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## Texas Probate Process—Explained

**By: Elizabeth Dean**

When a person dies and leaves property that has not been transferred to another person by way of a Trust, joint ownership with a right of survivorship, or direct payments to Beneficiaries (such as from insurance policies or retirement accounts), property in Texas will be distributed through probate.

Probate is the process in which a court legally recognizes a person's death and oversees the payment of a deceased person's debts and the distribution of his or her assets. The court's role is to facilitate this process and protect, when necessary, the interests of all creditors and Beneficiaries of the estate. The role of the Texas probate court and all persons hired by the court to facilitate this process is known as probate administration.

If the deceased, known as the decedent, dies with a drafted will, the executor or the personal representative in the will typically must file for probate. In Texas, state and local court rules govern the various time periods that the executor must follow in probating a will.

The general rule in Texas is that the executor has four years from the date of death of the testator (person who drafted the will) to file for probate. If the executor does not file the will within that prescribed time period, the laws of intestacy (when there is no will) may govern how the estate's assets are distributed unless the applicant is not at fault for failing to present the will within the four-year time period.

For a simple estate, the entire probate process can be completed within six months to a year. However, it can take much longer depending on the facts and circumstances of the case, such as uncooperative beneficiaries.

It should be noted that although it takes several months to probate an estate, Beneficiaries don't have to be left without funds while an estate is being probated. Certain assets are not distributed during probate but are transferred in some other way. These assets are called the non-probate estate. These can include bank accounts (if joint account or pay-on-death beneficiary), insurance policies, IRAs, KEOGHs, pensions, profit sharing, and 401(k) plans. These assets are transferred directly from the company or bank holding them to the beneficiary who is named in the policy or account documents.

There are two types of administration: "dependent administration" and "independent administration."

The easier probate process falls under independent administration procedures. In this situation, the court appoints an Administrator who submits an inventory of all assets and a list of people who owe

money to the estate. After the inventory is filed, the administration of the estate continues without the probate judge's approval. More than 80 percent of the estates probated in Texas are independently administered. Texas law allows the person writing a will to include a provision in the will for independent administration of the estate upon his or her death. The language for this provision is found in the Texas Estates Code. This law also tells how to ask for an independent administration in different kinds of cases.

A dependent administration procedure refers to the court being much more involved and appointing a dependent administrator who must get the probate judge's approval in every step of the probate process. This usually happens when beneficiaries fight over the will or the estate assets of the person who died. The purpose of dependent administration is to protect the rights of the beneficiaries, the people who will receive the assets. However, the necessity of a dependent administrator writing reports and seeking constant judicial approval drives the costs of probate administration up – a lot. Depending on the size of the estate, it can cost thousands of dollars more to go through dependent administration, money that would have gone to the beneficiaries under independent administration procedures.

### **Probate Terms:**

As you go through the probate process, there are many legal terms that might be unfamiliar or unclear to you. Here are a few of the main terms:

**Decedent:** When probating a will in Texas, you will likely encounter the term “decendent” often. This is the legal term for the person who has died and whose estate is in the probate process.

**Will:** This is the legal document in which a decedent has outlined how he or she would like assets distributed among their loved ones.

**Estate:** In the state of Texas, an estate consists of all the decedent's assets. These include, but aren't limited to, cash, real estate holdings (homes, land, etc.), stocks and bonds, life insurance policies, retirement accounts, vehicles and personal belongings.

**Beneficiaries:** These are the loved ones named in a will or determined by the court if there is no will, who will receive assets from the decedent's estate.

**Executor:** When a person dies with a valid will in place, the document typically names a person to serve as executor of the estate. The chief duties of the executor will be to inventory and catalogue the decedent's assets; pay debts of the estate; pay taxes of the estate; file lawsuits for claims owed to the estate; and distribute assets from the estate to the beneficiaries as named in the decedent's Last Will and Testament.

**Administrator:** When the decedent has passed on without leaving a valid will and no executor has been named, Texas law requires that an administrator be named to carry on the duties of the executor. The court will often appoint one of the primary heirs to act in this capacity.

