estate assets (or an affidavit in lieu of an inventory) has been filed, the executor or administrator can take care of the administration of the estate without further court involvement or supervision.

The independent executor or administrator can settle with creditors, set aside the homestead and other

exempt property, manage the property of the estate, sell assets for payment of debts or taxes, and distribute the remaining estate to those entitled to it. Thus, independent administration avoids the costs and delays associated with a court-supervised estate administration in which the executor or administrator must seek court approval before doing any of these acts. Courts often require that all heirs-at-law *agree* to an independent administration before an independent administration is permitted.

After you've been appointed administrator, what comes next?

Within one month after qualifying for letters of administration (the qualification date is noted on your letter), publish the notice to creditors of the estate in a local newspaper. Within two months after receiving the letters, send notice by registered or certified mail return receipt requested to all known secured creditors.

You give notice to [unsecured creditors](#) [3], such as credit card companies, under [Texas Estates Code chapter 308.054](#) [4]. This notice will state an unsecured creditor must present their claim before the 121st day after it gets notice. Your lawyer should prepare and mail these notices. Proof of publication and of all notices to real estate lien creditors should be filed with the county clerk.

What happens if I do not give notice to the unsecured creditors?

A claim may be presented to a personal representative of an estate any time before the estate is closed if suit on the claim has not been barred by the [statutes of limitation](#) [5]. In general, payment of claims of [unsecured creditors](#) [3] are low-priority claims.

Do I have to pay any taxes on the estate?

If the estate is taxable, you must file and pay applicable state and federal estate and inheritance tax returns within nine months from the date of death. Talk to your lawyer or a tax expert to find out if any taxes might be owed.

How long does the administrator have to distribute the inheritance to the heirs?

In most instances, an administrator may be removed after notice if he or she fails to make a final distribution of the estate within **three years** after letters of administration have been granted.

When can I distribute the assets to the heirs?

After you have gathered the assets of the estate and paid the debts and taxes that are owed, you are ready to distribute the estate. You may then deliver the assets of the estate to the heirs who are entitled to receive the property under the order declaring the heirs.

What happens if the debts of the estate are greater than the assets?

In general, a creditor does not have a personal judgment against the heirs or personal representative of a probate estate. In other words, if the assets of an estate are less than the debts owed, the debts, including the costs of administration, are paid per the Texas Estates Code up to the value of the estate assets.

When is the estate administration closed?

The estate administration may be closed once the debts known to exist against the estate have been paid, or been paid to the extent permitted by the estate assets, and no further need for administration for the estate exists. There is no time period within which an estate must be closed.

What are some other helpful resources if I want to learn about estate administration?

- [Texas Young Lawyers Association](#) [6]: [Texas Probate Passport](#) [7]
- [Houston Bar Association](#) [8]: [Elder Law Handbook](#) [9]
- [Austin Bar Association](#) [10]: [People's Law School videos related to probate](#) [11]

Links

- [1] <https://texaslawhelp.org/directory/legal-resource/university-houston-clinical-legal-programs>
- [2] <http://live-txlg.pantheonsite.io/article/probating-estate-without-will#toc-4>
- [3] <http://live-txlg.pantheonsite.io/article/alternatives-bankruptcy#toc-2>
- [4] <http://www.statutes.legis.state.tx.us/Docs/ES/htm/ES.308.htm>
- [5] <http://live-txlg.pantheonsite.io/article/statutes-limitation-civil-lawsuits>
- [6] <http://www.tyla.org/>
- [7] http://www.tyla.org/tyla/assets/File/TxProbatePassport_2015.pdf
- [8] <https://www.hba.org/>
- [9] <https://www.hba.org/services/legal-handbooks/>
- [10] <http://www.austinbar.org/>
- [11] <http://www.austinbar.org/for-the-public/peoples-law-school-2/>