
INDEPENDENT ADMINISTRATION BY AGREEMENT WHERE THERE IS NO WILL (IBA)

41. If **independent administration by agreement where there is no will (IBA)** is not the proper procedure, mark Items 41 through 43 of this Checkplan as not applicable and go to Item 44. If IBA is the proper probate procedure, go to Items 44 and 45, indicate that they are not applicable, and return here to do the following:
- a. See Special Instruction 89—Independent Administration by Agreement Where There Is No Will (IBA).
 - b. See Special Instruction 5—Qualification of and Priority Rights to Be Appointed Administrator or Executor and determine if applicant qualifies to serve as administrator.
 - c. See Special Instruction 15—Jurisdiction and Venue and prepare Application for Independent Administration of Intestate Estate by Agreement and Letters of Independent Administration (Form 108).
 - d. Prepare Waiver and Renunciation of Right to Letters of Administration (Form 74) for those preferentially entitled to serve as administrator 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 Independent Administration of Intestate Estate by Agreement and Letters of Independent Administration (Form 108) with clerk of court. If Waiver and Renunciation of Right to Letters of Administration (Form 74) was prepared and has been signed, file original with clerk of court. Enter date of this filing as Item 6.23 of MIL and complete Items 18 and 19 of SDL.
 - 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).

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- i. Prepare Distributee's Agreement to Independent Administration and Power of Sale, with Waiver of Citation and Notice (Form 106). Prepare and send Letter 48 to each distributee other than applicant, together with two copies of Distributee's Agreement to Independent Administration and Power of Sale, with Waiver of Citation and Notice (Form 106). Enclose one copy of the Application for Independent Administration of Intestate Estate by Agreement and Letters of Independent Administration (Form 108).
- j. On receipt of all properly signed and sworn Distributee's Agreement to Independent Administration and Power of Sale, with Waiver of Citation and Notice (Form 106), file with clerk of court.
- k. Complete steps in Item 209a–209q of this Checkplan. Coordinate steps in Item 209r–209t of this Checkplan with the remainder of this Item 41 so that the heirship order is entered before the Order Authorizing Independent Administration and Letters of Independent Administration (Form 109).
- l. Determine if proposed **administrator** is a **nonresident** of Texas. If so, do the following:
 - (1) Prepare Appointment of Resident Agent (Form 15) and place in file folder entitled "Court Proceedings."
 - (2) Prepare and send Letter 18 to proposed administrator, together with the original and one copy of Appointment of Resident Agent (Form 15).
 - (3) When signed Appointment of Resident Agent (Form 15) is received, file with clerk of court.
- m. Arrange for date and time of hearing on the Application for Independent Administration of Intestate Estate and Letters of Independent Administration (Form 108) 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).
 - (1) Prepare Proof of Death and Other Facts (Form 75) and place in file folder entitled "Court Proceedings."
 - (2) If witness for Proof of Death and Other Facts (Form 75) is *not* the proposed administrator, prepare and send Letter 13 to witness, together with a copy of the Proof of Death and Other Facts (Form 75), 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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n. Prepare and send Letter 19 to proposed administrator, together with a copy of the Application for Independent Administration of Intestate Estate by Agreement and Letters of Independent Administration (Form 108), to advise of the date and time of hearing and the method of appearance before the court.					
o. Prepare Order Authorizing Independent Administration and Letters of Independent Administration (Form 109) and place in file folder entitled "Court Proceedings."					
p. Review Item 2.58 of MIL, determine whether proposed administrator will sign oath before the court or before a notary, prepare Oath (Form 86), and place in file folder entitled "Court Proceedings."					
q. 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 proposed administrator and other witnesses of new date. If method of appearance is changed, notify proposed administrator and other witnesses and provide revised information.					
r. One business day before the hearing, call to remind proposed administrator and all witnesses of the time and date of hearing and the place of hearing or electronic access information.					
42. 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 75) for person who will testify as to death, etc.					
(2) Certified copy of D's death certificate if required by local practice.					
(3) Original copy of Order Authorizing Independent Administration and Letters of Independent Administration (Form 109).					
(4) Original copy of Oath (Form 86) if administrator will sign oath in 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 Authorizing Independent Administration and Letters of Independent Administration (Form 109) was signed by judge as Item 6.26 of MIL and Item 28 of SDL and complete Item 29 of SDL.					

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e. Have administrator who attends hearing by physical presence in the courtroom sign the Oath (Form 86) before appropriate court official and file with clerk of court. Complete Items 6.38 and 6.39 of MIL and Items 36 and 39 of SDL.					
f. Order two letters of administration 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 the 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 or of Administration."					
43. Follow-up. Refer to Item 2.58 of MIL. If administrator did not sign Oath (Form 86) before a court official, prepare and send Letter 20 to administrator, together with the original and one copy of Oath (Form 86).					
a. When signed Oath (Form 86) is returned, file oath with clerk of court.					
b. Determine the date on which the Oath (Form 86) 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. Prepare and send Letter 22 to thank each witness, other than administrator, who appeared before the court.					
d. Refer to Special Instruction 84—Execution of Documents regarding proper execution of documents by client.					
e. Prepare and send Letter 109 to administrator to advise of nature and extent of the duties of office and actions that will follow.					
f. Conform file copies of all documents for dates and signatures.					
g. 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.					

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(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.					
(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. <i>Note:</i> 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. <i>Note:</i> 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 43g 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 43h below.					
h. 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.					
i. Skip to Item 55 of this Checkplan.					