### **The 8 Steps of Texas Probate**

**Step 1: Filing.** An application for probate must be filed with the proper Texas probate court in the county where the decedent resided.

Step 2: Posting. After the probate application is filed, there will be approximately a two week waiting period before a hearing is held for the application. During this time, the county clerk will post a notice at the courthouse stating that a probate application was filed to serve as notice to anyone who may contest the will or administration of the estate. If no contests are received, the probate court proceeds in opening the administration.

Step 3: Will Validation. After the waiting period, a Texas probate judge will preside over a hearing and will legally recognize the decedent's death. You can also expect the probate judge to verify that the decedent had a valid will or that there was no will, and finally appoint an administrator or verify the person named as executor.

Step 4: Cataloguing Assets. After an executor or administrator is named to the estate, that person must catalogue and report to the county clerk all the assets held by the estate within 90 days after appointment. The executor must prepare an Inventory, Appraisal, and List of Claims, which is sworn to be accurate to the best of their knowledge.

The Inventory is essentially a catalog of estate properties which must be carefully prepared. It must include proper and complete descriptions of the various estate assets together with reasonably accurate valuations of such assets as of the date of death. How detailed this must be depends on the:

- Complexities of the estate
- Whether there is likely to be any question of assets owned or values by beneficiaries or creditors
- And other variables.

There is an exception to the filing rule for independent executors. If there are no unpaid debts owed by the estate, except for secured debts, taxes, and administration expenses, and if the decedent's will does not require the Inventory to be filed, then the executor may file an Affidavit in lieu of Inventory with the county clerk before the deadline, swearing that there are no unpaid debts (except secured debt, etc.) and that all estate beneficiaries have received a copy of the Inventory. The purpose of this exception is to protect the decedent's privacy and to keep his/her assets from appearing in a public record.

Step 5: Beneficiaries Identified. If the decedent had a valid Will, the executor will notify beneficiaries of the estate. If no was filed, the probate court in Texas must determine heirship. This can be a challenging predicament. With the legal representation of a Texas probate attorney, parties interested in the estate of the decedent may file a proceeding to determine heirship before the court in the county where the real property is situated.

All heirs must sign the application or must be personally served with the application. If there are potentially unknown heirs of the deceased, the court requires that notices be posted in newspapers as well as at the courthouse.

All applicants must be able to prove the truth of the details in the application. Written as well as oral testimony may be necessary.

Besides the heirs themselves, a secured creditor or a qualified representative of the deceased can also initiate these proceedings as parties interested in the estate.

Step 6: Notifying Creditors. Decedents usually leave behind debts. These must be resolved out of their estate. Typical debts include medical bills, mortgages and household expenses. Creditors are notified of the decedent's death by the estate's executor and given the opportunity to file claims against the estate. This notice to creditors can be legally accomplished in Texas with a notice published in the local newspaper.

Step 7: Resolving Disputes. The estate cannot be finalized if family members or other potential beneficiaries are contesting a will in Texas or if they file related grievances. These disputes must be heard by a probate court judge.

Probating a Last Will and Testament is often an emotional situation that has the potential to cause problems in the family. In the state of Texas, contesting a will must be done within two years after the original probate. A legal representative is necessary to direct and guide you through the dispute process whether or not you are the complainant.

The person contesting a will must prove that the will is invalid or that there is something wrong with it. There are several ways that a will can be determined to be invalid, including:

- Proving the will was a forgery
- The will was forced due to excessive influence by a third party
- The will was improperly executed
- They was more than one will executed

Many people contesting a will in Texas never get to court because mediation is the suggested course of action for resolving conflict with Texas probate. Sometimes the dispute never even makes it to a mediator because the problems are settled out of court between family and their attorneys.

Step 8: Distributing Assets. After the debts are resolved and disputes cleared up, remaining assets are then distributed to the beneficiaries.

**Conclusion:**

There are additional housekeeping matters, based on the unique facts of each case, that may need attention that we will assist you with in closing the estate, such as preparing an accounting, getting receipts from the beneficiaries, etc.

If you have any questions about the process, do not hesitate to reach out to us.

Best Regards,

*/s/ Elizabeth M. Dean*

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