
SPECIAL INSTRUCTION 67—ADMINISTRATION WITH WILL ANNEXED (AWA)

In this System, administration with will annexed is the procedure used for *dependent* administration with will annexed. For *independent* administration with will annexed, see [Special Instruction 88—Independent Administration by Agreement Where Decedent Left a Will \(TBA\)](#) and [Special Instruction 95—Authority to Designate Administrator](#).

Administration with will annexed is the procedure used if an administration is necessary for the estate of a person with a will that fails to name an executor, names an executor who is dead or is unable to act and no alternate or successor executor is named, or names an executor who, while acting as such, dies, resigns, or is removed before the completion of the administration. See [Estates Code, Sections 306.002 and 361.152](#). The first two situations are included in this System, but the third is not. In any of the above situations, if there is a necessity for an administration or for further administration when proceedings have already been instituted, the court then appoints an administrator with will annexed. The person appointed by the court will receive letters of administration. A person designated as administrator under [Estates Code, Section 254.006](#), by a person to whom authority to do so is granted in the will has priority. See [Estates Code, Sections 301.051 and 304.001](#).

The proceedings for the appointment of an administrator with will annexed are generally the same as those for the appointment of an administrator in a regular dependent administration except that, in addition to the proof required in the regular dependent administration, the existence and validity of decedent's will must also be alleged and proved.

If an administration is already pending and the executor dies, resigns, or is removed while there is a need for further administration of the estate, and if no successor executor was named in the will or none so named is living or able to act as such, any qualified person may apply to the court to be appointed administrator with will annexed. After an administrator with will annexed qualifies, the administration proceeds in the same manner as in a regular dependent administration and the administrator is governed by the rules applicable to administrations generally. Procedures for administration with will annexed begin at [Item 32](#) of the Checkplan.

[Estates Code, Section 401.002\(b\)](#), provides that an independent administration with will annexed may be created for an estate if all the distributees of decedent agree on and consent to the advisability of an independent administration with will annexed and court appointment of an independent administrator with will annexed. See [Special Instruction 88—Independent Administration by Agreement Where Decedent Left a Will \(TBA\)](#).

In this System it is assumed that applications for letters of administration with will annexed in an original proceeding are filed within four years of decedent's death. In general, application for probate of a will and letters of administration (except for ancillary probate of foreign wills) must be made within that four-year period. See [Estates Code, Sections 256.003 and 301.002\(a\)](#). Although [Estates Code, Section 301.002\(b\)](#), excepts late applications for letters if administration is necessary to receive or recover property due to a decedent's estate, it is not clear exactly what that exception covers.

In the event of a partial intestacy—if some of decedent's property was omitted from the will—a proceeding to declare heirship is authorized to determine decedent's heirs. [Estates Code, Section 202.002](#). Absent intestacy, a declaratory judgment is the procedure to ascertain distributees—if, for example, the will disposes of all of decedent's property to "my children" without naming them. Regardless, a declaratory judgment is the procedure to construe a will. [Civil Practice & Remedies Code, Sections 37.004\(a\), 37.005\(1\), and 37.005\(2\)](#). Declaratory judgments are beyond the scope of this System.

Note: Although this System reserves its administration with will annexed procedure for dependent administrations, the Estates Code uses the phrase "with will annexed" more broadly, to include any administration, not just a dependent one, where the personal representative is not named executor—for example, [Estates Code, Section 256.103](#) ("Procedure When Application for Probate Is Filed after Letters of Administration Have Been Granted"). This System sometimes adds the phrase "with Will Annexed" to form titles of other procedures—for example, independent administration by agreement where decedent left a will (TBA)—consistent with most judges' expectations and to put the

world on notice that, as is generally true where decedent left a will, the personal representative's powers are limited only by the will, in contrast to the default

rule in intestate estates, where the administrator has no powers except those found in the order or a statute.