
SPECIAL INSTRUCTION 89—INDEPENDENT ADMINISTRATION BY AGREEMENT WHERE THERE IS NO WILL (IBA)

Independent administration is the administration of an estate without supervision by a court.

Independent administration is far more convenient, efficient, and inexpensive than any other kind of administration. There is more flexibility in the management of the estate, and there usually will be substantial savings in court costs and attorney's fees. However, if the estate is insolvent or potentially insolvent, an independent administration might not be the best procedure.

Independent administration may be created by agreement in an intestate estate under [Estates Code, Section 401.003](#). In such an estate, the court may allow independent administration and appoint any qualified person agreed by the distributees as independent administrator. The term "independent executor" includes an independent administrator. [Estates Code, Section 22.017](#).

The court may not allow independent administration by agreement if the procedure or the agreed personal representative would not be in the best interest of an incapacitated distributee. [Estates Code, Section 401.004\(c\)](#). Check your court's policy if any distributee is a minor, disabled, or under a guardianship—that is, an incapacitated person as defined by [Estates Code, Section 22.016](#).

For decedents dying on or after September 1, 2011, a proceeding to declare heirship is required before creation of the independent administration. [Estates Code, Section 401.003\(b\)](#). The application for independent administration may be heard and granted in the same proceeding, provided the judgment declaring heirship precedes the order authorizing independent administration. See [Special Instruction 60—Proceedings to Declare Heirship \(PDH\)](#).

Applications for letters of administration in an intestate estate, whether independent or dependent, require different information from those for independent administration of a testate estate, including applicant's relation to decedent and decedent's heirs, children, and divorces. Compare [Estates Code, Section 301.052](#) (Contents of Application for Letters of Administration) with [Estates Code, Section 256.052](#) (Contents of Application for Probate of Will Generally).

Whenever independent administration is created by agreement, service of citation and notice of the application is required on each distributee who does not waive citation or enter an appearance. The definitions of distributee and the means of establishing consent are detailed, and they should be reviewed carefully. See [Estates Code, Section 401.004](#), which enables a representative to consent to independent administration under some circumstances. [Estates Code, Chapter 51](#), sets out procedures regarding notice that are unique to probate.

On filing the oath, the independent administrator is qualified and has the power to perform any act necessary to settle the estate that might be done under the authority of a court in a regular administration where no will existed. [Estates Code, Section 401.006](#), enables a power of sale by agreement. Although there is no provision for a representative's consent, [Property Code, Section 114.032\(c\)](#), may permit a parent to agree for a minor.

After the administrator has qualified by taking the oath, the administrator must prepare and file an inventory, appraisal, and list of claims, to be approved by the court. [Estates Code, Section 309.051](#). Alternatively, in some circumstances for the estate of a decedent who died on or after September 1, 2011, the independent administrator may file an affidavit in lieu of the inventory. [Estates Code, Section 309.056](#). After such approval or filing, as long as the estate is represented by an independent administrator, there is no further action of any nature to be taken in court except where the Estates Code specifically provides for some other action. [Estates Code, Section 402.001](#). [Estates Code, Chapters 308 and 404](#), are exceptions to that rule.

In this System it is assumed that applications for letters of administration are filed within four years of decedent's death. In general, application for letters of administration must be made within that four-year period. See [Estates Code, Section 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.

Most of the general Estates Code provisions for giving notice to creditors and for establishing claims against an estate apply to independent administrations. These provisions require an independent administrator to observe all provisions of the Estates Code regarding notice to creditors and classification and priority of claims once such claims have been presented. Similarly, the Code requires an independent administrator

to set aside and deliver exempt property and allowances as if under court order. *See Estates Code, Chapter 403.*

Procedures for independent administration by agreement in an intestate estate begin at [Item 41](#) of the Checkplan.