INDEPENDENT ADMINISTRATION (IA)

	NA	L	S	DATE	INITIALS
19. If **independent administration (IA)** is not the proper probate procedure, mark Items 19 through 21 of this Checkplan as not applicable and go to Item 22. If IA is the proper probate procedure, go to Items 22 through 45 and indicate that they are not applicable, and return here to do the following:					
a. See Special Instruction 68—Independent Administration (IA).					
b. See Special Instruction 5—Qualification of and Priority Rights to Be Appointed Administrator or Executor to determine that applicant qualifies to serve as executor.					
c. See Special Instruction 15—Jurisdiction and Venue and prepare Application for Probate of Will and Issuance of Letters Testamentary (Form 5).					
d. Prepare Waiver and Renunciation of Right to Letters Testamentary (Form 96) for those preferentially entitled to serve as executor who do not wish to serve and arrange for proper signature before a notary.					
e. Determine amount of filing fee, arrange for payment, and charge to client's account.					
f. File Application for Probate of Will and Issuance of Letters Testamentary (Form 5) with clerk of court. If Waiver and Renunciation of Right to Letters Testamentary (Form 96) was prepared and has been signed, file with application. If original will cannot be located, see Special Instruction 85—Wills Not Produced. *Note:* Wills are not required to be filed electronically, but doing so aids the clerk in matching the original will with the e-filed application. Regardless, the original will must be filed (or if not produced, a copy should be) with the clerk of the court within three business days after the application is filed. Once the filing is accepted, enter date of filing as Item 6.23 of MIL and the envelope number as Item 6.23A of MIL and complete Items 18 and 19 of SDL. Unless original will has already been deposited with the clerk, prepare Letter 128, enclose original will and codicil(s), and mail or deliver to clerk of court. Enter date of mailing or delivery of original will as Item 6.23B of MIL.					

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g. If a docket number has not been previously assigned to proceedings in this estate, obtain court docket number, enter it on Probate Chart (Worksheet 15), on cover page of MIL, and as Item 6.01 of MIL, and conform office file copies.					
h. Calculate the return date for the citation and enter as Item 20 of SDL (see Special Instruction 16—Citation and Notice).					
i. Determine if any proposed **executor** is a **nonresident** of Texas. If so, do the following:					
(1) Prepare Appointment of Resident Agent (Form 15 for each nonresident individual executor and Form 16 for each nonresident corporate executor) and place in file folder entitled "Court Proceedings."					
(2) Prepare and send Letter 18 to each nonresident executor, together with the original and one copy of Appointment of Resident Agent (Form 15 or Form 16).					
(3) When signed Appointment of Resident Agent (Form 15 or Form 16) is received, file with clerk of court.					
j. Arrange for date and time of hearing on Application for Probate of Will and Issuance of Letters Testamentary (Form 5) and enter as Item 24 of SDL. Complete Item 25 of SDL and Items 6.24 and 6.24A of MIL. Determine method of appearance for the hearing, and if remote, prepare Notice of Court Proceeding (Form 150), Motion for Remote Proceeding (Form 151), and Certificate of Service (Form 152). If proof of proper execution must be made by alternate methods (see Item 54 of this Checkplan), it will be necessary to wait until all required proof has been assembled before the hearing can be scheduled.					
(1) Prepare Proof of Death and Other Facts (Form 7) and place in file folder entitled "Court Proceedings."					
(2) If witness for Proof of Death and Other Facts (Form 7) is *not* the named executor, prepare and send Letter 13 to witness, together with a copy of the Proof of Death and Other Facts (Form 7), to advise of the date and time of the hearing, the need for the witness to appear before the court, and the method of appearance.					
k. If D's will is self-proved, skip to Item 19o of this Checkplan.					
l. If D's will is not self-proved or attested, but is holographic, skip to Item 19n of this Checkplan.					

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m. If D's **will is attested**, refer to Item 2.10 of MIL to determine whether an attesting witness will testify as to the proper execution of the will. If so, determine that witness's identity and whether that witness will be available to testify before the court. If no attesting witness will prove the will, skip to (3) in this Item 19m.					
(1) If the attesting witness will be available to testify before the court, do the following:					
(a) Prepare Proof by Subscribing Witness (Form 8) and place in file folder entitled "Court Proceedings."					
(b) Prepare and send Letter 14 to witness, together with a copy of the Proof by Subscribing Witness (Form 8) and a copy of D's will, to advise of the date of the hearing, the need for the witness to appear before the court, and the method of appearance.					
(2) If the attesting witness will not be available to testify before the court, determine an alternate method of proving execution of D's will. If attesting witness will testify by written interrogatories, see Item 54 of this Checkplan and take appropriate action.					
(3) If no attesting witness will be available to testify before the court or by written interrogatories, determine other appropriate witness(es) for proving execution of D's will. See Special Instruction 93—Proof of Execution of Will (Not Self-Proved) to determine nature and number of witnesses needed. Refer to Item 2.05 or 2.160 of MIL for identity of witness(es).					
(a) If witness(es) to D's signature will testify before the court, prepare Proof of Decedent's Signature (Form 133) for each witness and place in file folder entitled "Court Proceedings."					
(b) If witness(es) to the signature of an attesting witness will testify before the court, prepare Proof of Subscribing Witness's Signature (Form 134) for each witness and place in file folder entitled "Court Proceedings."					
(c) Prepare and send Letter 14 to each witness, together with a copy of the Proof of Decedent's Signature (Form 133) or Proof of Subscribing Witness's Signature (Form 134) and a copy of D's will, to advise of the date and time of the hearing, the need for the witness to appear before the court, and the method of appearance.					

