

Cause No. _____

**COURT INSTRUCTIONS
INDEPENDENT EXECUTOR
INDEPENDENT ADMINISTRATOR**

As the duly-appointed Personal Representative of a Decedent's Estate under a Will, you are hereby advised by the Court that you **must** do the following: (All section references are to the Texas Probate Code unless otherwise indicated.)

A. Necessity of Legal Representation

It will be necessary for you to have an attorney to represent you in all of your dealings on behalf of the estate. You should never attempt to handle the affairs of an estate without the guidance of your attorney. It is advisable to have counsel who is well-acquainted with probate administration, as the process is complicated and highly technical.

B. Fiduciary Responsibility: (§§232ff)

As the Personal Representative of the Estate, you are a **fiduciary**, a position of the highest trust and responsibility with respect to the estate of the decedent, keeping all affairs confidential; maintaining accurate and complete financial records and ensuring that all dealings undertaken on behalf of the estate, such as the purchase, sale or transfer of estate funds or property, whether real or personal, are properly completed.

It is your responsibility to act on behalf of all persons with rights in the estate. That includes not only the distributees under the will, but also the creditors of the estate.

Avoid **conflicts of interest** (and potential removal and personal liability) by: 1) **not** commingling your personal funds with the funds of the estate; 2) **not** borrowing money from or lending money to the estate; 3) **not** selling or encumbering real or personal property, or any interest therein, to yourself, a relative, friend or business acquaintance.

As a fiduciary, you may be held **liable** for any breach of your fiduciary duties. The requirements of the Probate Code are clear regarding your responsibilities.

C. Qualify as Executor: Within twenty (20) days of receiving the order appointing you (§189):

1. Take and file an *oath* (§190);
2. File the required *bond* (if required), (§§192, 194), and
3. Obtain *Letters Testamentary* or *Letters of Independent Administration* from the probate clerk's office (§178).

D. Power of Independent Personal Representative to Act - In general, an independent personal representative has the power to perform any act necessary for the full and complete settlement of the estate that he or she might do under court order and authority if the estate were dependent.

If the Will under which you are operating does not include a specific power to sell real property, or if you an independent administrator created under §145(e) where there is no will, obtain a written order of this Court before attempting to sell, transfer or otherwise dispose of any real property in the estate.

E. Take Possession of all Property of the Estate - Immediately upon receiving Letters, collect and take possession of all personal property and business records of the Estate. (§232) This may include, as necessary:

1. **Security** Change the locks on real property;
2. **Storage** Place all the non-perishable personal property in insured storage;
3. **Perishable Property** Sell perishable personal property, preferably after the Inventory has been filed and approved;
4. **Insurance Proceeds or other Employee Benefits** payable to the Estate and subject to administration.

5. **Accounts and Investments** Set up appropriate accounts for the Estate funds. (All Estate funds must be deposited in insured accounts in the name of the Estate. Retain in a checking account only such funds reasonably necessary for the current business of winding up the Estate. All other funds should be invested in insured, interest-bearing accounts. Determine whether you will need a tax identification number for the estate.

6. **Cancel Credit Cards** issued in the Decedent's name and send written notice to credit reporting agencies of the Decedent's death.

F. Manage the Property of the Estate as a "prudent person would manage one's own property." (§230)

1. **Spending Money** - Maintain thorough written records of any expenditure of Estate funds.

2. Expenditures for Support – Determine whether any ongoing business of the Decedent must be managed. (§238)

3. Sales and Leases - If necessary, obtain a written order of this Court before attempting to sell, transfer or otherwise dispose of any real estate of the Estate.

4. Insurance - Obtain adequate property insurance on all non-cash assets.

5. Collect all debts, rentals, or claims due to the Decedent, and, if necessary, with court permission, litigate on behalf of the Estate;

6. Creditor's Claims must be very carefully handled. Consult your attorney. Your improper approval of a claim or your failure to timely act on a claim can result in your personal liability.

G. Filing an Inventory Within 90 days after qualification, the Executor must file a sworn inventory, appraisal and list of claims due the estate. (§250)

H. Homestead, Exempt Property and Allowances
If necessary, the homestead and exempt property must be set aside, or an allowance fixed for the benefit of qualified family members. (§270ff)

I. Notice to Creditors

1. Within one month after qualification, you (through an attorney) must publish a notice to creditors in a newspaper of general circulation in the county and file a copy of the notice and the publisher's affidavit. (§294)

2. Within four months after qualification, you (through an attorney) must give notice by certified or registered mail, return receipt requested, to all secured creditors (§295) and any general claimants if you have actual knowledge of the debt or claim.

3. Permissive Notice: You may also (through an attorney) give permissive notice to unsecured creditors with claims for money, requiring them to present their claims within four months of the receipt of the notice or be barred from pursuing the claims. (§294(d))

J. Taxes and Bond Premiums

1. The personal representative may be held personally liable for failure to pay taxes of the

Decedent. This applies to income taxes, property taxes and payroll taxes.

2. If applicable, it is crucial that bond premiums be timely paid. Failure to do so unnecessarily exposes the estate assets to jeopardy and subjects you to removal.

K. Heirship If the will does not completely dispose of all estate assets, it will be necessary for the court to make a determination to whom the assets will be distributed after all debts have been paid. This will require the appointment of a second attorney to represent the interests of possible unknown heirs and a subsequent hearing with testimony of persons family with the family history of the Deceased.

L. Distribution and Closing Upon payment of all known debts, or at appropriate times in the administration of the estate, distribution of estate assets may be made to those persons entitled to receive the same.

When all debts have been paid, the remaining property should be distributed and the estate closed through the filing of the appropriate affidavit.

M. Period for Administration This is dependent upon the individual estate, but generally, an estate should be administered and closed in not less than six months and not more than fifteen months from the admitting of the will to probate. An interested party may thereafter seek an accounting of the personal representative and, after two years, apply to compel an accounting and distribution of the estate.

N. Questions? Consult with your attorney (not the Court) on any matter regarding the administration of this estate.

STEVE M. KING, JUDGE
PROBATE COURT NUMBER ONE
TARRANT COUNTY, TEXAS

I acknowledge receipt of a copy of these instructions:

_____ Date
Name Printed: _____