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	NA	L	S	DATE	INITIALS
(4) If a witness to the signature of D or that of an attesting witness will not be available to testify before the court, determine an alternate method of proving execution of D's will. If the witness will testify by written interrogatories, see Item 54 of this Checkplan and take appropriate action. *Note:* If witness(es) to signature cannot testify that D was of sound mind and over eighteen years of age at execution of will, applicant will need to do so.					
(5) Repeat procedures in this Item 19m for each **attested codicil**, referring to Items 2.20 and 2.170 of MIL regarding witnesses.					
n. If D's **will is holographic** and is neither attested nor self-proved, refer to Item 2.05 of MIL to determine the identity of the **two** witnesses who will testify as to D's handwriting and also determine if each witness will be available to testify before the court.					
(1) For *both* of these witnesses who will testify before the court, do the following:					
(a) Prepare Proof of Decedent's Handwriting and Signature (Form 14) for each witness and place in file folder entitled "Court Proceedings."					
(b) Prepare and send Letter 17 to each witness, together with a copy of the Proof of Decedent's Handwriting and Signature (Form 14) for that witness and a copy of D's will, to advise witness of the date and time of the hearing, the need for the witness to appear before the court, and the method of appearance.					
(2) For each witness who will not be available to testify before the court, determine an alternate method of proving D's will. If D's will is to be proved by written interrogatories, see Item 54 of this Checkplan and take appropriate action.					
(3) Repeat procedures in this Item 19n for each **holographic codicil.**					
o. Prepare and send Letter 19 to each named executor, together with a copy of the Application for Probate of Will and Issuance of Letters Testamentary (Form 5), to advise of the date and time of hearing and the method of appearance before the court.					
p. Prepare Order Admitting Will to Probate and Authorizing Letters Testamentary (Form 17) and place in file folder entitled "Court Proceedings."					

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	NA	L	S	DATE	INITIALS
q. Review Item 2.58 of MIL, determine whether proposed executor will sign oath before the court or before a notary, prepare Oath (Form 18 for each individual executor and Form 19 for each corporate executor), and place in file folder entitled "Court Proceedings."					
r. If hearing must be rescheduled, enter rescheduled date and time as Items 6.24 and 6.24A of MIL and Item 26 of SDL, revise Item 25 of SDL, and notify all executors and other witnesses of new date. If method of appearance is changed, notify all executors and other witnesses and provide revised information.					
s. One business day before the hearing, call to remind all executors and all witnesses of the time and date of hearing and the place of hearing or electronic access information.					
20. For the **hearing** itself, do the following:					
a. Assemble the following documents and have available at hearing:					
(1) Original copy of Proof of Death and Other Facts (Form 7) for person who will testify as to death, etc.					
(2) Original copy of Proof by Subscribing Witness (Form 8) or Proof of Decedent's Handwriting and Signature (Form 14) for each appropriate witness who will appear before the court.					
(3) Original copy of Order Admitting Will to Probate and Authorizing Letters Testamentary (Form 17).					
(4) Original copies of Oath (Form 18 or Form 19) for each executor who will sign oath before the court.					
b. Determine if local rules of court require different or additional documents or procedures and, if so, take appropriate action.					
c. Attend hearing (see Special Instruction 18—What to Do at Hearing) and enter actual date of hearing as Item 6.25 of MIL and Item 27 of SDL.					
d. Enter the date the Order Admitting Will to Probate and Authorizing Letters Testamentary (Form 17) was signed by judge as Item 6.26 of MIL and Item 28 of SDL. Complete Items 29, 31, and 32 of SDL.					
e. Have executors who attend hearing by physical presence in the courtroom sign their Oath (Form 18 or Form 19) before appropriate court official and file with clerk of court. If these are the only executors, complete Items 6.38 and 6.39 of MIL and Items 36 and 39 of SDL.					

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	NA	L	S	DATE	INITIALS
f. Order two letters testamentary from clerk of court and, if you paid for them, charge to client's account. If ordering by mail, determine appropriate number of letters and correct charge, arrange for payment, charge to client's account, and prepare and send Letter 2 to clerk of court. When received, place in file folder entitled "Letters Testamentary."					
21. **Follow-up**. Refer to Item 2.58 of MIL. For each Oath (Form 18 or Form 19) that was not signed before a court official, prepare and send Letter 20 to each executor who did not sign the oath before the court, together with the original and one copy of Oath (Form 18 or Form 19).					
a. When all oaths are signed and returned, file all Oaths (Form 18 or Form 19) with clerk of court.					
b. Determine the date on which the last Oath (Form 18 or Form 19) was filed, enter this date as Item 6.38 of MIL, and complete Item 6.39 of MIL and Items 36 and 39 of SDL. Also complete Items 40 through 43, 45A through 46, and 48 of SDL and Items 6.85, 7.35, and 21.23 of MIL.					
c. By the date shown in Item 31 of SDL (sixty days after will admitted to probate), do the following:					
(1) Review D's will and codicil(s) to identify all devisees and legatees.					
(2) If not already done, prepare Worksheet 9 and place in folder entitled "Notice to Beneficiaries."					
(3) Prepare Letter 102 for each devisee and legatee except those who have signed waivers (Form 100) or as otherwise provided by Estates Code, Section 308.002(c).					
(4) Arrange for signature by executor. If mailing, prepare and send Letter 24 to executor, together with two copies of each Letter 102.					
(5) Send signed Letter 102, together with appropriate enclosures, to each required devisee and legatee by registered or certified mail, return receipt requested, or other qualified delivery method (see Special Instruction 16—Citation and Notice).					
(6) Attach mailing receipt or proof of deposit to the copy of Letter 102.					
(7) When received, attach return receipt or proof of delivery receipt to file copy of Letter 102.					
(8) As letters are sent and return receipts or proof of delivery receipts are returned to office, enter on Worksheet 9.					

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	NA	L	S	DATE	INITIALS
(9) Prepare Certificate of Delivery of Notice (Form 153) and file it, together with copies of Letter 102 and return receipts or proof of delivery receipts, with clerk of court.					
d. By the date shown in Item 32 of SDL (ninety days after will admitted to probate), do the following:					
(1) Determine whether executor will sign the Affidavit of Notice of Probate (Form 101) or if attorney will sign the Certificate of Notice of Probate (Form 102).					
(a) If executor is to sign, prepare Affidavit of Notice of Probate (Form 101) and attach all waivers (Form 100). If mailing, prepare and send with Letter 48.					
(b) If attorney is to sign, prepare Certificate of Notice of Probate (Form 102) and attach all waivers (Form 100).					
(2) File signed Affidavit of Notice of Probate (Form 101) or Certificate of Notice of Probate (Form 102) together with all waivers (Form 100) with clerk of court.					
e. Prepare and send Letter 22 to thank each witness, other than executor(s), who appeared before the court.					
f. Refer to Special Instruction 84—Execution of Documents regarding proper execution of documents by client.					
g. Prepare and send Letter 23 to executor(s) to advise of nature and extent of the duties of office and actions that will follow.					
h. Conform file copies of all documents for dates and signatures.					
i. Collect all of D's records, books, title papers, and business papers. If anyone refuses to deliver the same, do the following:					
(1) Prepare Application for Order to Show Cause Why [**name**] Should Not Deliver Papers, Order to Show Cause, and Order to Deliver Papers (Form 147) and Letter 138.					
(2) Send Letter 138, enclosing Application for Order to Show Cause Why [**name**] Should Not Deliver Papers, Order to Show Cause, and Order to Deliver Papers (Form 147), to person or entity holding papers.					
(3) If response is not received by deadline set in Letter 138, file Application for Order to Show Cause Why [**name**] Should Not Deliver Papers, Order to Show Cause, and Order to Deliver Papers (Form 147) with court.					

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NA	L	S	DATE	INITIALS

(4) Request a hearing date and service of citation on the respondent. Allow for the minimum notice required by the local rules or the Texas Rules of Civil Procedure, whichever is greater.

Note: Form 147 includes three items, an application and two orders. Due process requires that citation issue and personal service be accomplished for at least the order to show cause. Court preferences vary on whether these should be staged—that is, whether the proposed order to show cause should be served with the application or only as submitted to the court, for example, following an initial hearing. Further coverage is beyond the scope of this System.

Note: Instead of using the show-cause proceeding under Estates Code, Section 252.202, that is contemplated by Application for Order to Show Cause Why [**name**] Should Not Deliver Papers (Form 147) and outlined in Item 21i above, you may wish to adapt Motion for Order to Deliver Personal Property of Estate (Form 148) to obtain these papers of the estate pursuant to Estates Code, Section 351.102, as outlined in Item 21j below.

j. Collect all personal property of the estate. If anyone refuses to deliver the same, do the following:

(1) Prepare Motion for Order to Deliver Personal Property of Estate and Order to Deliver Personal Property of Estate (Form 148) and Letter 138.

(2) Send Letter 138, enclosing Motion for Order to Deliver Personal Property of Estate and Order to Deliver Personal Property of Estate (Form 148), to person or entity holding property.

(3) If response is not received by deadline set in Letter 138, file Motion for Order to Deliver Personal Property of Estate and Order to Deliver Personal Property of Estate (Form 148) with court.

k. Skip to Item 55 of this Checkplan.

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